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

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 760

RIN 0560–AI39

2017 Wildfires and Hurricanes Indemnity Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The 2017 Wildfires and Hurricanes Indemnity Program (2017 WHIP) will provide payments to eligible producers who suffered eligible crop, tree, bush, and vine losses resulting from hurricanes and wildfires that occurred in the 2017 calendar year, as authorized by the Bipartisan Budget Act of 2018 (BBA). This rule specifies the administrative provisions, eligibility requirements, application procedures, and payment calculations for 2017 WHIP.

DATES: *Effective date:* July 18, 2018.

Comment date: We will consider comments on the Paperwork Reduction Act that we receive by: September 17, 2018.

ADDRESSES: We invite you to submit comments on this rule. In your comment, specify RIN 0560–AI39, and include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by either of the following methods:

- *Federal Rulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Director, PECD FSA, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 0522, Washington, DC 20250–0522.

Comments will be available for viewing online at *http://www.regulations.gov.* In addition, comments will be available for public inspection at the above address during business hours from 8 a.m. to 5 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lisa Berry, telephone: (202) 720–7641. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

BBA (Pub. L. 115–123) provided $2.36 billion, available until December 31, 2019, for disaster assistance for necessary expenses related to crop, tree, bush, and vine losses related to the consequences of Hurricanes Harvey, Irma, Maria, and other hurricanes and wildfires occurring in calendar year 2017. Of the $2.36 billion available under BBA, the Secretary directed the Farm Service Agency (FSA), to provide nearly $2 billion in assistance to eligible producers through the 2017 WHIP.[1] Additionally, approximately $340 million of the available $2.36 billion is being provided to the State of Florida through a block grant to address the consequences of Hurricane Irma including losses to citrus production expected during the 2018, 2019, and 2020 crop years. This final rule only covers disaster assistance for necessary expenses related to crop, tree, bush, and vine losses related to the consequences of Hurricanes Harvey, Irma, Maria, and other hurricanes and wildfires occurring in calendar year 2017 and does not discuss the terms and conditions of the block grant to Florida.

As mandated by BBA, the total amount of payments received under 2017 WHIP, crop insurance under the Federal Crop Insurance Act (FCIA; 7 U.S.C. 1501–1524), and the Noninsured Crop Disaster Assistance Program (NAP; 7 U.S.C. 7333) combined will not exceed 85 percent of the total losses for all 2017 WHIP participants with crop insurance or NAP coverage. Also, as required by BBA, the total amount of payments received under 2017 WHIP will not exceed 65 percent of the total losses for all participants without crop insurance or NAP coverage. BBA also requires all participants who receive 2017 WHIP payments to purchase crop insurance or NAP coverage for the next 2 available crop years, regardless of whether they had crop insurance or NAP coverage for 2017. This rule provides the eligibility requirements, application procedures, and payment calculation provisions for administration of 2017 WHIP.

Due to the variety of crops and the timing of the hurricanes and wildfires, 2017 WHIP covers losses resulting from the 2017 hurricanes and wildfires to crops that were intended for harvest in either the 2017 or 2018 crop year.

For clarity, throughout this final rule, the word producer is used to refer to those persons or legal entities who have suffered losses and can apply for 2017 WHIP; the term participant is used for a producer who applied for 2017 WHIP and has been determined eligible.

Available Funding

FSA will make an initial payment of up to 50 percent of an eligible 2017 WHIP participant's calculated 2017 WHIP payment. By issuing initial payments, FSA can quickly provide disaster assistance to those who have suffered severe losses while ensuring that 2017 WHIP payments do not exceed the available funding and those funds are distributed equitably among eligible producers. If funds remain available after the initial payment, FSA will disburse the remainder of the participant's payment. If eligible losses calculated based upon applications received exceed the amount of funding available, 2017 WHIP payments will be prorated using a national factor.

Eligibility

The 2017 WHIP payments are available to eligible producers who suffered an eligible loss to crops, trees, bushes, and vines or prevented planting due to a qualifying disaster event, which includes wildfires and hurricanes that occurred in the 2017 calendar year, and conditions related to those wildfires and hurricanes, such as excessive rain, high winds, flooding, mudslides, and heavy smoke. The 2017 WHIP payments for crop losses cover only production losses; they do not cover quality losses. Eligible crops include those for which crop insurance or NAP coverage is available, excluding crops intended for grazing. A list of crops covered by crop insurance is available through RMA's Actuarial Information Browser at *https://webapp.rma.usda.gov/apps/ActuarialInformationBrowser2017/*

[1] The 2017 WHIP is not related to the USDA program administered by the Natural Resources Conservation Service named the Wildlife Habitat Incentives Program (WHIP).

CropCriteria.aspx; this list is provided for reference and includes all commodities for which crop insurance can be obtained including crops intended for grazing, which are ineligible for 2017 WHIP. NAP coverage is available for the following commercial crops when crop insurance under section 508(b) or additional coverage under sections 508(c) or 508(h) of FCIA (7 U.S.C. 1508(b), (c), and (h)) is not available for:

- Crops grown for food, excluding livestock and their by-products;
- Crops planted and grown for livestock consumption, including but not limited to grain and forage crops;
- Crops grown for fiber, excluding trees grown for wood, paper, or pulp products; and
- The production of aquacultural species (including ornamental fish), floricultural crops, ornamental nursery plants, Christmas tree crops, turfgrass sod, sweet sorghum, biomass sorghum, industrial crops, seed crops, sea grass, and sea oats.

Grazing and livestock losses are covered by existing programs that are funded by the Commodity Credit Corporation (CCC) and administered by FSA, such as the Livestock Indemnity Program (LIP), Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) and the Livestock Forage Disaster Program (LFP), and therefore are not covered by 2017 WHIP, as such would be a duplication of benefits.

The Tree Assistance Program (TAP) provides cost-share for replanting and rehabilitation of eligible trees, while 2017 WHIP provides payments based on the loss of value of the tree, bush, or vine. Therefore, participants who suffered tree, bush, and vine losses may receive both TAP payments and 2017 WHIP payments for the same acreage because 2017 WHIP and TAP pay for different losses.

Assistance for Florida citrus tree losses will be provided through a grant program administered by the State of Florida so tree losses are not eligible for 2017 WHIP. Florida citrus crop losses, however, are eligible for 2017 WHIP. TAP is a cost share program that provides assistance for replanting trees, bushes, and vines. To the extent that expenses are paid via the block grant program; those expenses will not be eligible for TAP cost-share assistance. TAP is available only for expenses actually incurred by the eligible orchardist or nursery tree grower that are not covered, reimbursed, or paid for by anyone other than the eligible orchardist or nursery tree grower.

Trees, bushes, and vines that were abandoned or not used for or intended for use for commercial production at the time of the loss are ineligible for 2017 WHIP.

The 2017 WHIP for hurricane losses and related conditions, such as excessive rain and flooding, will be available for eligible farms located in counties that received a qualifying Presidential Emergency Disaster Declaration or Secretarial Disaster Designation. A list of counties that received qualifying hurricane declarations and designations is available at *https://www.fsa.usda.gov/programs-and-services/disaster-assistance-program/wildfires-and-hurricanes-indemnity-program/index.* Only producers in primary disaster counties qualify for 2017 WHIP based on the declaration or designation. Producers in counties that did not receive a qualifying hurricane declaration or designation, including those in counties contiguous to counties that received a Presidential declaration or Secretarial designation, may still apply for 2017 WHIP, but they must also provide supporting documentation to establish that the crop was directly affected by a hurricane or a related condition. The 2017 WHIP for losses due to wildfires and conditions related to wildfires, such as mudslides and heavy smoke, will be available in any county where a wildfire occurred, as determined by FSA county committees.

Payment Limitation

Each person and legal entity who is either a participant or member of a participant will have a single 2017 WHIP payment limitation even though they may be eligible to receive payment for more than one crop year or type of loss (for example, for both crop production and tree losses). Once the payment limit is reached for any person or legal entity, the person or legal entity is not eligible to receive any additional 2017 WHIP payment. For example, if a person or legal entity reaches the maximum payment based on losses to a 2017 crop, that person or legal entity will not receive any additional 2017 WHIP payment, even though there may have been losses to a 2018 crop, due to hurricanes or wildfires that occurred in calendar year 2017, as well.

The payment limitation is based on the person's or legal entity's average adjusted gross income (AGI) and factors in the person's or legal entity's average adjusted gross farm income. Farm income includes income from activities related to farming, ranching, or forestry. Specifically, a person or legal entity, other than a joint venture or general partnership, cannot receive 2017 WHIP payments, directly or indirectly, of more than $125,000, unless at least 75 percent of the person or legal entity's average AGI, as defined in § 760.1502, is derived from farming, ranching, or forestry related activities. If at least 75 percent of the person or legal entity's average AGI is derived from farming, ranching, or forestry related activities and the participant provides the required certification and documentation, as discussed below, the person or legal entity, other than a joint venture or general partnership, is eligible to receive 2017 WHIP payments, directly or indirectly, up to $900,000. Average AGI and average adjusted gross farm income are calculated based on the person or legal entity's average income in 2013, 2014, and 2015, which are the relevant years to calculate AGI for 2017 WHIP.

To receive more than $125,000 in 2017 WHIP payments, applicants must certify that as a person or legal entity they are eligible for the $900,000 payment limitation (that is, that at least 75 percent of the person's or legal entity's average AGI is derived from farming, ranching, or forestry related activities). That certification must be submitted on form FSA–892, Request for an Exception to the WHIP Payment Limitation of $125,000, and accompanied by a certification from a certified public accountant or attorney that confirms the person or legal entity's certification. If an applicant requesting the $900,000 payment limitation is a legal entity, all members of that entity must also complete FSA–892 and provide the required certification according to the direct attribution provisions in § 1400.105, ''Attribution of Payments.'' If a legal entity would be eligible for the $900,000 payment limitation based on the legal entity's average AGI from farming but a member of that legal entity either does not complete a FSA–892 or is not eligible for the $900,000 payment limitation, the payment to the legal entity will be reduced for the applicable limitation that will apply to the share of the 2017 WHIP payment attributed to that member.

Application Process

Producers must submit 2017 WHIP applications to their administrative FSA county office by the deadline that will be announced by the FSA Deputy Administrator for Farm Programs. A complete 2017 WHIP application consists of:

- FSA–890, Wildfires and Hurricanes Indemnity Program (WHIP) Application;
- FSA–891, Crop Insurance and/or NAP Coverage Agreement;

• FSA–892, Request for an Exception to the WHIP Payment Limitation of $125,000, if more than 75 percent of an applicant's average AGI is from farm income and the applicant wants to be eligible to receive 2017 WHIP payments of more than $125,000, up to the $900,000 payment limitation; and

• FSA–893, 2018 Citrus Actual Production History and Approved Yield Record, Florida Only, for applicants requesting payments for losses to citrus crops located in Florida.

Persons and legal entities who do not submit FSA–892 and a certification from a CPA or attorney will only be considered for the lower payment limitation of $125,000. If not already on file with FSA, applicants must also submit AD–1026, Highly Erodible Land Conservation (HELC) and Wetland Conservation Certification; CCC–902, Farm Operating Plan for Payment Eligibility; and a report of acreage on FSA–578, Report of Acreage, or in another format acceptable to FSA for all acres of each crop for which 2017 WHIP payments are being requested. Applicants must also submit verifiable or reliable crop records if not already on file for crop insurance or NAP purposes; producers who do not have verifiable or reliable records will have 2017 WHIP payments determined based on the lower of either the actual loss certified by the producer and determined acceptable by FSA or the county expected yield and county disaster yield, which is the production that a producer would have been expected to make based on the eligible disaster conditions in the county, as determined by the FSA county committee. Yield means unit of production, measured in bushels, pounds, or other unit of measure, per area of consideration, usually measured in acres. In no case will 2017 WHIP payments be issued or provided for losses that cannot be determined to have occurred to the satisfaction of FSA.

2017 WHIP Payments

In general, all 2017 WHIP payments for crop production losses will take into consideration the difference between the expected value of the crop and the actual value of the crop as a result of the wildfire or hurricane damage. The value is determined by FSA using crop insurance or NAP prices. For tree, bush, and vine losses, 2017 WHIP payments will be based on the loss of value of the trees, bushes, and vines that were destroyed or damaged due to the wildfire or hurricane. Various factors will be considered to determine the payments, as explained below in detail; however, overall, the payment calculation includes reductions based on any additional payments that the participant received from crop insurance indemnities, NAP payments, and salvage value. Further, as noted above, 2017 WHIP is prohibited from paying for more than 85 percent of the total losses. Therefore, a 2017 WHIP factor will be applied to reduce the participant's payment to ensure that total 2017 WHIP payments are no more than 85 percent of the total losses by all 2017 WHIP participants, as described below.

The specific payment calculations that will be used for each type of commodity are detailed below. Each of the calculations includes numerous elements to determine the accurate and equitable amount to pay for the various losses. Some of the data will come from the applications while other numbers used in the calculations will be determined by FSA. In general, the calculations are consistent with previous ad hoc disaster assistance programs administered by FSA.

2017 WHIP Factors

After the eligible loss is determined and quantified, a 2017 WHIP payment factor will be applied based on the level of crop insurance coverage or NAP coverage a participant obtained for a crop. The ''coverage level'' is the percentage determined by multiplying the elected yield percentage under a crop insurance policy or NAP coverage by the elected price percentage. Participants who elected higher levels of crop insurance or NAP coverage will receive a higher level of compensation from the combination of the 2017 WHIP payment amount plus the crop insurance indemnity or NAP payment, as compared to a participant who elected a lower level of crop insurance or NAP coverage. As detailed in the following table, the 2017 WHIP factors will be between 65 percent, for uninsured crops, and 95 percent, for crops for which a producer obtained greater than an 80 percent crop insurance coverage level. Total 2017 WHIP payments issued to all participants will not exceed 85 percent of their collective losses, as authorized by BBA.

Coverage level	2017 WHIP payment factor (percent)
No crop insurance or No NAP coverage	65
Catastrophic coverage	70
More than catastrophic coverage but less than 55 percent	72.5
At least 55 percent but less than 60 percent	75
At least 60 percent but less than 65 percent	77.5
At least 65 percent but less than 70 percent	80
At least 70 percent but less than 75 percent	85
At least 75 percent but less than 80 percent	90
At least 80 percent	95

More producers obtained coverage at the lower levels than obtained coverage at the higher levels. Therefore, including payments to individual participants at 90 and 95 percent, total 2017 WHIP payments will not exceed 85 percent of the value of total losses.

Payment Calculation for Yield-Based Crop Losses

The 2017 WHIP payments for yield-based crop losses will be calculated based on all acreage of the crop in a unit. The eligible crop acres will be multiplied by the 2017 WHIP yield, the price for the crop, and the WHIP factor, and reduced by the participant's production multiplied by the price, and that result will be multiplied by the participant's share and reduced by the gross insurance indemnity or NAP payment and any salvage value. Additional adjustments will be applied to 2017 WHIP payment calculation based on whether the crop was prevented planted or unharvested to account for expenses that were not incurred.

The 2017 WHIP yield is the approved yield based on the producer's actual production history (APH) for insured and NAP-covered crops, or the county expected yield for uninsured crops without NAP coverage and participants in Puerto Rico. Using county expected yields for producers who did not have crop insurance or NAP coverage allows FSA to quickly provide disaster assistance payments to affected producers, by not requiring producers and FSA resources to spend additional time on the burden of computing approved yields, and improves integrity by not allowing producers who do not have adequate records an opportunity to provide production records from prior years. FSA recognizes that due to the severity of hurricanes affecting Puerto Rico, flexibility regarding required documentation is necessary in order to provide needed payments to producers who suffered extreme losses. FSA is using this streamlined determination for

yields for all 2017 WHIP applicants in Puerto Rico to provide payments in a timely manner to producers who suffered known severe losses but may be unable to provide required documentation due to the extreme circumstances faced by the agricultural sector. FSA's decision to determine the extent of eligibility differently in Puerto Rico will have no impact on or be a consideration for losses sustained outside of Puerto Rico.

The participant's production for the crop year which suffered the loss (2017 or 2018, depending on the specific crop and when it would have been harvested) is based on their verifiable or reliable production records for that crop year. Reliable production records means evidence provided by the participant that is used to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements of deposit slips, register tapes, invoices for custom harvesting, and records to verify production costs, contemporaneous measurements, truck scale tickets, and contemporaneous diaries that are determined acceptable by the county committee. These records may already be on file if the crop was covered by crop insurance or NAP. If not already on file, or if the participant believes that RMA or NAP records are inaccurate or incomplete, the participant is responsible for providing verifiable or reliable records as specified in § 760.1512. Participants who do not have verifiable or reliable records will have their payments limited to the lower of either:

- The actual loss certified by the producer and determined acceptable by FSA, or
- The county disaster yield, as established by the FSA county committee.

Payment Calculation for Value Loss Crops Losses

Assessing loss for value loss crops, such as ornamental nursery and aquaculture, is significantly different than for yield-based crops. The participant's inventory of a typical value loss crop may fluctuate from week to week, sometimes rapidly, in the course of normal business operations for reasons that may be unrelated to a disaster. As a result, 2017 WHIP payments for value loss crops will be based on inventory and losses before and after the qualifying disaster event.

The 2017 WHIP payments for value loss crops will be based on the field market value of the crop before and after the qualifying disaster event. Specifically, payments for value loss crops will be calculated using the field market value of the crop before the disaster multiplied by the 2017 WHIP factor, reduced by the sum of the field market value after the disaster and the value of losses due to ineligible causes of loss, multiplied by the participant's share, reduced by the gross insurance indemnity or NAP payment amount and salvage value of the crop.

NAP value loss and tropical crop eligibility provisions in 7 CFR part 1437 apply to 2017 WHIP for value loss and tropical crops. Nursery stock of trees, bushes, and vines is considered a value loss crop rather than a tree, bush, or vine loss for 2017 WHIP payment calculations.

Payment Calculation for Tree, Bush, and Vine Losses

Payments for trees, bush, and vine losses will be based on federal crop insurance principles and will be determined separately for different growth stages, as determined by the Deputy Administrator of Farm Programs, FSA. Each growth stage will have an associated price and damage factor to determine the value lost when a tree, bush, or vine is damaged and requires rehabilitation but is not completely destroyed.

Payments will be calculated by multiplying the expected value of the eligible damaged and destroyed trees, bushes, or vines by the 2017 WHIP factor, reduced by the actual value of the trees, bushes, or vines, and multiplied by the producer's share. FSA will subtract the amount of any insurance indemnity received for trees, bushes, and vines covered by an insurance plan and any secondary use or salvage value. The expected value is determined by multiplying the total number of trees, bushes, or vines that were damaged or destroyed by a qualifying disaster event by the price. The actual value is the expected value minus the value of the producer's loss, which is calculated by multiplying the number of trees, bushes, or vines damaged by a qualifying disaster event by the damage factor, added to the number destroyed by a qualifying disaster event, and multiplied by the price.

The county committee will adjust the number of damaged and destroyed trees, bushes, or vines, if it determines that the number of damaged or destroyed trees, bushes, or vines certified by the participant is inaccurate.

Future Crop Insurance or NAP Coverage

BBA requires all 2017 WHIP payment recipients to obtain coverage under an FCIA plan (crop insurance) or NAP coverage, as may be applicable and if available, for the next 2 crop years. Because sign-up for crop insurance and NAP coverage has already begun for some 2019 crops and due to potential conflicts or short time periods between 2017 WHIP sign-up dates and crop insurance and NAP application closing dates, FSA is requiring 2017 WHIP participants to obtain crop insurance or NAP for the next 2 available consecutive crop years after the crop year for which 2017 WHIP payments are paid, with the latest year for finally meeting compliance with this provision being the 2021 crop year. In other words, if the 2 consecutive years of coverage are not met by 2021 coverage year, the participant is ineligible for payments. Participants must obtain crop insurance or NAP, as may be applicable, at the 60 percent coverage level or higher, if available. If NAP coverage at the 60 percent coverage level is unavailable at the time of the timely filing of an application for coverage, the participant must obtain NAP catastrophic level of coverage (that is, basic 50/55 NAP coverage).

There will be situations where a 2017 WHIP participant, who does not have to meet any adjusted gross income requirement for the 2017 WHIP payment and for which crop insurance is not available for a specific crop, will have to obtain NAP coverage due to the purchase requirement in BBA. Section 1001D of the Food Security Act of 1985 (1985 Farm Bill) provides that a person or entity with adjusted gross income in amount greater than $900,000 is not eligible to participate in NAP. Accordingly, in order to reconcile this restriction in the 1985 Farm Bill and the BBA requirement to obtain NAP or crop insurance coverage, 2017 WHIP participants may meet the BBAs purchase requirement by purchasing Whole-Farm Revenue Protection crop insurance coverage, if eligible, or they may pay the applicable NAP service fee and premium despite their ineligibility for a NAP payment. In other words, the service fee and premium must be paid even though no NAP payment will be made because the adjusted gross income of the person or entity exceeds the 1985 Farm Bill limitation.

The crop insurance and NAP requirements are specific to the crop and county (physical location county for insurance and administrative county for NAP) for which 2017 WHIP payments

are paid. This means that a producer who receives a 2017 WHIP payment for a crop in a county (physical location county for insurance and administrative county for NAP) is required to purchase crop insurance or NAP coverage for the crop in the county for which the producer was issued a 2017 WHIP payment. Producers who received a 2017 WHIP payment on a crop in a county and who have the crop or crop acreage in subsequent years, as provided in this rule, and who fail to obtain the 2 years of crop insurance or NAP coverage must refund all 2017 WHIP payments for that crop in that county with interest from the date of disbursement. This is a condition of payment eligibility specified by BBA and is therefore not subject to partial payment eligibility or other types of equitable relief. Producers who were paid 2017 WHIP on a crop in a county but do not plant that crop in a subsequent year are not required to purchase crop insurance or NAP coverage for that specific crop and year.

Miscellaneous

Applicable general eligibility requirements, including recordkeeping requirements and required compliance with HELC and Wetland Conservation provisions, are similar to those for the previous ad hoc crop disaster programs and current permanent disaster programs. All information provided to FSA for program eligibility and payment calculation purposes, including average AGI certifications and production records, is subject to spot check.

Notice and Comment

In general, the Administrative Procedure Act (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the **Federal Register** and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except that when the rule involves a matter relating to public property, loans, grants, benefits, or contracts section 553 does not apply. This rule involved matters relating to benefits and is therefore being published as a final rule without the prior opportunity for comments.

Effective Date

The Administrative Procedure Act provides generally that before rules are issued by Government agencies, the rule is required to be published in the **Federal Register**, and the required publication of a substantive rule is to be not less than 30 days before its effective date. However, as noted above, the Administrative Procedure Act requirements, including the effective date delay, do not apply to rulemaking that involves a matter relating to benefit. Therefore, to provide benefits in a timely fashion, the 2017 WHIP regulations, are effective when published in the **Federal Register**.

Executive Orders 12866, 13563, 13771 and 13777

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has reviewed this rule. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on *regulations.gov*.

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' requires that, in order to manage the costs required to comply with Federal regulations, that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. The OMB guidance in M–17–21, dated April 5, 2017, specifies that ''transfers'' are not covered by Executive Order 13771 but that changes in resource use that accompany transfer rules may qualify as costs or cost savings under Executive Order 13771. Although most of this rule's impacts are income transfers between taxpayers and program beneficiaries, the associated cost-benefit analysis shows a government administrative cost of approximately $10 million (which is the equivalent of $0.53 million when annualized over a perpetual time horizon at a 7 percent discount rate). Therefore this rule is considered an Executive Order 13771 regulatory action.

Cost Benefit Analysis Summary

BBA provided up to $2.36 billion for 2017 WHIP. Early estimates suggest that total 2017 WHIP payments could be lower than the $2.36 billion. However, in addition to producer payments, WHIP funds will be used for a $340 million block grant to Florida that will provide further aid to producers with damaged trees. The federal government is expected to expend around $10 million to manage 2017 WHIP and because of the 2017 WHIP mandate that producers purchase insurance, the government is expected to incur around $100 million in additional subsidy costs. The required policies will cost producers around $60 million. USDA estimates that payment limitation savings will be at least $50 million.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, Pub. L. 104–121), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by the Administrative Procedure Act or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because FSA is not required by Administrative Procedure Act or any law to publish a proposed rule for this rulemaking.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulation for compliance with NEPA (7 CFR part 799). The 2017 WHIP is mandated by BBA. The legislative intent for implementing 2017 WHIP is to provide payments to the producers who suffered eligible crop, tree, bush, and vine losses resulting from 2017 hurricanes and wildfires.

While OMB has designated this rule as ''economically significant'' under Executive Order 12866, ''. . . economic or social effects are not intended by themselves to require preparation of an environmental impact statement'' (40 CFR 1508.14), when not interrelated to natural or physical environmental effects. The limited discretionary aspects of the program (for example, use

of grants, and determining AGI and payment limitations) were designed to be consistent with established FSA disaster programs. As such, the Categorical Exclusions found at 7 CFR part 799.31 apply, specifically 7 CFR 799.31(b)(6)(iv) and (vi) (that is, § 799.31(b)(6)(iv) Individual farm participation in FSA programs where no ground disturbance or change in land use occurs as a result of the proposed action or participation; and § 799.31(b)(6)(vi) Safety net programs administered by FSA). No Extraordinary Circumstances (7 CFR 799.33) exist. As such, FSA has determined that the implementation of 2017 WHIP and the participation in 2017 WHIP do not constitute major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affect by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons specified in the final rule related notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments proposed legislation, and other policy statements or actions that have substantial direct effects 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.

FSA has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that required tribal consultation under Executive Order 13175. If a tribe requests consultation, FSA will work with USDA Office of Tribal Relations to ensure meaningful consultation is provided.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

SBREFA

This rule is a major rule under SBREFA. SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. Section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. The beneficiaries of this rule have suffered extensive damage due to the losses from the hurricanes and wildfires that occurred in 2017. Therefore, FSA finds that it would be contrary to the public interest to delay the effective date of this rule because it would delay implementation of 2017 WHIP as required by BBA. The regulation needs to be effective to provide adequate time for producers to submit applications to request payments. Therefore, this rule is effective on the July 18, 2018.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Program found in the Catalog of Federal Domestic Assistance to which this rule applies is 2017 Wildfires and Hurricanes Indemnity Program and 10.120.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the following new information collection request that supports 2017 WHIP and the block grant to Florida was submitted to OMB for emergency approval. OMB approved the 6-month emergency information collection. Since the information collection activities will continue for more than the approved 6 months, in addition, through this rule, FSA is requesting comments from interested individuals and organizations on the information collection activities related to 2017 WHIP and the block grant to Florida as described in this rule. Following the 60-day public comment period for this rule, the information collection request will be submitted to OMB for the 3-year approval to ensure adequate time for the information collection for the duration of 2017 WHIP.

Title: 2017 WHIP and Block Grant to Florida.

OMB Control Number: 0560–New.

Form number(s) for 2017 WHIP: FSA–890, Wildfires and Hurricanes Indemnity Program (WHIP) Application; FSA–891, Crop Insurance and/or NAP Coverage Agreement; FSA–892, Request for an Exception to the WHIP Payment Limitation of $125,000, if applicable; and FSA–893, 2018 Citrus Actual

Production History and Approve Yield Records (Florida only).

Type of Request: New Collection.

Abstract: This information collection is required to support both the regulation in 7 CFR part 760, subpart O, for 2017 WHIP that establishes the requirements or eligible producers who suffered eligible crop, tree, bush, and vine losses resulting from 2017 hurricanes and wildfires as specified in BBA and the block grant to Florida. The information collection is necessary to evaluate the application and other required paperwork for determining the producer's eligibilities and assist in producer's payment calculations.

For the Grant to Florida, the same citrus growers are likely to apply for both 2017 WHIP and the grant because they will pay for different losses. The grant will pay for the tree replacement and 2017 WHIP will pay for citrus crop losses. FSA expects that Florida will use information provided to FSA by Florida applications as part of their documentation for application for tree replacement payments from Florida through the grant. Although we do not know what application Florida will use for the tree replacement payment applications, we estimate that it will take less time to complete than the FSA application.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by the estimated total annual responses.

Estimate of Respondent Burden: Public reporting burden for this information collection is estimated to average 0.6983 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collections of information.

Type of Respondents: Producers or farmers.

Estimated Annual Number of Respondents: 44,124.

Estimated Number of Reponses Per Respondent: 1.

Estimated Total Annual Responses: 44,124.

Estimated Average Time per Response: 0.6983 hours.

Estimated Annual Burden on Respondents (WHIP applicants): 28,514.

Estimated Annual Burden on Respondents (Florida Grant): 1,097.

Estimated Total Annual Burden on Respondents: 29,611.

For 2017 WHIP, the per form estimated burden is:

Form name	Form No.	Number of respondents	Total burden hours
Wildfires and Hurricanes Indemnity Program Notification	FSA–890	40,831	20,416
Crop Insurance and/or NAP Coverage	FSA–891	40,831	3,401
Request for an Exception to the WHIP Payment Limitation of $125,000, WHIP only.	FSA–892	16,332	1,360
2018 Citrus Actual Production History and Approve Yield Records (Florida only).	FSA–893	3,293	274
Wildfires and Hurricanes Indemnity Program Application (Continuation Sheet).	FSA–890 (continuation)	12,250	3,062

FSA is requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected;

(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.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 760

Dairy products, Indemnity payments, Reporting and recordkeeping requirements.

For the reasons discussed above, FSA amends 7 CFR part 760 as follows:

PART 760—INDEMNITY PAYMENT PROGRAMS

■ 1. Revise the authority citation to read as follows:

Authority: 7 U.S.C. 4501, 7 U.S.C. 1531, 16 U.S.C. 3801, note, and 19 U.S.C. 2497; Title III, Pub. L. 109–234, 120 Stat. 474; Title IX, Pub. L. 110–28, 121 Stat. 211; Sec. 748, Pub. L. 111–80, 123 Stat. 2131; and Title I, Pub. L. 115–123.

■ 2. In part 760, add subpart O to read as follows:

Subpart O—2017 Wildfires and Hurricanes Indemnity Program

Sec.

Subpart O—2017 Wildfires and Hurricanes Indemnity Program

§ 760.1500 Applicability.

This subpart specifies the terms and conditions for the 2017 Wildfires and Hurricanes Indemnity Program (2017 WHIP). The 2017 WHIP provides disaster assistance for necessary expenses related to crop, tree, bush, and vine losses related to the consequences of wildfires and hurricanes that occurred in calendar year 2017.

§ 760.1501 Administration.

(a) The 2017 WHIP is administered under the general supervision of the Administrator, Farm Service Agency (FSA), and the Deputy Administrator for Farm Programs, FSA. The 2017 WHIP is carried out by FSA State and county committees with instructions issued by the Deputy Administrator.

(b) FSA State and county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations in this subpart or instructions issued by the Deputy Administrator.

(c) The FSA State committee will take any action required by the regulations in this subpart that the FSA county committee has not taken. The FSA State committee will also:

(1) Correct, or require an FSA county committee to correct, any action taken by the FSA county committee that is not in accordance with the regulations in this subpart; or

(2) Require an FSA county committee to withhold taking any action that is not in accordance with this subpart.

(d) No delegation to an FSA State or county committee precludes the FSA Administrator, the Deputy Administrator, or a designee, from determining any question arising under 2017 WHIP or from reversing or modifying any determination made by an FSA State or county committee.

(e) The Deputy Administrator has the authority to permit State and county committees to waive or modify a non-statutory deadline specified in this part.

(f) Items of general applicability to program participants, including, but not limited to, application periods, application deadlines, internal operating guidelines issued to FSA State and county offices, prices, yields, and payment factors established for 2017 WHIP, are not subject to appeal in accordance with part 780 of this chapter.

§ 760.1502 Definitions.

The following definitions apply to this subpart. The definitions in §§ 718.2 and 1400.3 of this title also apply, except where they conflict with the definitions in this section. In the event of conflict, the definitions in this section apply.

2017 WHIP factor means the factor in § 760.1511, determined by the Deputy Administrator, that is based on the crop insurance or NAP coverage level elected by the *2017* WHIP participant for a crop for which a payment is being requested; or, as applicable, the factor that applies for a crop of a crop year where the participant had no insurance or NAP coverage.

2017 WHIP yield means, for a unit:

(1) For an insured crop, excluding crops located in Puerto Rico, the approved federal crop insurance APH, for the disaster year;

(2) For a NAP covered crop, excluding crops located in Puerto Rico, the approved yield for the disaster year;

(3) For a crop located in Puerto Rico or an uninsured crop, excluding citrus crops located in Florida, the county expected yield for the disaster year; and

(4) For citrus crops located in Florida, the yield based on documentation submitted according to § 760.1511(c)(3), or if documentation is not submitted, the county expected yield.

Actual production means the total quantity of the crop appraised, harvested, or assigned, as determined by the FSA State or county committee in accordance with instructions issued by the Deputy Administrator.

Administrative county office means the FSA county office designated to make determinations, handle official records, and issue payments for the farm as specified in accordance part 718 of this title.

Appraised production means the amount of production determined by FSA, or a company reinsured by the Federal Crop Insurance Corporation (FCIC), that was unharvested but was determined to reflect the crop's yield potential at the time of appraisal.

Approved yield means the amount of production per acre, computed as specified in FCIC's Actual Production History (APH) Program in part 400, subpart G of this title or, for crops not included in part 400, subpart G of this title, the yield used to determine the guarantee. For crops covered under NAP, the approved yield is established according to part 1437 of this title.

Average adjusted gross farm income means the average of the portion of adjusted gross income of the person or legal entity that is attributable to activities related to farming, ranching, or forestry for the 2013, 2014, and 2015 tax years. The 2013, 2014, and 2015 tax years are the relevant years to calculate AGI for 2017 WHIP.

Average adjusted gross income means the average of the adjusted gross income as defined under 26 U.S.C. 62 or comparable measure of the person or legal entity for the 2013, 2014, and 2015 tax years.

Bush means, a low, branching, woody plant, from which at maturity of the bush, an annual fruit or vegetable crop is produced for commercial market for human consumption, such as a blueberry bush. The definition does not cover nursery stock or plants that produce a bush after the normal crop is harvested.

Buy-up NAP coverage means NAP coverage at a payment amount that is equal to an indemnity amount calculated for buy-up coverage computed under section 508(c) or (h) of the Federal Crop Insurance Act and equal to the amount that the buy-up coverage yield for the crop exceeds the actual yield for the crop.

Catastrophic coverage has the meaning as defined in § 1437.3 of this title.

Citrus crops and citrus trees include grapefruit, lemon, lime, Mandarin, Murcott, orange (all types), pummelo (pomelo), tangelo, tangerine, tangor.

County disaster yield means the average yield per acre calculated for a county or part of a county for the current year based on disaster events, and is intended to reflect the amount of production that a participant would have been expected to make based on the eligible disaster conditions in the county or area, as determined by the FSA county committee in accordance with instructions issued by the Deputy Administrator.

County expected yield has the meaning assigned in § 1437.102(b) of this title.

Coverage level means the percentage determined by multiplying the elected yield percentage under a crop insurance policy or NAP coverage by the elected price percentage.

Crop insurance means an insurance policy reinsured by FCIC under the provisions of the Federal Crop Insurance Act, as amended. It does not include private plans of insurance.

Crop insurance indemnity means, for the purpose of this subpart, the payment to a participant for crop losses covered under crop insurance administered by RMA in accordance with the Federal Crop Insurance Act (7 U.S.C. 1501–1524).

Crop year means:

(1) For insurable crops, trees, bushes, and vines, the crop year as defined according to the applicable crop insurance policy;

(2) For NAP eligible crops, the crop year as defined in § 1437.3 of this title;

(3) For uninsurable trees, bushes, and vines, the 2017 crop year.

Damage factor means a percentage of the value lost when a tree, bush, or vine is damaged and requires rehabilitation but is not completely destroyed, as determined by the Deputy Administrator.

Eligible crop means a crop for which coverage was available either from FCIC under part 400 of this title, or through

NAP under § 1437.4 of this title, that was affected by a qualifying disaster event.

Eligible disaster event means a disaster event that was:

(1) For insured crops, an eligible cause of loss under the applicable crop insurance policy for the crop year;

(2) For NAP covered crops and uninsured crops, an eligible cause of loss as specified in § 1437.10 of this title.

End use means the purpose for which the harvested crop is used, such as grain, hay, or seed.

Expected production means, for an agricultural unit, the historic yield multiplied by the number of planted or prevented planted acres of the crop for the unit.

FCIC means the Federal Crop Insurance Corporation, a wholly owned Government Corporation of USDA, administered by RMA.

Final planting date means the latest date, established by RMA for insurable crops, by which the crop must initially be planted in order to be insured for the full production guarantee or amount of insurance per acre. For NAP eligible crops, the final planting date is as defined in § 1437.3 of this title.

Growth stage means a classification system for trees, bushes, and vines based on a combination of age and production capability, determined by:

(1) The applicable insurance policy for insurable trees, bushes, and vines; or

(2) The Deputy Administrator for trees, bushes, and vines for which RMA does not offer an insurance policy.

Harvested means:

(1) For insurable crops, harvested as defined according to the applicable crop insurance policy;

(2) For NAP eligible single harvest crops, that a crop has been removed from the field, either by hand or mechanically;

(3) For NAP eligible crops with potential multiple harvests in 1 year or harvested over multiple years, that the producer has, by hand or mechanically, removed at least one mature crop from the field during the crop year;

(4) For mechanically-harvested NAP eligible crops, that the crop has been removed from the field and placed in a truck or other conveyance, except hay is considered harvested when in the bale, whether removed from the field or not. Grazed land will not be considered harvested for the purpose of determining an unharvested or prevented planting payment factor.

Insurable crop means an agricultural crop (excluding livestock) for which the producer on a farm is eligible to obtain a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524).

Multi-use crop means a crop intended for more than one end use during the calendar year such as grass harvested for seed, hay, and grazing.

Multiple cropping means the planting of two or more different crops on the same acreage for harvest within the same crop year.

Multiple planting means the planting for harvest of the same crop in more than one planting period in a crop year on different acreage.

NASS means the National Agricultural Statistics Service.

NAP means the Noninsured Crop Disaster Assistance Program under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333) and part 1437 of this title.

NAP covered crop means a crop for which the producer on a farm obtained NAP coverage.

NAP eligible crop means an agricultural crop for which the producer on a farm is eligible to obtain NAP coverage.

NAP service fee means the amount the producer must pay to obtain NAP coverage.

Planted acreage means land in which seed, plants, or trees have been placed, appropriate for the crop and planting method, at a correct depth, into a seedbed that has been properly prepared for the planting method and production practice normal to the USDA plant hardiness zone as determined by the county committee.

Prevented planting means the inability to plant an eligible crop with proper equipment during the planting period as a result of an eligible cause of loss, as determined by FSA.

Price means price per unit of the crop or commodity and will be:

(1) For an insured crop under a crop insurance policy that establishes a price to determine liability, that established price;

(2) For an insured crop under a crop insurance policy that does not establish a price to determine crop insurance liability, the county average price, as determined by FSA;

(3) For a NAP covered crop or uninsured crop, the average market price determined in § 1437.12 of this title; or

(4) For a tree, bush, or vine, the price determined by the Deputy Administrator based on the species of tree, bush, or vine and its growth stage.

Production means quantity of the crop or commodity produced expressed in a specific unit of measure including, but not limited to, bushels or pounds. Production under this subpart includes all harvested production, unharvested appraised production, and assigned production for the total planted acreage of the crop on the unit.

Qualifying disaster event means a hurricane or wildfire or related condition that occurred in the 2017 calendar year.

Related condition means damaging weather or an adverse natural occurrence that occurred as a direct result of a hurricane or wildfire, as determined by FSA, such as excessive rain, high winds, flooding, mudslides, and heavy smoke, as determined by the Deputy Administrator.

Repeat crop means, with respect to production, a commodity that is planted or prevented from being planted in more than one planting period on the same acreage in the same crop year.

RMA means the Risk Management Agency.

Salvage value means the dollar amount or equivalent for the quantity of the commodity that cannot be marketed or sold in any recognized market for the crop.

Secondary use means the harvesting of a crop for a use other than the intended use.

Secondary use value means the value determined by multiplying the quantity of secondary use times the FSA-established price for that use.

Tree means a tall, woody plant having comparatively great height, and a single trunk from which an annual crop is produced for commercial market for human consumption, such as a maple tree for syrup, or papaya or orchard tree for fruit. It includes immature trees that are intended for commercial purposes. Nursery stock, banana and plantain plants, and trees used for pulp or timber are not considered eligible trees under this subpart.

Tropical crops is defined in § 1437.501 of this title.

Tropical region is defined in § 1437.502 of this title.

Unharvested payment factor means a percentage established by FSA for a crop and applied in a payment formula to reduce the payment for reduced expenses incurred because commercial harvest was not performed.

Uninsured means a crop that was not covered by crop insurance or NAP for the crop year for which a 2017 WHIP payment is being requested.

Unit means, unless otherwise determined by the Deputy Administrator, basic unit as defined in part 457 or § 1437.9 of this title, for ornamental nursery production, includes all eligible plant species and sizes.

Unit of measure means:

(1) For insurable crops, the FCIC-established unit of measure; and

(2) For NAP eligible crops, the established unit of measure used for the NAP price and yield.

USDA means the U.S. Department of Agriculture.

USDA Plant Hardiness Zone means the 11 regions or planting zones as defined by a 10 degree Fahrenheit difference in the average annual minimum temperature.

Value loss crop has the meaning specified in subpart D, of part 1437 of this title.

Vine means a perennial plant grown under normal conditions from which an annual fruit crop is produced for commercial market for human consumption, such as grape, kiwi, or passion fruit, and that has a flexible stem supported by climbing, twining, or creeping along a surface. Nursery stock, perennials that are normally propagated as annuals such as tomato plants, biennials such as strawberry plants, and annuals such as pumpkin, squash, cucumber, watermelon, and other melon plants, are excluded from the term vine in this subpart.

Yield means unit of production, measured in bushels, pounds, or other unit of measure, per area of consideration, usually measured in acres.

§ 760.1503 Eligibility.

(a) Participants will be eligible to receive a 2017 WHIP payment under this subpart only if they incurred a loss to an eligible crop, tree, bush, or vine due to a qualifying disaster event, as further specified in this subpart.

(b) To be an eligible participant under this subpart a producer who is a person or legal entity must be a:

(1) Citizen of the United States;

(2) Resident alien; for purposes of this subpart, resident alien means ''lawful alien;''

(3) Partnership consisting of citizens of the United States or resident aliens; or

(4) Corporation, limited liability company, or other organizational structure organized under State law.

(c) If any person who would otherwise be eligible to receive a payment dies before the payment is received, payment may be released as specified in § 707.3 of this title. Similarly, if any person or legal entity who would otherwise been eligible to apply for a payment dies or is dissolved, respectively, before the payment is applied for, payment may be released in accordance with this subpart if a timely application is filed by an authorized representative. Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a participant is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment. Eligibility of such participant will be determined, as it is for other participants, based upon ownership share and risk in producing the crop.

(d) Growers growing eligible crops under contract for crop owners are not eligible unless the grower is also determined to have an ownership share of the crop. Any verbal or written contract that precludes the grower from having an ownership share renders the grower ineligible for payments under this subpart.

(e) A person or legal entity is not eligible to receive disaster assistance under this subpart if it is determined by FSA that the person or legal entity:

(1) Adopted any scheme or other device that tends to defeat the purpose of this subpart or any of the regulations applicable to this subpart;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination under any or all of the following: This subpart and parts 12, 400, 1400, and 1437 of this title.

(g) A person ineligible for crop insurance or NAP under §§ 400.458 or 1437.16 of this title, respectively, for any year is ineligible for payments under this subpart for the same year.

(h) The provisions of § 718.11 of this title, providing for ineligibility for payments for offenses involving controlled substances, apply.

(i) As a condition of eligibility to receive payments under this subpart, the participant must have been in compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of part 12 of this title for the applicable crop year for which the producer is applying for 2017 WHIP benefits, and must not otherwise be precluded from receiving payments under parts 12, 400, 1400, or 1437 of this title or any law.

§ 760.1504 Miscellaneous provisions.

(a) All persons with a financial interest in the legal entity receiving payments under this subpart are jointly and severally liable for any refund, including related charges, which is determined to be due to FSA for any reason.

(b) In the event that any application for payment under this subpart resulted from erroneous information or a miscalculation, the payment will be recalculated and any excess refunded to FSA with interest to be calculated from the date of the disbursement.

(c) Any payment to any participant under this subpart will be made without regard to questions of title under State law, and without regard to any claim or lien against the commodity, or proceeds, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings in part 792 of this chapter apply to payments made under this subpart.

(d) Any participant entitled to any payment may assign any payment(s) in accordance with regulations governing the assignment of payments in part 792 of this chapter.

(e) The regulations in parts 11 and 780 of this title apply to determinations under this subpart.

§ 760.1505 General provisions.

(a) For loss calculations, the participant's unit structure will be:

(1) For an insured crop, the participant's existing unit structure established in accordance with part 457 of this title;

(2) For a crop with NAP coverage, the participant's existing unit structure established in accordance with part 1437 of this title;

(3) For an uninsured crop, the participant's unit structure established in accordance with part 1437 of this title.

(b) FSA county committees will make the necessary adjustments to assign production or reduce the 2017 WHIP yield when the county committee determines:

(1) An acceptable appraisal or record of harvested production does not exist;

(2) The loss is due to an ineligible cause of loss;

(3) The loss is due to practices, soil type, climate, or other environmental factors that cause lower yields than those upon which the historic yield is based;

(4) The participant has a contract providing a guaranteed payment for all or a portion of the crop; or

(5) The crop was planted beyond the normal planting period for the crop.

(c) Assignment of production or reduction in yield will apply for practices that result in lower yields than those for which the historic yield is based.

(d) Eligibility and payments for 2017 WHIP will be determined based on a unit's:

(1) Physical location county for insured crops; and

(2) Administrative county for NAP covered crops and uninsured crops.

(e) FSA may separate or combine types and varieties as a crop for 2017 WHIP eligibility and payment purposes when specific credible information as determined by FSA shows the crop of a specific type or variety has a significantly different or similar value, respectively, when compared to other types or varieties, as determined by the Deputy Administrator.

(f) Unless otherwise specified, all the eligibility provisions of part 1437 of this title apply to value loss crops and tropical crops under this subpart.

(g) The quantity or value of a crop will not be reduced for any quality consideration unless a zero value is established based on a total loss of quality.

(h) FSA will use the best data available to calculate a 2017 WHIP payment at the time 2017 WHIP payments are calculated. If additional data or information is provided or becomes available after a 2017 WHIP payment is issued, FSA will recalculate the payment amount and the producer must return any overpayment amount to FSA. In all cases, 2017 WHIP payments can only issue based on the payment formula for losses that affirmatively occurred.

§ 760.1506 Availability of funds and timing of payments.

(a) An initial payment will be issued for 50 percent of each 2017 WHIP payment calculated according to this subpart, as determined by the Secretary. The remainder of the calculated 2017 WHIP payment will be paid to a participant only after the application period has ended and any crop insurance indemnity or NAP payment the participant is entitled to receive for the crop has been calculated and reported to FSA, and then only if there are funds available for such payment as discussed in this subpart.

(b) In the event that, within the limits of the funding made available by the Secretary, approval of eligible applications would result in payments in excess of the amount available, FSA will prorate payments by a national factor to reduce the payments to an amount that is less than available funds as determined by the Secretary. FSA will prorate the payments in such manner as it determines equitable.

(c) Applications and claims that are unpaid or prorated for any reason will not be carried forward for payment under other funds for later years or otherwise, but will be considered, as to any unpaid amount, void and nonpayable.

§ 760.1507 Payment limitation.

(a) For any 2017 WHIP payments for the 2017 or 2018 crop year combined, a person or legal entity, other than a joint venture or general partnership, is eligible to receive, directly or indirectly, 2017 WHIP payments of not more than:

(1) $125,000, if less than 75 percent of the person or legal entity's average adjusted gross income is average adjusted gross farm income; or

(2) $900,000, if not less than 75 percent of the average adjusted gross income of the person or legal entity is average adjusted gross farm income.

(b) For 2017 WHIP eligibility, a person or legal entity's average adjusted gross income and average adjusted gross farm income are determined based on the 2013, 2014, and 2015 tax years.

(c) To be eligible for more than $125,000 in 2017 WHIP payments, a person or legal entity must submit FSA–892 and provide a certification in the manner prescribed by FSA from a certified public accountant or attorney that at least 75 percent of the person or legal entity's average adjusted gross income was average adjusted gross farm income. Persons or legal entities who fail to provide FSA–892 and the required certification may not receive a 2017 WHIP payment, directly or indirectly, of more than $125,000.

(d) The direct attribution provisions in part 1400 of this chapter apply to 2017 WHIP for both payment limitation as well as in determining average AGI as defined and used in this rule.

§ 760.1508 Qualifying disaster events.

(a) A producer will be eligible for 2017 WHIP payments for a crop, tree, bush, or vine loss only if the producer suffered a loss to the crop, tree, bush, or vine on the unit due to a qualifying disaster event.

(b) For a loss due to hurricane and conditions related to hurricanes, the crop, tree, bush, or vine loss must have occurred on acreage that was physically located in a county that received a:

(1) Presidential Emergency Disaster Declaration authorizing public assistance for categories C through G or individual assistance due to a hurricane occurring in the 2017 calendar year; or

(2) Secretarial Disaster Designation for a hurricane occurring in the 2017 calendar year.

(c) A producer with crop, tree, bush, or vine losses on acreage not located in a physical location county that was eligible under paragraph (b)(1) of this section will be eligible for 2017 WHIP for losses due to hurricane and related conditions only if the producer provides supporting documentation that is acceptable to FSA from which the FSA county committee determines that the loss of the crop, tree, bush, or vine on the unit was reasonably related to a qualifying disaster event as specified in this subpart. Supporting documentation may include furnishing climatological data from a reputable source or other information substantiating the claim of loss due to a qualifying disaster event.

(d) For a loss due to wildfires and conditions related to wildfire in the 2017 calendar year, all counties where wildfires occurred, as determined by FSA county committees, are eligible for 2017 WHIP; a Presidential Emergency Disaster Declaration or Secretarial Disaster Designation for wildfire is not required. The loss of the crop, tree, bush, or vine must be reasonably related to wildfire and conditions related to wildfire, as specified in this subpart's definition of qualifying disaster event.

§ 760.1509 Eligible and ineligible losses.

(a) Except as provided in paragraphs (b) through (e) of this section, to be eligible for payments under this subpart the unit must have suffered a loss of the crop, tree, bush, or vine, or prevented planting of a crop, due to a qualifying disaster event.

(b) A loss will not be eligible for 2017 WHIP if any of the following apply:

(1) The cause of loss is determined by FSA to be the result of poor management decisions, poor farming practices, or drifting herbicides;

(2) The cause of loss was due to failure of the participant to re-seed or replant to the same crop in a county where it is customary to re-seed or replant after a loss before the final planting date;

(3) The cause of loss was due to water contained or released by any governmental, public, or private dam or reservoir project if an easement exists on the acreage affected by the containment or release of the water;

(4) The cause of loss was due to conditions or events occurring outside of the applicable growing season for the crop, tree, bush, or vine; or

(5) The cause of loss was due to failure of a power supply or brownout.

(c) The following types of loss, regardless of whether they were the result of an eligible disaster event, are not eligible losses:

(1) Losses to crops intended for grazing;

(2) Losses to crops for which FCIC coverage or NAP coverage is unavailable;

(3) Losses to volunteer crops;

(4) Losses to crops not intended for harvest;

(5) Losses of by-products resulting from processing or harvesting a crop,

such as, but not limited to, cotton seed, peanut shells, wheat or oat straw, or corn stalks or stovers;

(6) Losses to home gardens; or

(7) Losses of first year seeding for forage production, or immature fruit crops.

(d) The following losses of ornamental nursery stock are not eligible losses:

(1) Losses caused by the inability to market nursery stock as a result of lack of compliance with State and local commercial ordinances and laws, quarantine, boycott, or refusal of a buyer to accept production;

(2) Losses affecting crops where weeds and other forms of undergrowth in the vicinity of nursery stock have not been controlled; or

(3) Losses caused by the collapse or failure of buildings or structures.

(e) The following losses for honey, as a crop, where the honey production by colonies or bees was diminished, are not eligible losses:

(1) Losses caused by the unavailability of equipment or the collapse or failure of equipment or apparatus used in the honey operation;

(2) Losses caused by improper storage of honey;

(3) Losses caused by bee feeding;

(4) Losses caused by the application of chemicals;

(5) Losses caused by theft;

(6) Losses caused by the movement of bees by or for the participant;

(7) Losses caused by disease or pest infestation of the colonies, unless approved by the Deputy Administrator;

(8) Losses of income from pollinators; or

(9) Losses of equipment or facilities.

(f) Qualifying losses for trees, bushes, and vines will not include losses:

(1) That could have been prevented through reasonable and available measures; and

(2) To trees, bushes, or vines that were abandoned or were not in use or intended for commercial operation at the time of the loss.

§ 760.1510 Application for 2017 WHIP payment.

(a) The 2017 WHIP application must be submitted on a completed form FSA–890, Wildfires and Hurricanes Indemnity Program Application, to the FSA county office serving as the farm's administrative county office by the close of business on a date that will be announced by the Deputy Administrator.

(b) Once signed by a producer, the application for payment is considered to contain information and certifications of and pertaining to the producer regardless of who entered the information on the application.

(c) The producer applying for 2017 WHIP payment certifies the accuracy and truthfulness of the information provided in the application as well as any documentation filed with or in support of the application. All information is subject to verification or spot check by FSA at any time, either before or after payment is issued. Refusal to allow FSA or any agency of the Department of Agriculture to verify any information provided will result in the participant's forfeiting eligibility for 2017 WHIP. FSA may at any time, including before, during, or after processing and paying an application, require the producer to submit any additional information necessary to implement or determine any eligibility provision of this subpart. Furnishing required information is voluntary; however, without it FSA is under no obligation to act on the application or approve payment. Providing a false certification will result in ineligibility and can also be punishable by imprisonment, fines, and other penalties.

(d) The application submitted in accordance with paragraph (a) of this section is not considered valid and complete for issuance of payment under this subpart unless FSA determines all the applicable eligibility provisions have been satisfied and the participant has submitted all of following completed forms and information:

(1) FSA–891, Crop Insurance and/or NAP Coverage Agreement;

(2) Report of all acreage for the crop for the unit for which 2017 WHIP payments are requested, on FSA–578, Report of Acreage, or in another format acceptable to FSA;

(3) AD–1026, Highly Erodible Land Conservation (HELC) and Wetland Conservation Certification; and

(4) FSA–892, Request for an Exception to the WHIP Payment Limitation of $125,000, if the applicant is requesting 2017 WHIP payments in excess of the $125,000 payment limitation; and

(5) FSA–893, 2018 Citrus Actual Production History and Approved Yield Record, Florida Only, for participants applying for payment for a citrus crop located in Florida.

(e) Application approval and payment by FSA does not relieve a participant from having to submit any form required, but not filed, according to paragraph (d) of this section.

§ 760.1511 Calculating payments for yield-based crop losses.

(a) Payments made under this subpart to a participant for a loss to yield-based crops, including losses due to prevented planting, are determined for a unit by:

(1) Multiplying the eligible acres by the 2017 WHIP yield in paragraph (c) of this section by the price;

(2) Multiplying the result from paragraph (a)(1) of this section by the applicable 2017 WHIP factor in paragraph (b) of this section;

(3) Multiplying the applicable production in paragraph (d) of this section by the price;

(4) Subtracting the result from paragraph (a)(3) of this section from the result of paragraph (a)(2) of this section;

(5) Multiplying the result from paragraph (a)(4) of this section by the participant's share in paragraph (e) of this section;

(6) Multiplying the result from paragraph (a)(5) of this section by the applicable payment factor in paragraph (f) of this section;

(7) Subtracting the amount of the gross insurance indemnity or NAP payment from the result from paragraph (a)(6) of this section; and

(8) Subtracting the secondary use or salvage value of the crop from the result from paragraph (a)(7) of this section.

(b) If the NAP or crop insurance coverage is at the coverage level listed in the first column, then the 2017 WHIP factor is listed in the second column:

Coverage Level	2017 WHIP factor (percent)
(1) No crop insurance or No NAP coverage	65
(2) Catastrophic coverage	70
(3) More than catastrophic coverage but less than 55 percent	72.5
(4) At least 55 percent but less than 60 percent	75
(5) At least 60 percent but less than 65 percent	77.5
(6) At least 65 percent but less than 70 percent	80
(7) At least 70 percent but less than 75 percent	85
(8) At least 75 percent but less than 80 percent	90
(9) At least 80 percent	95

(c) The 2017 WHIP yield is:

(1) The producer's APH for insured crops under a crop insurance policy that has an associated yield and for NAP covered crops, excluding all crops located in Puerto Rico;

(2) The county expected yield for crops located in Puerto Rico and uninsured crops, excluding citrus crops located in Florida; or

(3) For uninsured citrus crops located in Florida:

(i) Determined based on information provided on FSA–893 and supported by

evidence that meets the requirements of § 760.1513(c), or

(ii) If FSA–893 and supporting documentation are not submitted, the county expected yield.

(d) The production used to calculate a 2017 WHIP payment will be determined as specified in § 760.1513.

(e) The eligible participant's share of a 2017 WHIP payment is based on the participant's ownership entitlement share of the crop or crop proceeds, or, if no crop was produced, the share of the crop the participant would have received if the crop had been produced. If the participant has no ownership share of the crop, the participant is ineligible for 2017 WHIP.

(f) Payment factors will be used to calculate payments for crops produced with significant and variable production and harvesting expenses that are not incurred because the crop acreage was prevented planted, or planted but not harvested, as determined by FSA. The use of payment factors is based on whether the crop acreage was unharvested or prevented planted, not whether a participant actually incurs or does not incur expenses. Payment factors are generally applicable to all similarly situated participants and are not established in response to individual participants. Accordingly established payment factors are not appealable under parts 11 and 780 of this title. A crop that is intended for mechanical harvest, but subsequently grazed and not mechanically harvested, will have an unharvested payment factor applied.

(g) Production from all end uses of a multi-use crop will be calculated separately and summarized together.

§ 760.1512 Production losses; participant responsibility.

(a) For any record submitted along with the certification of production, the record must be either a verifiable or reliable record that substantiates the certification to the satisfaction of the FSA county committee. If the eligible crop was sold or otherwise disposed of through commercial channels, a record of that disposition must be provided to FSA with the certification.

(1) Acceptable production records include:

(i) RMA or NAP records, if accurate and complete;

(ii) Commercial receipts;

(iii) Settlement sheets;

(iv) Warehouse ledger sheets or load summaries; or

(v) Appraisal information from a loss adjuster acceptable to FSA.

(2) If the eligible crop was farm-stored, sold, fed to livestock, or disposed of by means other than verifiable commercial channels, acceptable records for these purposes include:

(i) Truck scale tickets;

(ii) Appraisal information from a loss adjuster acceptable to FSA;

(iii) Contemporaneous reliable diaries; or

(iv) Other documentary evidence, such as contemporaneous reliable measurements.

(3) Determinations of reliability with respect to this paragraph will take into account, as appropriate, the ability for FSA to review and verify or compare the evidence against the similarity of the evidence or reports or data received by FSA for the crop or similar crops. Other factors deemed relevant may also be taken into account.

(b) If RMA or NAP records are not available, or if the FSA county committee determines the RMA or NAP records as reported by the insured or covered participant appear to be questionable or incomplete, or if the FSA county committee makes inquiry, the participant is responsible for:

(1) Retaining and providing, at time of application and whenever required by FSA, the best available verifiable or reliable or other production records for the crop;

(2) Summarizing all the production evidence;

(3) Accounting for the total amount of unit production for the crop, whether or not records reflect this production;

(4) Providing the information in a manner that can be easily understood by the FSA county committee; and

(5) Providing supporting documentation if the FSA county committee has reason to question the disaster event or that all production has been taken into account.

(c) FSA may verify the production evidence submitted with records on file at the warehouse, gin, or other entity that received or may have received the reported production.

(d) Participants must provide all records for any production of a crop that is grown with an arrangement, agreement, or contract for guaranteed payment.

§ 760.1513 Determination of production.

(a) The harvested production of eligible crop acreage harvested more than once in a crop year includes the total harvested production from all the harvests in the crop year.

(b) If a crop is appraised and subsequently harvested as the intended use, the actual harvested production must be taken into account to determine payments. FSA will analyze and determine whether a participant's evidence of actual production represents all that could or would have been harvested.

(c) For all crops eligible for loan deficiency payments or marketing assistance loans (see parts 1421 and 1434 of this title) with an intended use of grain but harvested as silage, ensilage, cabbage, hay, cracked, rolled, or crimped, production will be converted to a whole grain equivalent based on conversion factors as previously established by FSA.

(d) If a participant does not receive compensation based upon the quantity of the commodity delivered to a purchaser, but has an agreement or contract for guaranteed payment for production, the determination of the production will be the greater of the actual production or the guaranteed payment converted to production as determined by FSA.

(e) Production that is commingled between crop years, units, ineligible and eligible acres, or different practices before it was a matter of record or combination of record and cannot be separated by using records or other means acceptable to FSA will be prorated to each respective year, unit, type of acreage, or practice, respectively. Commingled production may be attributed to the applicable unit, if the participant made the unit production of a commodity a matter of record before commingling and does any of the following, as applicable:

(1) Provides copies of verifiable documents showing that production of the commodity was purchased, acquired, or otherwise obtained from beyond the unit;

(2) Had the production measured in a manner acceptable to the FSA county committee; or

(3) Had the current year's production appraised in a manner acceptable to the FSA county committee.

(f) The FSA county committee will assign production for the unit when the FSA county committee determines that:

(1) The participant has failed to provide adequate and acceptable production records;

(2) The loss to the crop is because of a disaster condition not covered by this subpart, or circumstances other than natural disaster, and there has not otherwise been an accounting of this ineligible cause of loss;

(3) The participant carries out a practice, such as multiple cropping, that generally results in lower yields than the established historic yields;

(5) A crop was late-planted;

(6) Unharvested acreage was not timely appraised; or

(7) Other appropriate causes exist for such assignment as determined by the Deputy Administrator.

(g) The FSA county committee will establish a county disaster yield that reflects the amount of production producers would have produced considering the eligible disaster events in the county or area for the same crop. The county disaster yield for the county or area will be expressed as either a percent of loss or yield per acre. The county disaster yield will apply when:

(1) Unharvested acreage has not been appraised by FSA or a company reinsured by FCIC; or

(2) Acceptable production records for harvested acres are not available from any source.

(h) In no case will the production amount of any applicant be less than the producer's certified loss.

§ 760.1514 Eligible acres.

(a) Eligible acreage will be calculated using the lesser of the reported or determined acres shown to have been planted or prevented from being planted to a crop.

(b) Initial crop acreage will be the payment acreage for *2017* WHIP, unless the provisions for subsequent crops in this section are met. Subsequently planted or prevented planted acre acreage is considered acreage for *2017* WHIP only if the provisions of this section are met. All plantings of an annual or biennial crop are considered the same as a planting of an initial crop in tropical regions as defined in part 1437, subpart F, of this title.

(c) In cases where there is double cropped acreage, each crop may be included in the acreage for *2017* WHIP only if the specific crops are approved by the FSA State committee as eligible double cropping practices in accordance with procedures approved by the Deputy Administrator.

(d) Except for insured crops, participants with double cropped acreage not meeting the criteria in paragraph (c) of this section may have such acreage included in the acreage for *2017* WHIP on more than one crop only if the participant submits verifiable records establishing a history of carrying out a successful double cropping practice on the specific crops for which payment is requested.

(e) Participants having multiple plantings may receive payments for each planting included only if the planting meets the requirements of part 1437 of this title and all other provisions of this subpart are satisfied.

(f) Losses due to prevented planting are eligible for *2017* WHIP only if the loss was due to a qualifying disaster event. Provisions of parts 718 and 1437 of this title specifying what is considered prevented planting and how it must be documented and reported will apply to *2017* WHIP. Crops located in tropical regions are not eligible for prevented planting.

(g) Subject to the provisions of this subpart, the FSA county committee will:

(1) Use the most accurate data available when determining planted and prevented planted acres; and

(2) Disregard acreage of a crop produced on land that is not eligible for crop insurance or NAP.

(h) If a farm has a crop that has both FSA and RMA acreage for insured crops, eligible acres for *2017* WHIP will be based on the lesser of RMA or FSA acres.

§ 760.1515 Calculating payments for value loss crops.

(a) Payments made under this subpart to a participant for a loss on a unit with respect to value loss crops are determined by:

(1) Multiplying the field market value of the crop immediately before the qualifying disaster event by the *2017* WHIP factor specified in § 760.1511(b);

(2) Subtracting the sum of the field market value of the crop immediately after the qualifying disaster event and the value of the crop lost due to ineligible causes of loss from the result from paragraph (a)(1) of this section;

(3) Multiplying the result from paragraph (a)(2) of this section by the participant's share;

(4) Multiplying the result from paragraph (a)(3) of this section by the applicable payment factor;

(5) Subtracting the gross insurance indemnity or NAP payment from the result from paragraph (a)(4) of this section; and

(7) Subtracting the secondary use or salvage value of the crop from the result from paragraph (a)(5) of this section.

(b) In the case of an insurable value loss crop for which crop insurance provides for an adjustment in the guarantee, liability, or indemnity, such as in the case of inventory exceeding peak inventory value, the adjustment will be used in determining the *2017* WHIP payment for the crop.

(c) In the case of a NAP eligible value loss crop for which NAP provides for an adjustment in the level of assistance, such as in the case of unharvested field grown inventory, the adjustment will be used in determining the *2017* WHIP payment for the crop.

§ 760.1516 Calculating payments for tree, bush, and vine losses.

(a) Payments will be calculated separately based on the growth stage of the trees, bushes, or vines, as determined by the Deputy Administrator.

(b) Payments made under this subpart to a participant for a loss on a unit with respect to tree, bush, and vine losses are determined by:

(1) Multiplying the expected value (see paragraph (c) of this section) of the trees, bushes, or vines immediately before the qualifying disaster event by the *2017* WHIP factor specified in § 760.1511(b);

(2) Subtracting the actual value (see paragraph (d) of this section) of the trees, bushes, or vines immediately after the qualifying disaster event from the result of paragraph (b)(1) of this section;

(3) Multiplying the result of paragraph (b)(2) of this section by the participant's share;

(4) Subtracting the amount of any insurance indemnity received from the result of paragraph (b)(3) of this section; and

(5) Subtracting the value of any secondary use or salvage value from the result of paragraph (b)(4) of this section.

(c) Expected value is determined by multiplying the total number of trees, bushes, or vines that were damaged or destroyed by a qualifying disaster event by the price.

(d) Actual value is determined by:

(1) Multiplying the number of trees, bushes, or vines damaged by a qualifying disaster event by the damage factor;

(2) Adding the result of paragraph (d)(1) of this section and the number of trees, bushes, or vines destroyed by a qualifying disaster event;

(3) Multiplying the result of paragraph (d)(2) of this section by the price; and

(4) Subtracting the result of paragraph (d)(3) of this section from the expected value from paragraph (c) of this section.

(e) The FSA county committee will adjust the number of damaged and destroyed trees, bushes, and vines, if it determines that the number of damaged or destroyed trees, bushes, or vines certified by the participant is inaccurate.

(f) Citrus trees located in Florida are ineligible for payment under this section.

§ 760.1517 Requirement to purchase crop insurance or NAP coverage.

(a) For the first 2 consecutive crop years for which crop insurance or NAP coverage is available after the enrollment period for 2017 WHIP ends, but no later than the 2021 crop year, a participant who receives 2017 WHIP payments for a crop loss in a county must obtain:

(1) For an insurable crop, crop insurance with at least a 60 percent

coverage level for that crop in that county; or

(2) For a NAP eligible crop:

(i) NAP coverage with a coverage level of 60 percent, if available for the applicable crop year, or NAP catastrophic coverage if NAP coverage is not offered at a 60 percent coverage level for that crop year.

(ii) Participants who exceed the average adjusted gross income limitation for NAP payment eligibility [1] for the applicable crop year may meet the purchase requirement specified in paragraph (a)(2)(i) of this section by purchasing Whole-Farm Revenue Protection crop insurance coverage, if eligible, or paying the NAP service fee and premium even though the participant will not be eligible to receive a NAP payment due to the average adjusted gross income limit but will be eligible for the WHIP payment.

(b) For the first 2 consecutive insurance years for which crop insurance is available after the enrollment period for 2017 WHIP ends, but no later than the 2021 crop year, any participant who receives 2017 WHIP payments for a tree, bush, or vine loss must purchase a plan of insurance for the tree, bush, or vine with at least a 60 percent coverage level.

(c) If a producer fails to obtain crop insurance or NAP coverage as required in paragraphs (a) and (b) of this section, the producer must reimburse FSA for the full amount of 2017 WHIP payment plus interest that the producer received for that crop, tree, bush, or vine loss. A producer will only be considered to have obtained NAP coverage for the purposes of this section if the participant applied and payed the requisite NAP service fee and paid any applicable premium by the applicable deadline and completed all program requirements, including filing an acreage report as may be required under such coverage agreement.

Richard Fordyce,

Administrator, Farm Service Agency.

[FR Doc. 2018–15346 Filed 7–16–18; 8:45 am]

BILLING CODE 3410–05–P

[1] See §§ 1400.500(a) and 1400.1(a)(4) of this title.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–1102; Product Identifier 2017–NM–078–AD; Amendment 39–19320; AD 2018–13–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2016–01–11, which applied to certain Airbus Model A320–211, –212, and –231 airplanes. AD 2016–01–11 required repetitive inspections for cracking of the radius of the front spar vertical stringers and the horizontal floor beam on frame (FR) 36, repetitive inspections for cracking of the fastener holes of the front spar vertical stringers on FR 36, and repair if necessary. This AD adds new thresholds and intervals for the repetitive inspections; requires, for certain airplanes, a potential terminating action modification of the center wing box area; and expands the applicability. This AD was prompted by a report that, during a center fuselage certification full-scale fatigue test, cracks were found on the front spar vertical stringer at a certain frame. This AD was also prompted by a determination that, during further investigations of the frame as part of the widespread fatigue damage (WFD) campaign, certain inspection compliance times have to be revised and new inspections and a new potential terminating action modification have to be introduced. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 22, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 22, 2018.

ADDRESSES: For service information identified in this final rule, contact Airbus, Airworthiness Office–EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.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. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1102.

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–2017–1102; 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 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: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2016–01–11, Amendment 39–18370 (81 FR 3316, January 21, 2016) (''AD 2016–01–11''). AD 2016–01–11 applied to certain Airbus Model A320–211, –212, and –231 airplanes. The NPRM published in the **Federal Register** on December 13, 2017 (82 FR 58566). The NPRM was prompted by a report that, during a center fuselage certification full-scale fatigue test, cracks were found on the front spar vertical stringer at a certain frame. The NPRM proposed to continue to require repetitive inspections for cracking of the radius of the front spar vertical stringers and the horizontal floor beam on FR 36, repetitive inspections for cracking of the fastener holes of the front spar vertical stringers on FR 36, and repair if necessary. The NPRM also proposed to add new thresholds and intervals for the repetitive inspections; require, for certain airplanes, a potential terminating action modification of the center wing box area; and expand the applicability. We are issuing this AD to address fatigue cracking of the front spar vertical stringers on the wings, which

could result in the reduced structural integrity of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0099, dated June 8, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A318 series airplanes; Model A319 series airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321 series airplanes. The MCAI states:

> During centre fuselage certification full-scale fatigue test, cracks were found on the front vertical stringer at frame (FR) 36. Analysis of these findings indicated that a number of in-service aeroplanes could be similarly affected.
>
> This condition, if not detected and corrected, could lead to crack propagation and consequent deterioration of the structural integrity of the aeroplane.
>
> To address this potential unsafe condition, Airbus issued Airbus Service Bulletin (SB) A320–57–1016 to provide inspection instructions, and, consequently, [Direction Générale de l'Aviation Civile] DGAC France issued AD 97–311–105 [which corresponded to FAA AD 98–18–26, Amendment 39–10742 (63 FR 47423, September 8, 1998)] to require those repetitive [high frequency eddy current (HFEC)] inspections [for cracking]. At the same time, modification in accordance with Airbus SB A320–57–1017 was introduced as (optional) terminating action for the repetitive inspections * * *.
>
> After that [French] AD was issued, and following new analysis, modification per Airbus SB A320–57–1017 was no longer considered to be terminating action for the repetitive inspections as required by DGAC France AD 97–311–105. Aeroplanes with [manufacturer serial number] MSN 0080 up to MSN 0155 inclusive were delivered with the addition of a 5 [millimeter] mm thick light alloy shim under the heads of 2 fasteners at the top end of the front spar vertical stringers (Airbus mod 21290P1546, which is the production line equivalent to in-service modification through Airbus SB A320–57–1017). Aeroplanes with MSN 0156 or higher are delivered with vertical stiffeners of the forward wing spar upper end with stiffener cap thickness increased from 4 to 6 mm (Airbus mod 21290P1547).
>
> Prompted by these findings, Airbus issued SB A320–57–1178 Revision 01 to introduce new repetitive inspections and, consequently, EASA issued AD 2014–0069 [which corresponds to FAA AD 2016–01–11], superseding DGAC France AD 97–311–105 to require the new repetitive inspections, and, depending on findings, accomplishment of applicable corrective action(s).
>
> Since [EASA] AD 2014–0069 was issued, further investigations in the frame of the Widespread Fatigue Damage (WFD) campaign identified that some repetitive inspection thresholds and intervals have to be revised or introduced, and a new [potential] terminating action modification has been designed.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2014–0069, which is superseded, revises and introduces thresholds and intervals for the repetitive inspections, [introduces a potential terminating action modification,] and expands the Applicability.

Required actions also include reporting. Although this AD does not explicitly restate the requirements of AD 2016–01–11, it retains certain requirements of AD 2016–01–11. Those requirements are referenced in Airbus Service Bulletin A320–57–1178, Revision 03, including only Appendix 03, both dated November 29, 2016.

This service information is identified in ''Related Service Information under 1 CFR part 51,'' in this preamble and in paragraph (i)(1) of this AD. You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1102.

Comments

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

Support for the NPRM

United Airlines (UAL) stated that it agrees with the intent of the NPRM.

Request To Change Costs of Compliance Section

Delta Airlines (DAL) requested that the Costs of Compliance section of the proposed AD be revised to include the costs for reporting inspection findings and for modifying the airplane as specified in Airbus Service Bulletin A320–57–1200. DAL stated that the cost of reporting, in addition to the cost for the modification has been significantly underestimated in the cost section of the proposed AD. DAL noted that it takes 2 work-hours per airplane to do the steps for reporting, in addition to numerous work-hours for setup time. DAL pointed out that the proposed AD mandates two service bulletins, and the cost of both should be included in the proposed AD. DAL explained that the kit cost for the modification is $55,360 (depending on configuration), and the labor is approximately 137 work-hours. DAL stated that the cost does not reflect lost revenue due to removing the airplane from service outside of the normal maintenance schedule. Given all of these factors, DAL asserted that the true cost of the proposed AD on operators should be as follows.

- For the inspection provided in Airbus Service Bulletin A320–57–1178: $1,947,850 + $232,275 for reporting.
- For the modification provided in Airbus Service bulletin A320–57–1200: $54,609,075 + $232,275 for reporting.
- Total cost to industry is: $57,021,475.

We partially agree. We do not agree to increase the work-hours for reporting; however. We estimate only the time necessary to submit a report (per each response), since the reporting information would be obtained when accomplishing the inspection(s) in the service bulletin(s). However, we do agree to include the costs for the modification for certain airplanes specified in Airbus Service Bulletin A320–57–1200, dated November 20, 2015, which will result in a total fleet cost of $1,107,050 or $110,705 per product, for the basic requirement of this AD. We have changed the ''Costs of Compliance'' section of this final rule accordingly.

Request To Clarify Certain Requirements in Table 1 to Paragraphs (g), (h), (i)(1), and (j) of the Proposed AD

UAL asked that we revise table 1 to paragraphs (g), (h), (i)(1), and (j) of the proposed AD to clarify that Airbus modification (Mod) 21290P1546 is limited to airplanes with manufacturer serial numbers (MSN) 0080 up to MSN 0155 inclusive. UAL also asked that another clarification be added to table 1 to specify that Mod 21290P1547 is effective for airplanes with MSN 0156 or higher, which were delivered with vertical stiffeners of the forward wing spar upper end with stiffener cap thickness increased from 4 to 6 mm. UAL stated that those airplanes were delivered with the addition of a 5 millimeter (mm) thick light alloy shim under the heads of two fasteners at the top end of the front spar vertical stringers. UAL added that Mod 21290P1546 is the production line equivalent to in-service modifications through Airbus Service Bulletin A320–57–1017.

We do not agree with the commenter's requests. Figure 1 to paragraphs (g), (h), (i)(1), and (j) of this AD (table 1 to paragraphs (g), (h), (i)(1), and (j) of the proposed AD) defines configurations by whether or not certain modifications were done and certain service bulletins were embodied. Airbus Service Bulletin A320–57–1017 provides information regarding Mod 21290P1546 and Mod 21290P1547 that identifies the specific configuration of the airplanes. The definitions in figure 1 to paragraphs (g), (h), (i)(1), and (j) of this AD and figure 2 to paragraphs (g) and (i)(1) of this AD

correspond to the airplane configuration definitions provided in Appendix 1 of EASA AD 2017–0099, dated June 8, 2017. Therefore, we have not changed this AD in this regard.

Request To Extend Compliance Times for Configuration 003 Airplanes

DAL asked that we extend the proposed initial compliance time for Configuration 003 airplanes identified in figure 3 to paragraph (i)(1) of the proposed AD. DAL asked that the initial inspection be extended to 24 months, or at a minimum, that the flight-hour limit be increased to 1,500 flight hours, since the initial inspection is dependent on flight cycles, not flight hours. DAL provided the following options for the proposed compliance time: (1) Next scheduled . . ., (2) 12-month . . ., or (3) 4-months. . . . DAL stated that it currently operates five airplanes, which are Configuration 003 on which the threshold of ''Before exceeding 32,000 flight cycles or 64,000 flight hours since airplane first flight'' for the initial inspection has been exceeded. DAL added that, at current fleet utilization rates, it will require the inspections be done within approximately 85 days after the effective date of the AD, due to the flight-hour limit. DAL noted that this will necessitate a special maintenance visit. DAL also stated that its maintenance program requires a maintenance visit every 24 months, and added that most, if not all, of the airplanes will not visit a hangar within the next 3 months.

DAL asked that the compliance time be extended to 6 years after the effective date of the AD, with supplemental inspections for accomplishing the modification required by paragraph (j) of the proposed AD. At a minimum, DAL requested relief by allowing for an inspection, as specified in Airbus Service Bulletin A320–57–1178, Revision 03, dated November 29, 2016, at 2-year intervals until the heavy ''H'' check can be reached. DAL stated that modifications to Configuration 003 airplanes require incorporation of Airbus Service Bulletin A320–57–1200, dated November 20, 2015, prior to reaching 48,000 flight cycles or 96,000 flight hours, whichever occurs first. DAL stated that, at its current utilization rate, this modification would be required in approximately 4 years; however, its current heavy maintenance ''H'' checks are scheduled at 6-year intervals. DAL noted that this is a minimal risk, since Configuration 003 airplanes will receive supplemental inspections within a short time after the effective date specified in paragraph (i)(1) of the proposed AD.

We do not agree with the commenter's requests to extend the specified compliance times. The compliance times for the actions specified in this AD for addressing widespread fatigue damage (WFD) were established to ensure that affected structure is replaced before WFD develops. Standard inspection techniques cannot be relied on to detect WFD before it becomes a hazard to flight. We will not grant any extensions of the compliance time to complete any AD-mandated service bulletin related to WFD without extensive new data that would substantiate and clearly warrant such an extension. Therefore, we have not changed this AD in this regard.

Request To Allow Alternative Method of Compliance (AMOC) in Lieu of Contacting the Manufacturer for Repair Instructions

DAL asked that an allowance be made under the provisions of paragraph (o)(2) of the proposed AD (and future ADs) for contacting Airbus for any deviations to the instructions contained within the service bulletins required in paragraphs (i) and (j) of the proposed AD, and to be able to use their EASA Design Organization Approval (DOA) approvals without seeking separate and redundant FAA AMOCs. DAL stated that as airplanes are scheduled for maintenance to comply with the proposed AD, the operator may discover that the Airbus service information contains errors that can affect compliance with the actions in the proposed AD. DAL did not state there are any known errors in the service information required in paragraphs (i) and (j) of the proposed AD. DAL added that, although the proposed AD provides an option to receive approval from the Manager, International Section, Transport Standards Branch, FAA; or EASA, or Airbus's EASA DOA; as specified in paragraph (o)(2) of the proposed AD, no such allowance is provided for receiving approval for deviations from the service information. DAL noted that past experience has shown that the FAA is unable to provide AMOC approvals within 2 days after receiving the request, which could result in grounding of airplanes. DAL suggested using the language in paragraph (6) of the MCAI.

We do not agree with the commenter's request. Paragraph (o)(2) of this AD, ''Contacting the Manufacturer,'' only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from the requirements of AD-mandated actions. We do not agree to expand paragraph (o)(2) of this AD to include such deviations because we need to ensure that any deviations from the requirements of AD-mandated actions are properly reviewed to adequately address the unsafe condition. Regarding paragraph (6) of the MCAI, if an operator is not able to comply with service information that is required by an AD, then the operator must request an AMOC in accordance with the procedures specified in paragraph (o)(1) of this AD.

We also note that, although we cannot guarantee AMOC approvals within 2 business days, we have provided AMOC approvals to U.S. operators, including DAL, within 24 hours of receiving the request, provided operators submit a complete AMOC package with substantiation and explanation of the urgency, such as, but not limited to, a disruption in operation. Guidance for submitting AMOCs is available in FAA Advisory Circular (AC) 39–10. We also recommend that operators work with the original equipment manufacturers to address errors in service information as part of AD planning, in addition to submitting comments to the NPRM denoting any errors in the service information, so that corrections to methods of compliance (MOC) can be addressed in the FAA final rule. Additional guidance for operators on AD management can be found in FAA AC 39–9. We have not changed this AD in this regard.

Requests To Change or Delete Reporting Requirement

DAL and UAL asked that the reporting of findings (positive or negative), as specified in the reporting requirement in paragraphs (n) and (o)(4) of the proposed AD, be limited to positive findings only, or be removed entirely. DAL stated that it will require a significant amount of work to collect, collate, and disseminate the requested data to Airbus, resulting in little or no benefit to the airworthiness of the airplane. DAL added that any findings will require transmission of findings to engineering from maintenance prior to submission to Airbus, which could result in a time lag and opportunities for error. DAL and UAL asserted that all positive findings are already reported to Airbus as part of the repair process and Airbus has the means to determine negative findings, so reporting is a duplicative burden on operators. Further, DAL argued that the Paperwork Reduction Act (*https://www.gpo.gov/fdsys/pkg/PLAW-104publ13/html/PLAW-104publ13.htm*) is meant to reduce the burden placed on public entities from government agencies when

the information is obtainable from other sources, especially for the convenience of a foreign business. Additionally, DAL notes that only individuals that have the required access—controlled by Airbus—may submit reports, and provided data about what is required in order to submit a report (*i.e.,* work-hours for the various steps in the process). DAL asserted that the cost of reporting on its operation would be $518,710, and that Airbus, EASA, nor the FAA have demonstrated in any of the service documents why the reporting requirement in this AD is necessary.

We agree to limit the reporting requirement to positive findings only for the reasons provided by the commenters. We have changed paragraph (n) of this AD accordingly.

We do not agree to remove the reporting requirement in this AD because the inspection reports will enable the manufacturer to obtain better insight into the nature, cause, and extent of the cracking, and eventually to develop final corrective action to address the unsafe condition. Once final corrective action has been identified, we might consider further rulemaking.

Clarification of Actions That Prompted This AD

We have revised the **SUMMARY** section of this final rule and paragraph (e) of this AD to clarify what prompted this AD. In addition to the report of cracks on the front spar vertical stringer at a certain frame, this AD was prompted by a determination that, during further investigations of the frame as part of the WFD campaign, certain inspection compliance times have to be revised and new inspections and a new potential terminating action modification have to be introduced.

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information.

- Service Bulletin A320–57–1178, Revision 03, including only Appendix 03, both dated November 29, 2016. The service information describes procedures for a rototest inspection for cracking of the radius of the front spar vertical stringers on FR 36, a HFEC for cracking of the horizontal floor beam on FR 36, and an HFEC inspection for cracking of the fastener holes of the front spar vertical stringers on FR 36.
- Service Bulletin A320–57–1200, dated November 20, 2015. The service information describes procedures for modifying the center wing box area, which includes related investigative and corrective actions. Related investigative actions include an HFEC inspection on the radius of the rib flanges, a rototest inspection of the fastener holes, detailed and HFEC inspections for cracking on the cut edges, detailed and rototest inspections on all open fastener holes, and an inspection to determine if secondary structure brackets are installed. Corrective action includes reworking the secondary structure bracket and repair.

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

Costs of Compliance

We estimate that this AD affects 815 airplanes of U.S. registry.

The actions required by AD 2016–01–11, take about 24 work-hours per inspection cycle per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 2016–01–11 is $2,040 per inspection cycle per product.

We also estimate that it takes about 273 work-hours per product to comply with the basic requirements of this AD and 1 work-hour for reporting per response. The average labor rate is $85 per work-hour. Required parts cost about $87,500 per product. Based on these figures, we estimate the cost of this AD on affected U.S. operators of certain airplanes specified in the service information to be $1,107,050 or $110,705 per product.

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

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW, Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

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

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

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States,

or on the distribution of power and responsibilities among the various levels of government.

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2016–01–11, Amendment 39–18370 (81 FR 3316, January 21, 2016), and adding the following new AD:

2018–13–08 Airbus: Amendment 39–19320; Docket No. FAA–2017–1102; Product Identifier 2017–NM–078–AD.

(a) Effective Date

This AD is effective August 22, 2018.

(b) Affected ADs

This AD replaces AD 2016–01–11, Amendment 39–18370 (81 FR 3316, January 21, 2016) (''AD 2016–01–11'').

(c) Applicability

This AD applies to Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all manufacturer serial numbers, except airplanes specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model A319 and A320 series airplanes on which Airbus Modification 160000 (structural reinforcement for sharklet installation) has been embodied in production.

(2) Model A321 series airplanes on which Airbus Modification 160021 (structural reinforcement for sharklet installation) has been embodied in production.

(d) Subject

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

(e) Reason

This AD was prompted by a report that, during a center fuselage certification full-scale fatigue test, cracks were found on the front spar vertical stringer at frame (FR) 36. This AD was also prompted by a determination that, during further investigations of the frame as part of the widespread fatigue damage (WFD) campaign, certain inspection compliance times have to be revised and new inspections and a new potential terminating action modification have to be introduced. We are issuing this AD to address fatigue cracking of the front spar vertical stringers on the wings, which could result in the reduced structural integrity of the airplane.

(f) Compliance

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

(g) Definition of Airplane Configurations

For the purposes of this AD, airplane configurations are defined in figure 1 to paragraphs (g), (h), (i)(1), and (j) of this AD and figure 2 to paragraphs (g) and (i)(1) of this AD.

Figure 1 to Paragraphs (g), (h), (i)(1), and (j) of this AD – *Definition of Airplane Configurations (Config.) 001, 002, 003, 005, 006, and 007*

Config.	Airbus Modification (Mod) embodied in production / Service Bulletin (SB) embodied				Affected Airplanes			
	Mod 21290P1546	Mod 21290P1547	Mod 36993P9963	SB A320-57-1017	A320 Series	A321 Series	A319 Series	A318 Series
001	No	No	No	No	X			
002	No	No	No	Yes	X			
003	Yes	No	No	No	X			
005	No	Yes	No	No	X			
	No	Yes	No	No			X	
	No	Yes	No	No				X
006	No	Yes	Yes	No	X			
	No	Yes	Yes	No			X	
	No	Yes	Yes	No				X
007	No	No	No	No		X		

Figure 2 to Paragraphs (g) and (i)(1) of this AD – *Definition of Airplane Configurations (Config.) 004, 008, 009, and 010*

Config.	Airbus Modification (Mod) embodied / not embodied in production / Service Bulletin (SB) embodied	Affected Airplanes		
		A319 Series	A320 Series	A318 and A321 Series
004	Not applicable (N/A)	N/A	N/A	N/A
008	Airplanes on which Mod 28162, 28238 and 28342 have been embodied ("Corporate Jet"), and Mod 36993P9963 is not embodied	X		
009	Airplanes on which Mod 28162, 28238 and 28342 have been embodied ("Corporate Jet"), and Mod 36993P9963 is embodied	X		
010	Airplanes post-SB A320-57-1200		X	

(h) Actions Required for Previously Inspected Airplanes

For Configuration 001, 002, or 003 airplanes, as identified in figure 1 to paragraphs (g), (h), (i)(1), and (j) of this AD, on which the inspections specified in Airbus Service Bulletin A320–57–1178, dated October 29, 2013, have been accomplished before the effective date of this AD; but the additional work specified in Airbus Service Bulletin A320–57–1178, Revision 01, dated May 28, 2014, including Appendix 01, dated May 28, 2014, has not been accomplished before the effective date of this AD: Before accomplishing the initial inspection required by paragraph (i)(1) of this AD, contact the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA) for further instructions and accomplish those instructions accordingly.

(i) Repetitive Inspections

(1) Within the compliance time defined in figure 3 to paragraph (i)(1) of this AD, as applicable to airplane configuration as identified in figure 1 to paragraphs (g), (h), (i)(1), and (j) of this AD and figure 2 to paragraphs (g) and (i)(1) of this AD, accomplish a special detailed inspection (SDI) for cracking of the radius of the front spar vertical stringers and the horizontal floor beam and the fastener holes on FR 36, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1178, Revision 03, including only Appendix 03, both dated November 29, 2016.

Figure 3 to Paragraph (i)(1) of this AD – *Initial Inspection, A or B, Whichever Occurs Later*

Configuration	A (Flight Cycles (FC) or Flight Hours (FH), whichever occurs first)	B (Calendar time, FC or FH, whichever occurs first)
001	Before exceeding 25,100 FC or 50,200 FH since airplane first flight	Within 8,800 FC or 17,700 FH, since the last SDI performed in accordance with the instructions of Airbus Service Bulletin A320-57-1178
002	Within 8,800 FC or 17,700 FH after embodiment of Airbus Service Bulletin A320-57-1017 without prior accomplishment of Airbus Service Bulletin A320-57-1016 or Airbus Service Bulletin A320-57-1178, and before exceeding 32,000 FC or 64,000 FH since airplane first flight	Within 15,900 FC or 31,900 FH since last SDI performed in accordance with the instructions of Airbus Service Bulletin A320-57-1178; or within 12 months, or 2,500 FC or 5,000 FH, after the effective date of this AD; whichever occurs first
003	Before exceeding 32,000 FC or 64,000 FH since airplane first flight	Within 4 months or 750 FC or 750 FH after the effective date of this AD
005 and 006	Before exceeding 48,000 FC or 96,000 FH since airplane first flight	Within 4 months or 750 FC or 750 FH after the effective date of this AD
007	Before exceeding 44,400 FC or 88,900 FH since airplane first flight	Within 4 months or 750 FC or 750 FH after the effective date of this AD
008 and 009	Before exceeding 26,880 FC or 115,580 FH since airplane first flight	Within 30 days after the effective date of this AD
010	Within 48,000 FC or 96,000 FH after embodiment of Airbus Service Bulletin A320-57-1200	Within 4 months or 750 FC or 750 FH after the effective date of this AD

(2) If no cracking is found during any inspection required by paragraph (i)(1) of this AD, repeat the inspection required by paragraph (i)(1) of this AD thereafter at intervals not to exceed the inspection interval values defined in figure 4 to paragraphs (i)(2) and (l) of this AD, except as provided by paragraph (l) of this AD.

Figure 4 to Paragraphs (i)(2) and (l) of this AD – *Repetitive Inspections, A or B, Whichever Occurs Later*

Configuration	A Interval (FC or FH, whichever occurs first)	B (Calendar time, FC or FH, whichever occurs first)
001	Within 8,800 FC or 7,700 FH	None
002 and 003	Within 15,900 FC or 31,900 FH	Within 12 months or 2,500 FC or 5,000 FH after the effective date of this AD, without exceeding 24,900 FC or 49,800 FH since last inspection (for the first inspection only)
005 and 006	Within 11,500 FC or 23,000 FH	None
007	Within 10,200 FC or 20,500 FH	None
008 and 009	Within 6,240 FC or 26,830 FH	None
010	Within 11,500 FC or 23,000 FH	None

(j) Modification

For A320 series airplanes, Configuration 001, 002, or 003 as identified in figure 1 to paragraphs (g), (h), (i)(1), and (j) of this AD: Within the compliance time defined in figure 5 to paragraph (j) of this AD, as applicable, modify the center wing box area, including doing all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1200, dated November 20, 2015, except as required by paragraph (k) of this AD. Do all applicable related investigative and corrective actions before further flight.

Figure 5 to Paragraph (j) of this AD – *Airbus Service Bulletin A320-57-1200 Modification Threshold*

Airplane Mod-Status	Compliance time (whichever occurs later, A or B, C or D, as applicable to mod-status)	
Pre-mod 21290P1546	A	Before exceeding 37,700 FC or 75,400 FH, whichever occurs first since airplane first flight, but not before reaching 28,000 FC and 56,000 FH since airplane first flight
	B	Within 12 months after the effective date of this AD
Post-mod 21290P1546	C	Before exceeding 48,000 FC or 96,000 FH, whichever occurs first since airplane first flight, but not before reaching 28,000 FC and 56,000 FH since airplane first flight
	D	Within 12 months after the effective date of this AD

(k) Corrective Action

If any crack is found during any inspection required by this AD: Before further flight, repair using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature. Where Airbus Service Bulletin A320–57–1178, Revision 03, including only Appendix 03, both dated November 29, 2016; and Airbus Service Bulletin A320–57–1200, dated November 20, 2015; specify to contact Airbus for appropriate action, and specify that action as ''RC'' (Required for Compliance), accomplish corrective actions in accordance with this paragraph.

(l) Previous Repairs

For airplanes that have been repaired in the inspection area specified in paragraph (i)(1) of this AD before the effective date of this AD using a method approved by the

Manager, International Section, Transport Standards Branch, FAA; or the EASA; or Airbus's EASA DOA: Accomplish repetitive SDIs within the compliance time defined in those repair instructions for repetitive SDIs. If no compliance time is identified in the repair instructions for repetitive SDIs, accomplish the repetitive SDIs required by paragraph (i)(2) of this AD at the compliance times defined in figure 4 to paragraphs (i)(2) and (l) of this AD.

(m) No Terminating Action

Modification or repair of an airplane, as specified in paragraph (j) or (k) of this AD, does not constitute terminating action for the repetitive inspections required by this AD, unless it is specified otherwise in a repair method approved by the Manager, International Section, Transport Standards Branch, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Reporting Requirement

Submit a report of the positive findings of the inspections required by paragraphs (i) and (j) of this AD to ''Airbus Service Bulletin Reporting Online Application'' on Airbus World (*https://w3.airbus.com/*), at the applicable time specified in paragraph (n)(1) or (n)(2) of this AD.

(1) If the inspection was done on or after the effective date of this AD: Report within 30 days after that inspection.

(2) If the inspection was done before the effective date of this AD: Report within 30 days after the effective date of this AD.

(o) Other FAA AD Provisions

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Section, send it to the attention of the person identified in paragraph (p)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as specified in paragraph (k) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified 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 procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(4) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not 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 Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 work-hour per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW, Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(p) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017–0099, dated June 8, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1102.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

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

(q) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A320–57–1178, Revision 03, including only Appendix 03, both dated November 29, 2016.

(ii) Airbus Service Bulletin A320–57–1200, dated November 20, 2015.

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.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 Des Moines, Washington, on June 12, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–13802 Filed 7–17–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0073; Product Identifier 2017–NM–100–AD; Amendment 39–19318; AD 2018–13–06]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 767–300 and –300F series airplanes. This AD was prompted by reports of fatigue cracking in the lower outboard wing skin at the farthest outboard fastener of the inboard segment of a certain stringer. This AD requires repetitive high frequency eddy current (HFEC) inspections for cracking of the lower outboard wing skin at the inboard segment of a certain stringer, and repair if necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 22, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 22, 2018.

ADDRESSES: For service information identified in this final rule, contact Aviation Partners Boeing, 2811 S 102nd Street, Suite 200, Seattle, WA 98168; telephone 206–762–1171; internet *https://www.aviationpartnersboeing.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–2018–0073.

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–2018–0073; or in person at Docket Operations 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 Docket Operations (phone: 800–647–5527) is Docket Operations, 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: Allen Rauschendorfer, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3528; email: *allen.rauschendorfer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 767–300 and –300F series airplanes. The NPRM published in the **Federal Register** on February 9, 2018 (83 FR 5738). The NPRM was prompted by reports of fatigue cracking in the lower outboard wing skin at the farthest outboard fastener of the inboard segment of stringer L–9.5 on airplanes with winglets installed per Supplemental Type Certificate ST01920SE. The NPRM proposed to require repetitive high frequency eddy current (HFEC) inspections for cracking of the lower outboard wing skin at the inboard segment of a certain stringer, and repair if necessary. We are issuing this AD to address fatigue cracking in the lower outboard wing skin, which could result in failure and subsequent separation of the wing and winglet and consequent reduced controllability of the airplane.

Comments

We gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment. Aviation Partners Boeing (APB) concurred with the NPRM.

Request To Provide Credit for Previously Approved Repairs

All Nippon Airways (ANA) and American Airlines (AAL) asked that credit be given for repair deviations approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) using 8100–9 forms dated after June 15, 2017. ANA stated that Boeing ODAs will be using APB analysis methodology to evaluate and approve the repairs. ANA and AAL stated that Boeing indicated in Multi-Operator Message MOM–MOM–17–0480–01B, dated August 29, 2017, that repairs approved after June 15, 2017, would be acceptable as alternative methods of compliance (AMOCs) to the final rule if using the referenced service information. Both commenters asked that credit language for those previously approved repairs be added to the content of the proposed AD.

We agree with the commenters' requests for the reasons provided. The revised APB analysis methodology was approved by the FAA on June 15, 2017. Therefore, we have added paragraph (i)(2) to this AD to include that approval.

Request To Allow Alternative Oversize Fastener Holes

AAL asked that we allow oversize fasteners of at least 1/64 inch to be installed at all fastener locations common to inboard stringer L–9.5. AAL stated that the referenced service information and the APB modification drawing are very restrictive regarding oversize fasteners that are outside of the five critical fasteners at each end of inboard stringer L–9.5. AAL added that hole damage during fastener removal at the existing stringer L–9.5 is common.

We do not agree with the commenter's request. This type of deviation would require an engineering evaluation to assess inboard stringer L–9.5 and the skin fastener locations to determine if it is feasible for the oversize fasteners to be installed. However, under the provisions of paragraph (j) of this AD, we will consider requests for approval of an AMOC, if sufficient data are submitted to substantiate that installing 1/64-inch oversize fasteners at all fastener locations common to inboard stringer L–9.5 will provide an acceptable level of safety. We have not changed this AD in this regard.

Request To Add Alternative Alodine Type

Delta Air Lines (Delta) asked that we add a new paragraph to the proposed AD specifying that Alodine coating ''Bonderite M–CR 600 Aero'' is an acceptable alternative to ''Alodine 600'' coating. Delta stated that APB Service Bulletin AP767–57–013, Revision 1, dated April 11, 2017, calls out Alodine 600 in paragraph 2.B.2, ''Parts and Materials Supplied by the Operator,'' and in Drawing 767–9420, Sheet 1, in paragraph 3.B, Part 2, Steps 4 and 5, as an ''RC'' (Required for Compliance) step. Delta noted that the name of the Alodine coating ''Alodine 600'' has been changed to ''Bonderite M–CR 600 Aero.'' Delta added that the FAA issued a Special Airworthiness Information Bulletin (SAIB) that cited an AMOC for the use of Bonderite products.

We agree with the commenter's request, for the reason provided. Alodine products made by Henkel manufacturing have been renamed to Bonderite. We issued SAIB HQ–18–09, dated February 5, 2018, which cited the AMOC that allows the use of Henkel Bonderite products as an alternative to Henkel Alodine products. We have revised paragraphs (g)(1)(ii)(A) and (g)(2)(i) of this AD to allow the use of Bonderite M–CR 600 Aero and Bonderite M–CR 600 RTU Aero as an alternative coating.

Requests To Clarify Compliance Time Definition

United Airlines (UAL) and Delta asked that we clarify the ''Compliance Times'' definition specified in the preamble of the NPRM. The commenters stated that the initial compliance time is defined as 1,500 flight cycles or 7,500 flight cycles after winglet installation, but it should be 1,500 flight cycles or 7,500 flight hours after winglet installation. The commenters noted that this should be corrected to be consistent with the compliance time specified in the referenced service information.

We agree with the commenters that the compliance time definition in the NPRM is inaccurate, and should specify ''The initial compliance time is the later of: 1,500 flight cycles or 7,500 flight hours after winglet installation, whichever occurs first.'' This language provided notice regarding compliance times that were specified in the referenced service information. The compliance time is correct in the referenced service information and does not conflict with this AD. Since that section of the preamble does not reappear in the final rule, no change to this AD is necessary.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the changes described

previously and minor editorial changes. We have determined that these minor changes:

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

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

Related Service Information Under 1 CFR Part 51

We reviewed APB Service Bulletin AP767–57–013, Revision 1, dated April 11, 2017. The service information describes procedures for an HFEC inspection for cracking of the lower outboard wing skin at the inboard segment of stringer L–9.5, and on-condition actions that include repetitive HFEC inspections, a preventive modification (repair) that includes installing new stringers, repetitive post-modification (repair) HFEC inspections for cracking, and repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 140 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS—REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
HFEC Inspections	1 work-hour × $85 per hour = $85, per inspection cycle.	$0	$85, per inspection cycle	$11,900, per inspection cycle.

ESTIMATED COSTS—ON-CONDITION ACTIONS

Action	Labor cost	Parts cost	Cost per product
Preventive Modification (Repair)	50 work-hours × $85 per hour = $4,250	$0	$4,250.
Post-modification (repair) Inspections	1 work-hour × $85 per hour = $85, per inspection cycle.	0	$85, per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for on-condition repairs that might be necessary as a result of the post-modification (repair) inspections specified in this AD.

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

Authority for This Rulemaking

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

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

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

2018–13–06 The Boeing Company: Amendment 39–19318; Docket No. FAA–2018–0073; Product Identifier 2017–NM–100–AD.

(a) Effective Date

This AD is effective August 22, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 767–300 and -300F series airplanes, certificated in any category, with Aviation Partners Boeing winglets installed; as identified in Aviation Partners Boeing Service Bulletin AP767–57–013, Revision 1, dated April 11, 2017.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of fatigue cracking in the lower outboard wing skin at the farthest outboard fastener of the inboard segment of stringer L–9.5 on airplanes with winglets installed per Supplemental Type Certificate ST01920SE. We are issuing this AD to address fatigue cracking in the lower outboard wing skin, which could result in failure and subsequent separation of the wing and winglet and consequent reduced controllability of the airplane.

(f) Compliance

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

(g) Repetitive Inspections, Preventive Modification (Repair), Repetitive Post-Modification (Repair) Inspections, and Repair

At the applicable time specified in paragraph 1.E., ''Compliance,'' of Aviation Partners Boeing Service Bulletin AP767–57–013, Revision 1, dated April 11, 2017, except as required by paragraph (h) of this AD: Do a high frequency eddy current (HFEC) inspection for cracking of the lower outboard wing skin at the inboard segment of stringer L–9.5, in accordance with Part 1 of the Accomplishment Instructions of Aviation Partners Boeing Service Bulletin AP767–57–013, Revision 1, dated April 11, 2017.

(1) For airplanes on which ''Condition 1'' is found, as defined in the Accomplishment Instructions of Aviation Partners Boeing Service Bulletin AP767–57–013, Revision 1, dated April 11, 2017, during any inspection required by the introductory text of paragraph (g) or paragraph (g)(1)(i) of this AD: Do the actions required by paragraph (g)(1)(i) or (g)(1)(ii) of this AD.

(i) Repeat the inspection specified in the introductory text of paragraph (g) of this AD thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Aviation Partners Boeing Service Bulletin AP767–57–013, Revision 1, dated April 11, 2017.

(ii) Do the actions required by paragraphs (g)(1)(ii)(A) and (g)(1)(ii)(B) of this AD:

(A) Before further flight, do the preventive modification in accordance with Part 2 of the Accomplishment Instructions of Aviation Partners Boeing Service Bulletin AP767–57–013, Revision 1, dated April 11, 2017. The use of Alodine 600–RTU, Henkel Bonderite M–CR 600 Aero, or Henkel Bonderite M–CR 600 RTU Aero coating is an acceptable alternative to Alodine 600 coating.

Note 1 to paragraph (g)(1)(ii)(A) of this AD: Guidance on identifying alternative Henkel Bonderite Alodine coatings can also be found in Special Airworthiness Information Bulletin (SAIB) HQ–18–09, dated February 5, 2018. The SAIB may be viewed online at *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSAIB.nsf/0/F87909D65FCE4BFA8625822B005AE82A?OpenDocument&Highlight=hq-18-09.*

(B) At the applicable time specified in paragraph 1.E., ''Compliance,'' of Aviation Partners Boeing Service Bulletin AP767–57–013, Revision 1, dated April 11, 2017, do an HFEC inspection for cracking, in accordance with Part 3 of the Accomplishment Instructions of Aviation Partners Boeing Service Bulletin AP767–57–013, Revision 1, dated April 11, 2017; and repeat the inspection thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Aviation Partners Boeing Service Bulletin AP767–57–013, Revision 1, dated April 11, 2017.

(2) For airplanes on which ''Condition 2'' is found as defined in the Accomplishment Instructions of Aviation Partners Boeing Service Bulletin AP767–57–013, Revision 1, dated April 11, 2017, during any inspection required by the introductory text of paragraph (g) or paragraph (g)(1)(i) of this AD: Do the actions required by paragraph (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Before further flight, repair in accordance with Part 2 of the Accomplishment Instructions of Aviation Partners Boeing Service Bulletin AP767–57–013, Revision 1, dated April 11, 2017. The use of Alodine 600–RTU, Henkel Bonderite M–CR 600 Aero, or Henkel Bonderite M–CR 600 RTU Aero coating is an acceptable alternative to Alodine 600 coating.

Note 2 to paragraph (g)(2)(i) of this AD: Guidance on identifying alternative Henkel Bonderite Alodine coatings can also be found in SAIB HQ–18–09, dated February 5, 2018. The SAIB may be viewed online at *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSAIB.nsf/0/F87909D65FCE4BFA8625822B005AE82A?OpenDocument&Highlight=hq-18-09.*

(ii) At the applicable time specified in paragraph 1.E., ''Compliance,'' of Aviation Partners Boeing Service Bulletin AP767–57–013, Revision 1, dated April 11, 2017, do an HFEC inspection for cracking, in accordance with Part 3 of the Accomplishment Instructions of Aviation Partners Boeing Service Bulletin AP767–57–013, Revision 1, dated April 11, 2017; and repeat the inspection thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Aviation Partners Boeing Service Bulletin AP767–57–013, Revision 1, dated April 11, 2017.

(3) If any crack is found during any inspection required by paragraph (g)(1)(ii)(B) or (g)(2)(ii) of this AD, repair before further flight using a method approved in accordance with the procedures specified in paragraph (j) of this AD. Although Aviation Partners Boeing Service Bulletin AP767–57–013, Revision 1, dated April 11, 2017, specifies to contact Boeing for repair instructions, and specifies that action as ''RC'' (Required for Compliance), this AD requires repair as specified in this paragraph.

(h) Exception to Service Information Specifications

Where paragraph 1.E., ''Compliance,'' of Aviation Partners Boeing Service Bulletin AP767–57–013, Revision 1, dated April 11, 2017, specifies a compliance time of ''after the initial issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) Credit for Previous Actions

(1) For Group 2 airplanes: This paragraph provides credit for the actions specified in Part 1 and Part 2 of the Accomplishment Instructions of Aviation Partners Boeing Service Bulletin AP767–57–013, Revision 1, dated April 11, 2017, that are required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Aviation Partners Boeing Service Bulletin AP767–57–013, dated November 30, 2016.

(2) Repairs of the lower outboard wing skin approved after June 15, 2017, and before the effective date of this AD, if approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, are approved for the applicable repairs required by paragraph (g) of this AD.

(j) 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 (k) 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, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (g)(3) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures

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

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

(k) Related Information

For more information about this AD, contact Allen Rauschendorfer, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3528; email: *allen.rauschendorfer@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Aviation Partners Boeing Service Bulletin AP767–57–013, Revision 1, dated April 11, 2017.

(ii) Reserved.

(3) For service information identified in this AD, contact Aviation Partners Boeing, 2811 S 102nd Street, Suite 200, Seattle, WA 98168; telephone 206–762–1171; internet *https://www.aviationpartnersboeing.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 Des Moines, Washington, on June 12, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–13362 Filed 7–17–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0111; Product Identifier 2017–NM–059–AD; Amendment 39–19312; AD 2018–12–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2017–07–07, which applied to certain Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes. AD 2017–07–07 required repetitive inspections of certain fastener holes, and related investigative and corrective actions if necessary. This AD retains the requirements of AD 2017–07–07 and expands the applicability. This AD was prompted by a report of cracking at fastener holes located at frame (FR) 40 on the lower shell panel junction. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 22, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 22, 2018.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com;* internet: *http://www.airbus.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. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0111.

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–2018–0111; 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone: 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: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3229.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2017–07–07, Amendment 39–18845 (82 FR 18547, April 20, 2017) (''AD 2017–07–07''). AD 2017–07–07 applied to certain Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes with manufacturer serial numbers (MSN) 0176 through 0915 inclusive. The NPRM published in the **Federal Register** on February 20, 2018 (83 FR 7117). The NPRM was prompted by a report of cracking at fastener holes located at frame FR40 on the lower shell panel junction. The NPRM proposed to retain the requirements of AD 2017–07–07 and expand the applicability. We are issuing this AD to detect and correct cracking at FR40 on the lower shell panel junction; such cracking could lead to reduced structural integrity of the fuselage.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0063, dated April 12, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A330–200, A330–300, and A340–200 series airplanes, and Model A340–312 and –313 airplanes. The MCAI states:

During full scale fatigue test of the Frame (FR) 40 to fuselage skin panel junction, fatigue damage was found. Corrective actions consisted of in-service installation of an internal reinforcing strap on the related junction, as currently required by DGAC [Direction Générale de l'Aviation Civile] France AD 1999–448–126(B), which refers to Airbus Service Bulletin (SB) A340–53–4104 Revision 02, and [DGAC] AD 2001–070(B), which refers to Airbus SB A330–53–3093 Revision 04; retrofit improvement of internal reinforcing strap fatigue life through recommended Airbus SB A330–53–3145; and

introducing a design improvement in production through Airbus mod 44360.

After those actions were implemented, cracks were found on both left-hand (LH) and right-hand (RH) sides on internal strap, butt strap, keel beam fitting, or forward fitting FR40 flange. These findings were made during embodiment of a FR40 web repair on an A330 aeroplane, and during keel beam replacement on an A340 aeroplane, where the internal strap was removed and a special detailed inspection (SDI) was performed on several holes.

This condition, if not detected and corrected, could affect the structural integrity of the centre fuselage of the aeroplane.

Prompted by these findings, Airbus issued SB A330–53–3215 and SB A340–53–4215, providing inspection instructions. Consequently, EASA issued AD 2014–0136 [which corresponds to FAA AD 2017–07–07] to require repetitive SDI (rototest) of 10 fastener holes located at the FR40 lower shell panel junction on both LH and RH sides and, depending on findings, accomplishment of applicable corrective action(s).

Since that [EASA] AD was issued, prompted by the results of complementary fatigue analyses, it was determined that post-mod 55792 aeroplanes could be also affected by crack initiation and propagation at this area of the fuselage. These analyses demonstrated that post-mod 55792 aeroplanes must follow the same maintenance program as aeroplanes in post-mod 55306 and pre-mod 55792 configuration. Consequently, Airbus published SB A330–53–3215 Revision 02 and SB A340–53–4215 Revision 02 to expand the Effectivity accordingly.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2014–0136, which is superseded, which now also apply to aeroplanes in post-mod 55792 configuration [the applicability identifies airplanes in post-mod 44360 configuration].

AD 2017–07–07 includes Model A340–211 airplanes in its applicability. Airbus Model A340–211 airplanes are not identified in the applicability of this AD because those airplanes are not affected by the identified unsafe condition. All of those airplanes are in the pre-Airbus modification 44360 configuration. The MCAI also does not include Model A340–211 airplanes in its applicability.

The compliance time ranges between 20,000 flight cycles or 65,400 flight hours and 20,800 flight cycles or 68,300 flight hours, depending on airplane utilization and configuration. The repetitive inspection interval ranges between 14,000 flight cycles or 95,200 flight hours and 24,600 flight cycles or 98,700 flight hours, depending on airplane utilization and configuration. You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0111.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. Kenneth Ciallella supported the NPRM.

Explanation of Changes Made to This AD

We have revised this AD to refer to Airbus Service Bulletin A330–53–3215, Revision 03, dated January 22, 2018, as the appropriate source of service information for the required actions. This service information incorporates minor editorial changes which have no effect on airplanes that have incorporated prior revisions of this service information. We have revised table 1 to paragraph (g)(1) of this AD and paragraphs (g), (g)(1), (g)(2), (h), (h)(1), (h)(2), and (i) of this AD to specify Airbus Service Bulletin A330–53–3215, Revision 03, dated January 22, 2018, as the appropriate source of service information for accomplishing the required actions in those paragraphs.

We have revised paragraph (j) of this AD to give credit for using Airbus Service Bulletin A330–53–3215, Revision 02, dated November 23, 2016, to accomplish the required actions before the effective date of this AD.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting this AD as proposed except for the changes described previously and minor editorial changes. We have determined that these minor changes:

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

Related Service Information Under 1 CFR Part 51

Airbus has issued Airbus Service Bulletin A330–53–3215, Revision 03, dated January 22, 2018 (''A330–53–3215, R3'') and Airbus Service Bulletin A340–53–4215, Revision 02, dated November 23, 2016. This service information describes procedures for repetitive rototest inspections of certain fastener holes, and related investigative and corrective actions if necessary. These documents are distinct since they apply to different airplane models. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 99 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
42 work-hours × $85 per hour = $3,570	$0	$3,570	$353,430

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
46 work-hours × $85 per hour = $3,910	$2,358	$6,268

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2017–07–07, Amendment 39–18845 (82 FR 18547, April 20, 2017), and adding the following new AD:

2018–12–08 Airbus: Amendment 39–19312; Docket No. FAA–2018–0111; Product Identifier 2017–NM–059–AD.

(a) Effective Date

This AD is effective August 22, 2018.

(b) Affected ADs

This AD replaces AD 2017–07–07, Amendment 39–18845 (82 FR 18547, April 20, 2017) (''AD 2017–07–07'').

(c) Applicability

This AD applies to the airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD, all manufacturer serial numbers on which Airbus Modification 44360 has been embodied in production.

(1) Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(2) Airbus Model A340–212, –213, –312, and –313 airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by a report of cracking at fastener holes located at frame (FR) 40 on the lower shell panel junction. We are issuing this AD to detect and correct cracking at FR40 on the lower shell panel junction; such cracking could lead to reduced structural integrity of the fuselage.

(f) Compliance

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

(g) Compliance Times for the Actions Required by Paragraph (h) of This AD

Accomplish the actions required by paragraph (h) of this AD at the times specified in paragraphs (g)(1) and (g)(2) of this AD, as applicable.

(1) For airplanes having serial numbers 0176 through 0915 inclusive: Within the compliance times defined in table 1 to paragraph (g)(1) of this AD, and, thereafter, at intervals not to exceed the compliance times defined in Airbus Service Bulletin A330–53–3215, Revision 03, dated January 22, 2018 (''A330–53–3215, R3''); or Airbus Service Bulletin A340–53–4215, Revision 02, dated November 23, 2016 (''A340–53–4215, R2''); as applicable, depending on airplane utilization and configuration. As of the effective date of this AD, where paragraph 1.E. ''Compliance,'' of A330–53–3215, R3 specifies weight variant (WV) 050 in the condition column of table 1, configuration 003, for the purposes of this AD, WV060 and WV080 are also included.

Table 1 to Paragraph (g)(1) of this AD – *Compliance Time for Initial Inspection*

	Compliance time (whichever occurs later, A or B)
A	Before exceeding the compliance time "threshold" defined in table 1 of A330-53-3215, R3; or A340-53-4215, R2; as applicable, depending on airplane utilization and configuration and to be counted from airplane first flight.
B	For Model A330 airplanes: Within 2,400 flight cycles or 24 months, whichever occurs first after May 25, 2017 (the effective date of AD 2017-07-07). For Model A340 airplanes: Within 1,300 flight cycles or 24 months, whichever occurs first after May 25, 2017 (the effective date of AD 2017-07-07).

(2) For all airplanes except those identified in paragraph (g)(1) of this AD: Before exceeding the applicable compliance time ''threshold'' defined in paragraph 1.E., ''Compliance,'' of A330–53–3215, R3; or A340–53–4215, R2; as applicable, depending on airplane utilization and configuration and to be counted from airplane first flight, and, thereafter, at intervals not to exceed the compliance times specified in paragraph 1.E., ''Compliance'' of A330–53–3215, R3; or A340–53–4215, R2; as applicable, depending on airplane utilization and configuration. Where paragraph 1.E. ''Compliance,'' of A330–53–3215, R3 specifies weight variant WV050 in the condition column of table 1, configuration 003, for the purposes of this AD, WV060 and WV080 are also included.

(h) Repetitive Inspections and Related Investigative and Corrective Actions

At the applicable compliance times specified in paragraph (g) of this AD: Accomplish a special detailed inspection of the 10 fastener holes located at FR40 lower shell panel junction on both left-hand and right-hand sides, in accordance with the Accomplishment Instructions of A330–53–3215, R3; or A340–53–4215, R2; as applicable.

(1) If, during any inspection required by the introductory text of paragraph (h) of this AD, any crack is detected, before further flight, accomplish all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of A330–53–3215, R3; or A340–53–4215, R2; as applicable, except where A330–53–3215, R3; or A340–53–4215, R2; specifies to contact Airbus for repair instructions, and specifies that action as ''RC,'' this AD requires repair before further flight using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(2) If, during any inspection required by the introductory text of paragraph (h) of this AD, the diameter of a fastener hole is found to be outside the tolerances of the transition fit as specified in A330–53–3215, R3; or A340–53–4215, R2; as applicable; and A330–53–3215, R3; or A340–53–4215, R2; specifies to contact Airbus for repair instructions, and specifies that action as ''RC,'' before further flight, repair using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) Accomplishment of corrective actions, as required by paragraph (h)(1) of this AD, does not constitute terminating action for the repetitive inspections required by the introductory text of paragraph (h) of this AD.

(4) Accomplishment of a repair on an airplane, as required by paragraph (h)(2) of this AD, does not constitute terminating action for the repetitive inspections required by the introductory text of paragraph (h) of this AD for that airplane, unless the method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus's EASA DOA indicates otherwise.

(i) No Reporting Requirement

Although A330–53–3215, R3 and A340–53–4215, R2, specify to submit certain information to the manufacturer, and specify that action as ''RC,'' this AD does not include that requirement.

(j) Credit for Previous Actions

This paragraph provides credit for the inspections required by the introductory text of (h) of this AD and the related investigative and corrective actions required by paragraph (h)(1) of this AD, if those actions were performed before May 25, 2017 (the effective date of AD 2017–07–07), using Airbus Service Bulletin A330–53–3215, dated June 21, 2013; or Revision 01, dated April 17, 2014; or Revision 02, dated November 23, 2016; or Airbus Service Bulletin A340–53–4215, dated June 21, 2013; or Revision 01, dated April 17, 2014; as applicable.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (l)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraphs (g)(1), (g)(2), (h)(1), (h)(2), and (i) of this AD: If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified 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 procedures and tests identified as RC can be done and the airplane can be put back in an

airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017–0063, dated April 12, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0111.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3229.

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

(m) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A330–53–3215, Revision 03, dated January 22, 2018.

(ii) Airbus Service Bulletin A340–53–4215, Revision 02, dated November 23, 2016.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com;* internet: *http://www.airbus.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 Des Moines, Washington, on June 6, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–13220 Filed 7–17–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[189A2100DD/AAKC001030/A0A501010.999900 253G]

25 CFR Part 83

RIN 1076–AF41

Change of Address; Office of Federal Acknowledgment

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule; technical amendment.

SUMMARY: The Bureau of Indian Affairs (BIA) is amending its regulations to reflect a change of address for the Office of Federal Acknowledgment. This rule is a technical amendment that corrects the address for filing petitions for Federal acknowledgment as an Indian Tribe.

DATES: Effective July 18, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273–4680; *elizabeth.appel@bia.gov.*

SUPPLEMENTARY INFORMATION: This rule updates the address for the Office of Federal Acknowledgment to reflect the office's change in location.

Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

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

B. Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The rule is administrative in nature and affects only a mailing address.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. The rule's requirements will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

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

E. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable ''taking.'' A takings implication assessment is therefore not required.

F. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this rule has no 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. This rule corrects a mailing address.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule meets the criteria of section 3(a) requiring all regulations be reviewed to eliminate errors and ambiguity and be written to minimize

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

H. Consultation With Indian Tribes (E.O. 13175)

The Department strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined there are no potential effects on federally recognized Indian Tribes and Indian trust assets.

I. Paperwork Reduction Act

This rule does not contain any information collections requiring approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment because it is of an administrative, technical, and procedural nature. *See,* 43 CFR 46.210(i). No extraordinary circumstances exist that would require greater review under the National Environmental Policy Act.

K. Effects on the Energy Supply (E.O. 13211)

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

L. Determination To Issue Final Rule Without the Opportunity for Public Comment and With Immediate Effective Date

BIA is taking this action under its authority, at 5 U.S.C. 552, to publish regulations in the **Federal Register**. Under the Administrative Procedure Act, statutory procedures for agency rulemaking do not apply ''when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(3)(B). BIA finds that the notice and comment procedure are impracticable, unnecessary, or contrary to the public interest, because: (1) These amendments are non-substantive; and (2) the public benefits for timely notification of a change in the official agency address, and further delay is unnecessary and contrary to the public interest. Similarly because this final rule makes no substantive changes and merely reflects a change of address and updates to titles in the existing regulations, this final rule is not subject to the effective date limitation of 5 U.S.C. 553(d).

List of Subjects in 25 CFR Part 83

Administrative practice and procedures, Indians-tribal government.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, amends part 83 in Title 25 of the Code of Federal Regulations as follows:

PART 83—PROCEDURES FOR FEDERAL ACKNOWLEDGMENT OF INDIAN TRIBES

■ 1. The authority citation for part 83 continues to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 479a–1; Pub. L. 103–454 Sec. 103 (Nov. 2, 1994); and 43 U.S.C. 1457.

■ 2. Revise § 83.20 to read as follows:

§ 83.20 How does an entity request Federal acknowledgment?

Any entity that believes it can satisfy the criteria in this part may submit a documented petition under this part to: Department of the Interior, Office of the Assistant Secretary—Indian Affairs, Attention: Office of Federal Acknowledgment, Mail Stop 4071 MIB, 1849 C Street NW, Washington, DC 20240.

Dated: June 14, 2018.

John Tahsuda,

Principal Deputy Assistant Secretary—Indian Affairs, Exercising the Authority of Assistant Secretary—Indian Affairs.

[FR Doc. 2018–15334 Filed 7–17–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Parts 405 and 406

RIN 1245–AA07

Rescission of Rule Interpreting ''Advice'' Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act

AGENCY: Office of Labor-Management Standards, Department of Labor.

ACTION: Final rule.

SUMMARY: This final rule rescinds the regulations established in the final rule titled ''Interpretation of the 'Advice' Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act,'' effective April 25, 2016.

DATES: This final rule is effective on August 17, 2018.

FOR FURTHER INFORMATION CONTACT: Andrew Davis, Chief of the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5609, Washington, DC 20210, (202) 693–0123 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

Sections 203 and 208 of the LMRDA, 29 U.S.C. 432, 438, set forth the Department's authority. Section 208 gives the Secretary of Labor authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required under Title II of the Act and such other reasonable rules and regulations as necessary to prevent circumvention or evasion of the reporting requirements. 29 U.S.C. 438. Section 203, discussed in more detail below, sets out the substantive reporting obligations.

The Secretary has delegated his authority under the LMRDA to the Director of the Office of Labor-Management Standards and permitted redelegation of such authority. *See* Secretary's Order 03–2012 (Oct. 19, 2012), published at 77 FR 69375 (Nov. 16, 2012).

II. Background

A. Introduction

In this final rule, the Office of Labor-Management Standards of the Department of Labor revises the Form LM–20 Agreement and Activities Report and the Form LM–10 Employer Report upon reviewing the comments the Department received in response to a June 12, 2017 Notice of Proposed Rulemaking. 82 FR 26877. The NPRM proposed to rescind the regulations established in the final rule titled ''Interpretation of the 'Advice' Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act,'' effective April 25, 2016. 81 FR 15924 (Mar. 24, 2016) (''Persuader Rule'').

This Persuader Rule revised the Department's interpretation of the ''advice'' exemption to the reporting requirements of Labor-Management Reporting and Disclosure Act Section 203. Sections 203(a) and (b) require employers and consultants to file reports when they reach an agreement

that the consultant will perform activities to persuade employees about how or whether to exercise their collective bargaining rights. But Section 203(c) excepts agreements by consultants who ''give advice'' to the employer. The Persuader Rule sought to require employers and their consultants to file a report not only when they make agreements or arrangements pursuant to which a consultant directly contacts employees, but also when a consultant engages in activities ''behind the scenes'' if an object of those activities is to persuade employees concerning their rights to organize and bargain collectively. *Id.* at 15925. Such ''behind the scenes'' activity included, for instance, recommending drafts of or revisions to an employer's speeches and communications if those drafts or revisions were designed to influence employees' exercise of their organizational rights.

In the NPRM, the Department proposed to rescind the Persuader Rule to further its consideration of the legal and policy objections raised by the federal courts that have reviewed the Rule and by other stakeholders. A number of comments objected to rescinding the Persuader Rule with a view toward engaging in further consideration. [LMSO–2017–0001–0543, AFL–CIO pages 9–10; LMSO–2017–0001–0797, NABTU, page 4, LMSO–2017–0001–1126, UFCW, page 4].

In accordance with these comments, the Department has now conducted its ultimate review of the objections to the Persuader Rule and has concluded that the Rule must be rescinded. The Rule relied on an inappropriate reading of Section 203(c) that required reporting based on recommendations that constitute ''advice'' under any reasonable understanding of the term. That fact alone requires rescission. Even if the statute does not unambiguously forbid the Persuader Rule, strong policy reasons—in particular, the Persuader Rule's effect on the attorney-client relationship—militate in favor of rescission.

Pursuant to today's final rule, the reporting requirements in effect are the requirements as they existed before the Persuader Rule. Due to an intervening court order that enjoined the Persuader Rule nationwide, *National Federation of Independent Business* v. *Perez* (N.D. Tex. 5:16–cv–00066–c) (filed Mar. 31, 2016), 2016 WL 3766121, 206 L.R.R.M. 35982016 (granting preliminary injunction); 2016 WL 8193279 (filed Nov. 16, 2016) (granting permanent injunction) (NFIB), no reports were ever filed or due under the Persuader Rule.

This final rule is considered an E.O. 13771 deregulatory action. For a perpetual time horizon, the annualized cost savings are the same at $92.89 million with a discount rate of 7 percent. Details of the estimated cost savings of this final rule can be found in the Rule's economic analysis.

B. The LMRDA's Reporting Requirements

In enacting the LMRDA in 1959, a bipartisan Congress sought to protect the rights and interests of employees, labor organizations, employers, and the public generally as they relate to collective bargaining.

Section 203(a) of the LMRDA, 29 U.S.C. 433(a), requires employers to report to the Department ''any agreement or arrangement with a labor relations consultant or other independent contractor or organization'' under which such person ''undertakes activities where an object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise,'' or how to exercise, their rights to union representation and collective bargaining. 29 U.S.C. 433(a)(4).[1] ''[A]ny payment (including reimbursed expenses)'' pursuant to such an agreement or arrangement must also be reported. 29 U.S.C. 433(a)(5). The report must be one ''showing in detail the date and amount of each such payment, . . . agreement, or arrangement . . . and a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made.'' An employer must submit this information on the prescribed Form LM–10 within 90 days of the close of the employer's fiscal year. 29 U.S.C. 433(a); 29 CFR part 405.[2]

LMRDA Section 203(b) imposes a similar reporting requirement on labor relations consultants and other persons. It provides, in part, that every person who enters into an agreement or arrangement with an employer and undertakes activities where an object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise, or how to exercise, their rights to union representation and collective bargaining ''shall file within thirty days after entering into such agreement or arrangement a report with the Secretary . . . containing . . . a detailed statement of the terms and conditions of such agreement or arrangement.'' 29 U.S.C. 433(b). Covered individuals must submit this information on the prescribed Form LM–20 (''Agreement and Activities Report'') within 30 days of entering into the reportable agreement or arrangement. *See* 29 U.S.C. 433; 29 CFR part 406.

A third report is relevant here. Section 203(b) further requires that every labor relations consultant or other person who engages in reportable activity must file an additional report in each fiscal year during which payments were made as a result of reportable agreements or arrangements. The report must contain a statement (A) of the consultant's receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of the consultant's disbursements of any kind, in connection with such services and the purposes thereof. The consultant must submit the information on the prescribed Form LM–21 (''Receipts and Disbursements Report'') within 90 days of the close of the labor relations consultant's fiscal year. *See* 29 U.S.C. 433(b); 29 CFR part 406.

Since at least 1963, the reporting requirements have required reporting by the prescribed forms, Form LM–10, Form LM–20, and Form LM–21. 28 FR 14384, Dec. 27, 1963; *See* 29 CFR part 405, 406.

Section 203(c), referred to as the ''advice'' exemption, provides in pertinent part that ''nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer.'' 29 U.S.C. 433(c). Finally, LMRDA Section 204 exempts from reporting attorney-client communications, which are defined as ''information which was lawfully communicated to [an] . . . attorney by any of his clients in the course of a legitimate attorney-client relationship.'' 29 U.S.C. 434. Even if a report is triggered by persuader activity, and a report must therefore be filed, material that is advice is not to be reported on the form.

C. Administrative and Regulatory History

In 1960, one year after the LMRDA's passage, the Department issued its initial interpretation of Section 203(c)'s advice exemption. This interpretation appeared in a technical assistance publication for employers. U.S. Dep't of Labor, Bureau of Labor-Management

[1] The LMRDA defines a ''labor relations consultant'' as ''any person who, for compensation, advises or represents an employer, employer organization, or labor organization concerning employee organizing, concerted activities, or collective bargaining activities.'' 29 U.S.C. 402(m).

[2] The statute and the Form LM–10 also require disclosure of financial activities that do not constitute persuader activities, such as payments or loans from an employer to a labor union or a labor union's official. *Id.*

Reports,[3] *Technical Assistance Aid No. 4: Guide for Employer Reporting* (1960). Under this original interpretation, the Department required employers to report any ''[a]rrangement with a 'labor relations consultant' or other third party to draft speeches or written material to be delivered or disseminated to employees for the purpose of persuading such employees as to their right to organize and bargain collectively.'' *Id.* at 18. By contrast, employers were not required to report ''[a]rrangements with a 'labor relations consultant,' or other third parties related exclusively to advice, representation before a court, administrative agency, or arbitration tribunal, or engaging in collective bargaining on [the employer's] behalf.'' *Id.* Additionally, in opinion letters to members of the public, the Department stated that a lawyer's or consultant's revision of a document prepared by an employer constituted reportable activity. *See* 76 FR 36178, 36180 (June 21, 2011) (NPRM) (citing Benjamin Naumoff, Reporting Requirements under the Labor-Management Reporting and Disclosure Act, in Fourteenth Annual Proceedings of the New York University Conference on Labor 129, 140–141 (1961)).

Just two years later, the Department revisited its interpretation, adopting the view that it was to hold for the next several decades. The Department's revised interpretation construed the advice exemption of Section 203(c) so as to no longer trigger reporting upon the provision of materials by a third party to an employer that the employer could ''accept or reject.'' [4] But a consultant who did present materials for the employer to accept or reject could trigger disclosure obligations by interacting with employees, either directly or through an agent. *See* Interpretative Manual section 265.005 (Scope of the Advice Exemption).[5]

On June 21, 2011, the Department issued a notice of proposed rulemaking to revise its interpretation of Section 203(c). 76 FR 36178. The Department received approximately 9,000 comments. 81 FR at 15945. On March 24, 2016, the Department issued its final Rule, addressing the comments it received. *See* 81 FR at 15945–16,000 (Mar. 24, 2016).

The Persuader Rule—the subject of this final rule—altered the prior, decades-long interpretation. The preamble to the Persuader Rule and the instructions on the relevant forms defined ''advice,'' which does not give rise to a reporting obligation, as ''an oral or written recommendation regarding a decision or a course of conduct.'' *Id.* at 15,939, 16,028 (LM–10 instructions), 16,044 (LM–20 instructions). The Persuader Rule then defined four new categories of non-contact conduct that triggered reporting obligations when done with an object to persuade: Directing supervisor activity, providing material for employers to disseminate to employees, conducting tailored seminars on the issue of unionization, and developing or implementing personnel policies designed to influence unionization. 81 FR at 15938. (These categories were in addition to contact of employees by a consultant or a consultant's agent, which the Rule continued to cover.) Among the activities covered by the Persuader Rule's four new categories were providing messaging on unionization to employers, 81 FR at 15970; developing policies for employers to dissuade employees as to the need for a union (such as a longer lunch break or a more generous leave policy), 81 FR at 15973; drafting or revising written materials regarding unionization for employers to disseminate to employees, 81 FR at 15971; or planning ''captive audience'' meetings or scripting interactions between supervisors and employees, 81 FR at 15970.

The Department thus construed the ''advice'' exemption more narrowly than it had done previously. In particular, it abandoned the position that developing speeches, communications, policies, and other proposals that an employer may decide to accept or reject constituted ''advice'' that did not trigger the reporting requirement. Under the new rule, the fact that the employer itself delivered the message or carried out the policy developed by a consultant would no longer exempt a consulting arrangement from reporting. The stated purpose of this change was to ''more closely reflect the employer and consultant reporting intended by Congress in enacting the LMRDA.'' 81 FR at 16001. The Persuader Rule cited evidence that the use of outside consultants to contest union organizing efforts had proliferated, while the number of reports filed remained consistently small. 81 FR at 16001. The Department concluded that its previous ''broad interpretation of the advice exemption ha[d] contributed to this underreporting.'' *Id.*

D. Litigation Surrounding the Rule

Shortly after it was issued, the Persuader Rule was challenged in three district courts and eventually enjoined on a nationwide basis. Plaintiffs in those suits contended that the Rule conflicts with the LMRDA, is arbitrary and capricious, violates the First Amendment, and is void for vagueness. *Associated Builders & Contractors of Arkansas* v. *Perez* (E.D. Ark. 4:16-cv-169); *Labnet, Inc.* v. *U.S. Dep't of Labor,* 197 F. Supp. 3d 1159 (D. Minn. 2016); *Nat'l Fed'n of Indep. Bus.* v. *Perez,* 2016 WL 3766121 (N.D. Tex.). On June 22, 2016, the federal district court in Minnesota found that the plaintiffs were likely to establish that the Persuader Rule violated the LMRDA, in at least some of its applications, but denied their request for preliminary relief on the ground that plaintiffs had not shown the threat of irreparable harm. *Labnet,* 197 F. Supp. 3d at 1175–76. On June 27, 2016, a federal district court in Texas granted the challengers' motion for injunctive relief—finding that the plaintiffs were likely to prevail on the merits of both their statutory and constitutional claims—and issued a nationwide preliminary injunction, which was later converted to a permanent injunction. *NFIB,* 2016 WL 3766121, at *46; s*ee also NFIB,* 2016 WL 8193279 (granting permanent injunction). The Department appealed to the Fifth Circuit, which has held the matter in abeyance pending this rulemaking. *See NFIB,* Dkt. No. 00514035358 (Dec. 27, 2017). The other two court cases have also been stayed.

III. Determination To Rescind

While the NPRM proposed rescission of the Persuader Rule to enable the Department to engage in further analysis, a further review of the record, including several comments urging that the Department complete its final analysis of the Persuader Rule now, have convinced the Department that the best course of action is to achieve

[3] The Bureau of Labor-Management Reports was the predecessor agency to the Office of Labor-Management Standards.

[4] *See* 81 FR at 15936 (quoting the agency's 1962 LMRDA Interpretive Manual as stating: ''In a situation where the employer is free to accept or reject the written material prepared for him and there is no indication that the middleman is operating under a deceptive arrangement with the employer, the fact that the middleman drafts the material in its entirety will not in itself generally be sufficient to require a report.'') (emphasis omitted).

[5] In 2001, the Department temporarily altered its interpretation of Section 203(c), expanding the scope of reportable activities by focusing on whether an activity has persuasion of employees as an object, rather than categorically exempting activities in which a consultant has no direct contact with employees. *See* 66 FR 2782 (Jan. 11, 2001). However, later that year, that interpretation was rescinded, and the Department returned to its prior view. *See* 66 FR 18864 (Apr. 11, 2001).

finality at this time.[6] The Department's NPRM notified the public of the possible rescission of the Persuader Rule, and the concerns animating that proposed rescission, including the Department's concerns about ''alternative interpretations of the statute,'' ''the potential effects of the Rule on attorneys and employers seeking legal assistance,'' the potential increased ''burden of the Form LM–20,'' and ''the impact of shifting priorities and resource constraints.'' 82 FR 26879. The Department received 1,160 comments submitted via the *www.regulations.gov* website in response to its NPRM. Of this total, 1,111 constituted non-substantive comments, including seven form letters.[7] The remaining 49 comments were substantive in nature, submitted by labor organizations, trade associations, business and professional federations, law firms, public policy groups, and four Members of Congress. Many of the substantive comments, both supporting and opposing rescission, discussed the merits of the Persuader Rule's consistency with Section 203(c) and provided the commenters' views on the Department's prior interpretation of the advice exemption. A number of comments objected to the Department's proposal to rescind with a view to further consideration rather than making a final substantive determination at this time.[8] Also, this same issue was evaluated at length in the Persuader Rule NPRM and final rule. The Department thus believes that it has received comments fully airing the substantive issues raised by the Persuader Rule, has completed its analysis of those issues, and will not engage in further analysis regarding its interpretation of Section 203(c) at this time.

Based on the comments received, and in light of the Department's legal and policy analysis, the Department has decided to rescind the Persuader Rule. The Department will continue to apply the longstanding interpretation of the advice exemption that predated the Persuader Rule.

Four primary reasons lead the Department to its rescission decision. First, the Department has determined that Section 203(c)'s plain text clearly forbids the interpretation on which the Persuader Rule in part rested. Second, the Department has determined that the Persuader Rule unduly causes disclosure of client confidences that are at the heart of the attorney-client relationship. Third, the Department has concluded that the Form LM–21's requirements substantially increased the burden on filers of the Form LM–20—a cost that the Persuader Rule declined to factor into its analysis. Fourth, the Department has determined to allocate its scarce resources to other priorities rather than to addressing the substantial fiscal burdens that the Persuader Rule imposed on the Department.

A. The Persuader Rule Rested on a Misinterpretation of Section 203(c)

Section 203(c) provides that the LMRDA's reporting obligation is not triggered by a consultant's ''giving or agreeing to give advice'' to an employer. The plain meaning of the term ''advice,'' as the Persuader Rule found, is ''an oral or written recommendation regarding a decision or course of conduct.'' 81 FR at 15926. Decisions about speech and written communications are among the subjects on which such ''recommendations'' are frequently made. Sometimes such advice may take the form of a general discussion about what the employer should or should not say to its employees. But it may also consist of drafts of speeches or written communications. Such drafts, if given to an employer to accept or reject, are simply recommendations to the employer to communicate as laid out in the draft. The employer remains free to disregard these recommendations and communicate in any manner it sees fit. Because the employer in such a scenario is the one communicating with employees, and the consultant simply proffers recommendations about those communications, the consultant renders only ''advice'' as that term is used in Section 203(c).

The Persuader Rule required reporting based on such advice. For instance, the Persuader Rule explained that reporting is required when a consultant, who has no direct contact with employees, ''provides material or communications to the employer, in oral, written, or electronic form, for dissemination or distribution to employees.'' 81 FR at 16027 (Mar. 24, 2016). Likewise, the Rule required reporting for ''drafting, revising, or providing speeches'' and ''written material . . . for presentation, dissemination, or distribution to employees.'' *Id.*

The Persuader Rule maintained that the ''preparation of persuader materials [such as speeches and written communications] is more than a recommendation to the employer that it should communicate its views to employees on matters affecting representation and their collective bargaining rights,'' 81 FR at 15951 (Mar. 24, 2016), but that analysis was mistaken. If the employer retains the ability to accept or reject the proffered communication, the consultant has not tendered ''more than a recommendation,'' even if his recommendation is made with the purpose to persuade employees. *Id.* That is because ''the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it.'' *Janus Capital Grp.* v. *First Derivative Traders* 564 U.S. 135, 142 (2011).

Janus is instructive. There, plaintiffs claimed that a mutual fund's allegedly misleading prospectuses were prepared by the fund's investment advisor, and sought to hold the investment advisor liable under SEC Rule 10b–5 for ''mak[ing] an[] untrue statement of a material fact in connection with the purchase or sale of securities.'' *Id.* at 137 (first alteration in original; internal quotation marks omitted). The Supreme Court rejected plaintiffs' claims, holding that, as the alleged misstatements had been issued solely on the authority and under the name of the mutual fund, the advisor could not be held liable even if it had prepared the prospectuses that the mutual fund ultimately adopted. *Id.* at 142–47. The Court explained that the mutual fund, rather than the investment advisor, exercised ''ultimate authority'' over whether to adopt any communication prepared by the advisor; the advisor, ''[w]ithout control, . . . can merely suggest what to say, not 'make' a statement in its own right.'' *Id.* at 142.

The same rationale applies here: A consultant's draft of, or revisions to, speeches or other communications, constitute recommendations about how the employer should communicate with its employees. As long as the ''ultimate authority'' to decide whether to make such communications rests with the employer, such recommendations by a consultant are merely ''advice'' within the meaning of Section 203(c).

The Persuader Rule rejected this interpretation based in significant part on the desire to give more effect to Section 203(c)'s reporting requirement for agreements to undertake activities ''where an object thereof, directly *or*

[6] Several commenters noted that no further statutory analysis is needed given the Department's years of extensive analysis and study that initially led to the promulgation of the Persuader Rule. *See* Communication Workers of America [pp. 1–2]; Economic Policy Institute [pp. 4–5]; Ranking Members Scott and Sablan [p. 3].

[7] Additionally, the Department received 1,433 comments submitted via mail or email, all of which were duplicative of form letters that the Department also received properly via *www.regulations.gov*.

[8] LMSO–2017–0001–0543, AFL–CIO pages 9–10; LMSO–2017–0001–0797, NABTU, page 4, LMSO–2017–0001–1126, UFCW, page 4.

indirectly, is to persuade employees'' with respect to their collective bargaining rights. 29 U.S.C. 433(a)(4) (emphasis added); *see also id.* § 433(b) (likewise covering ''indirect'' persuasion). The Persuader Rule reasoned that, unless the drafting of speeches and communications were deemed ''indirect'' persuasion (in assistance of the employer's ''direct'' dissemination of the statements to its employees), the term ''indirect'' would have little independent meaning. See 57 FR at 15926, 15933, 15936–37, 15949 fn 39. The Department is now convinced, after a review of the statute's text, the intervening court decisions, and the submitted comments, that this reading of Section 203(c) is improper.

First, the Department's prior longstanding interpretation comports with the general principle ''that Congress, when drafting a statute, gives each provision independent meaning,'' *Torres* v. *Lynch,* 136 S. Ct. 1619, 1628 (2016) That presumption tells against the Persuader Rule. The Persuader Rule interpreted section 203(c) as having no independent meaning, merely ''making explicit what sections 203(a) and (b) make implicit: That consultant activity undertaken without an object to persuade employees, such as advisory and representative services for the employer, do not trigger reporting.'' 81 FR at 15951; see also *id.* at 15952 (advice exemption is simply a ''rule of construction'' that ''underscore[s] that advice *qua* advice . . . does not trigger a reporting obligation simply because it arguably concerns a potential employer action that has an object to persuade''). In other words, the Persuader Rule read Section 203(c) merely to clarify what already lies outside the scope of Sections 203(a) and (b)—depriving Section 203(c) of independent meaning. Both federal courts to have reviewed the Persuader Rule rejected this interpretation, and the D.C. Circuit long ago accepted the Department's view that ''[t]he very purpose of section 203's exemption prescription . . . is to remove from the section's coverage certain activity that otherwise would have been reportable.'' *UAW* v. *Dole,* 869 F.2d 616, 618 (DC Cir. 1989) (R. Ginsburg, J.). The reading that the Department reinstates today, by contrast, gives robust and independent meaning to Section 203(c).[9]

Second, the Persuader Rule is not needed to save the words ''or indirectly'' from redundancy, and the Department's longstanding interpretation did not render the words ''or indirectly'' redundant. These words bear independent meaning, under the Department's previous interpretation, if construed to cover cases in which a consultant communicates with employees through a third party, such as an agent or independent contractor. Thus, for instance, reporting requirements would attach when a consultant hires a spokesman to spread its message to employees or to pass out to employees advocacy materials the consultant had prepared. In such cases, the consultant—rather than the employer—retains final authority over the message to be delivered to employees, thus depriving the consultant of the advice exemption. The words ''or indirectly'' ensure that reporting requirements attach to such conduct, which has long been the Department's position. At least as far back as 1989, the Department's Interpretative Manual asserted that a consultant who employs an agent to contact employees falls within Section 203's reporting requirement. Interpretative Manual section 265.005 (Scope of the Advice Exemption) (''Moreover, the fact that such material may be delivered or disseminated through an agent would not alter the result.'').[10] Even if the Department's longstanding interpretation rendered the words ''or indirectly'' redundant, the redundancy to which the Persuader Rule reduced Section 203(c) means that one of the Persuader Rule's principal rationales—the asserted need to avoid rendering the words ''or indirectly'' redundant—cannot stand. When *either* of two interpretations would create redundancy, the canon against redundancy cannot constitute a basis for choosing between the interpretations, because neither interpretation avoids redundancy. If anything, rendering the words ''or indirectly'' redundant is preferable to rendering the entirety of Section 203(c) redundant, as the Persuader Rule did.

All that has been said above with respect to communications prepared by a consultant for final acceptance or rejection by the employer also applies to conduct and policies that a consultant advises an employer to implement, an activity that triggered reporting requirements under the Persuader Rule. Planning meetings with employees and developing personnel policies, like drafting a speech, consist of making recommendations that the employer is free to accept or reject. Planning such conduct or policies fits within the traditional meaning of ''advice.'' *See Labnet,* 197 F. Supp. 3d at 1169.

While the Department's own reading of the plain statutory text plays the principal role in supporting the interpretation of Section 203(c) taken here, the Department also notes that the only federal courts to have pronounced on the Persuader Rule found that it violates the text of the LMRDA or likely does so. One federal district court permanently enjoined the Persuader Rule after finding that it impermissibly required reporting based on advice within the meaning of Section 203(c) and indeed read Section 203(c) out of the statute. *NFIB,* 2016 WL 3766121, at *28; *see also NFIB,* 2016 WL 8193279 (converting preliminary injunction to permanent injunction). The other district court to consider the Persuader Rule similarly held that it ''categorizes conduct that clearly constitutes advice as reportable persuader activity'' and concluded that the plaintiffs in that case ''have a strong likelihood of success on their claim that the [Persuader Rule] conflicts with the plain language of the

[9] The Eighth Circuit, which canvassed the legislative history of section 203 in a case involving a different question, reached a conclusion that supports the Department's longstanding reading of section 203(c). That case involved the question whether a consultant who engages in reportable persuasion on behalf of one client must include in its LM–21 report information about advice given to other clients for whom it performed no persuader activity. Although the Department does not here opine on this issue, the Department notes that the Eighth Circuit exhaustively examined Section 203's legislative history and rejected the view that Section 203(c) merely clarifies the meaning of Sections 203(a) and (b), concluding that the view of the advice exception as ''broader than a mere proviso'' more closely reflects congressional intent. *Donovan* v. *Rose Law Firm,* 768 F.2d 964, 974 (8th Cir. 1985). The Eighth Circuit also persuasively explained how previous courts of appeals that reached the opposite conclusion on this question misread the intent of Section 203(c). *See, e.g., Humphreys, Hutcheson and Mosely* v. *Donovan,* 755 F.2d 1211 (6th Cir. 1985); *Price* v. *Wirtz,* 412 F.2d 647 (5th Cir. 1969) (en banc). These cases have limited relevance with regard to the question presented by the Persuader Rule and this proceeding. As the D.C. Circuit explained in *UAW,* the question considered in these cases differed from ''the threshold question presented by this [rulemaking]: what is the appropriate characterization of activity that can be viewed as both advice and persuasion?'' *UAW,* 869 F.2d at 618 n.3. Nevertheless, the Eighth Circuit's well-reasoned conclusion that Section 203(c) does not serve merely to make explicit the implicit contours of Sections 203(a) and (b) is consistent with the Department's longstanding interpretation that it reinstates today and is at least somewhat inconsistent with the Persuader Rule.

[10] The Persuader Rule rejected the view that the term ''indirectly'' could be given meaning by attributing to it coverage of a consultant's retention of a third party to interact with employees, because, according to the Persuader Rule, such indirect persuasion by a consultant would be covered even absent the words ''or indirectly.'' 57 FR at 15949, fn. 39. Absent any definitive authority on how the statute would be interpreted in the absence of those words, the Department finds persuasive the suggestion that Congress included the words 'or indirectly' to make clear something that might well not be implicit in the statute otherwise: That a consultant's use of a third party to contact employees triggers reporting requirements.

statute.'' *Labnet,* 197 F. Supp. 3d at 1170.

A number of commenters agreed that the Persuader Rule incorrectly read Section 203(c). For instance, the Retail Industry Leaders Association [p. 5], Council on Labor Law Equality [pp. 20–21], and Coalition for a Democratic Workforce [pp. 7–8], as well as several others, contended that Congress intended to give the term ''advice'' broad scope and the Persuader Rule's interpretation of Section 203(c) effectively eviscerated that advice exemption. The American Bar Association [p. 4] stated that the proposed interpretation of ''advice'' in the Persuader Rule would thwart the will of Congress.

Other commenters opposed rescission, but failed to grapple with the fundamental statutory problem with the Persuader Rule. For example, one commenter [LMSO–2017–0001–0543; AFL–CIO page 9–10] urged the Department to retain the Persuader Rule because it ''has multiple valid applications,'' citing *Labnet, Inc.,* 197 F. Supp. 3d at 1168. But rejection of the Department's longstanding accept-or-reject test stands at the heart of the Persuader Rule's legal analysis, see 81 FR at 15941, and that rejection is based on a fundamentally flawed interpretation of section 203. The Department accordingly is not rescinding the Persuader Rule because it has some invalid applications. The Department is rescinding the Persuader Rule because the Rule as a whole rested on an improper reading of Section 203(c).

Two Members of Congress serving on the House of Representatives' Committee on Education and the Workforce opined that ''a single district court decision should not be enough to justify rescinding a rule. [LMSO–2017–0001–1097; Ranking Members Scott and Sablan Comment Letter page 3.] [11] But the Department is not rescinding the Persuader Rule simply because a district court enjoined it. It is rescinding the Persuader Rule because the Department has concluded, after considering the arguments made by those challenging the Rule in litigation, the opinions of the two district courts to have pronounced on the Persuader Rule's merits, the comments that have been submitted, and the plain meaning of the statutory text, that the Persuader Rule read Section 203(c) improperly.

[11] A think tank [LMSO–2017–0001–0800; Economic Policy Institute p.5) raised a similar issue, asserting that the related litigation does not compel rescission.

Several commenters opposed rescission on the ground that the Persuader Rule is needed to address underreporting. [AFL–CIO, page 10; Economic Policy Institute, page 4; Communications Workers of America, page 2; North America's Building Trades Union, page 5; National Nurses United, page 2; Screen Actors Guild, page 2; and United Food and Commercial Workers, page 2] They noted that the Department cited underreporting under its prior interpretation—that a consultant incurs a reporting obligation only when it directly communicates with employees with an object to persuade them—as part of the rationale for promulgating the Persuader Rule. 81 FR 15933 (Mar. 24, 2016) (''Indeed, the prior interpretation did not properly take into account the widespread use of indirect tactics . . . and thus did not result in the reporting of most persuader agreements.''). But activities such as drafting speeches, proposing policies, and other recommendations that a business can accept or reject fall within the plain meaning of the ''advice'' that Congress exempted from its reporting requirements. Failure to report these activities accordingly is not ''evasion'' of the LMRDA; rather, such activities fall within the unambiguous scope of the term ''advice'' that Congress expressly excepted from triggering Section 203's reporting requirements, and thus declining to report based on such activities constitutes compliance with the LMRDA.

Even if a court were to disagree with the Department's view that its interpretation of the statute, as laid out in this rulemaking, is mandated by the statute, the Department's reasonable reading of the statute should still be given deference under *Chevron. Chevron, USA, Inc.* v. *Nat. Res. Def. Council, Inc.,* 467 U.S. 837, 844 (1984). And, as discussed in more detail in the next sections, several policy considerations support rescission of the Persuader Rule and the Department's prior longstanding interpretation of the statute. Even if the interpretation adopted herein were only one permissible interpretation of Section 203(c), the Department would nevertheless adopt it based on these compelling policy considerations.

B. The Persuader Rule Impinged on the Attorney-Client Relationship

A second, independent, reason supports rescission: The Persuader Rule would have interfered with longstanding protections of the attorney-client relationship.

The duty to safeguard client confidences has long formed the bedrock of the attorney-client relationship. One hundred years ago, the American Bar Association's first set of model ethics rules accepted as already established ''[t]he obligation . . . not to divulge [a client's] secrets or confidences.'' Code of Professional Ethics No. 6 (1908). Today, the ABA's Model Rules instruct that, absent specific exceptions, a ''lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent . . . .'' Model Rule 1.6.

The duty not to disclose confidences plays a vital role in encouraging businesses and individuals alike to seek counsel. Potential clients who fear their decision to retain counsel, or facts about the representation, will become public may hesitate before consulting a lawyer. Such hesitation would run counter to society's interest in fostering legal compliance, as more citizens and businesses would be forced to act based on an uninformed interpretation of the law. Perhaps even more importantly, the disincentive built into the Persuader Rule in consulting an attorney is particularly troubling given that the Rule is vague regarding the activities that would be newly reportable. Pressuring Americans to act in ignorance of the law imperils a ''fundamental principle in our legal system[, which] is that laws . . . must give fair notice of conduct that is forbidden or required.'' *FCC* v. *Fox Television Stations, Inc.,* 567 U.S. 239 (2012). For better or worse, such fair notice as a practical matter often requires consulting legal counsel.

The Department finds generally persuasive the American Bar Association's comments submitted in response to this rulemaking. One of these comments, on which the court in Texas relied, states that the Persuader Rule called for disclosure of important client confidences and would undermine the attorney-client relationship:

[The Persuader Rule] . . . would require lawyers (and their employer clients) to disclose a substantial amount of confidential client information, including the existence of the client-lawyer relationship and the identity of the client, the general nature of the legal representation, and a description of the legal tasks performed.

By requiring lawyers to file [such reports], the Proposed Rule could chill and seriously undermine the confidential client-lawyer relationship. In addition, by imposing these unfair reporting burdens on both the lawyers

and the employer clients they represent, the Proposed Rule could very well discourage many employers from seeking the expert legal representation that they need, thereby effectively denying them their fundamental right to counsel.

NFIB, 2016 WL 3766121, at *7–9. LMSO–2017–0001–0111, American Bar Assn., page 7.] Even a comment from several law professors in support of retaining the Persuader Rule did not dispute that the Rule required disclosure of information that would, absent the Rule, be shielded by rules of confidentiality. [LMSO–2017–0001–088127; 27 Law Professors page 5–7].

These concerns are not hypothetical; as the court in Texas found based on witness testimony, ''law firms around the country have already started announcing their decisions to cease providing advice and representations that would trigger reporting under DOL's New Rule,'' which ''decrease[s] employers' access to advice from an attorney of one's choice.'' *Id.* at *10. The court further noted the Persuader Rule's likely negative effect on organizations' ability to offer unionization-related training and seminars to employers (including small businesses) because would-be trainers and attendees ''will not want their attendance reported and made publicly available.'' *Id.* at *11. After analyzing these and other considerations, the court ultimately held that the Persuader Rule was likely ''arbitrary, capricious, and an abuse of discretion'' in part because ''the rule unreasonably conflicts with state rules governing the practice of law.'' *Id.* at *29. Several commenters shared similar concerns that the Texas court noted. [Chairwoman Foxx and Walberg, p. 8; Associated General Contractors of America, p. 8; Retail Industry Leaders Association, p. 3; Independent Electrical Contractors, p. 6; Seyfarth Shaw, p. 4; National Association of Homebuilders, p. 5; Coalition for a Democratic Workforce, p. 13; Employment Law Alliance, p. 7].

The Persuader Rule acknowledged the potential impact on attorney-client confidences, but simply concluded that the interpretation of the LMRDA advanced in the Rule, ''as federal law, must prevail over any conflicting . . . rules governing legal ethics'' and that Model Rule 1.6 and state laws modeled on it permit disclosure when required by law. 81 FR at 15998 (Mar. 24, 2016). Those arguments are beside the point. The Department agrees that federal law preempts state law and does not dispute that many state ethics laws permit disclosures required by law. But the state laws at issue enshrine, and bear witness to the importance of, certain principles of confidentiality—principles that the Persuader Rule, by requiring disclosure of client confidences, endangers irrespective of whether attorneys could be administratively disciplined for making such disclosures.[12]

This is not the first time the Department has recognized the need for confidentiality to protect the attorney-client relationship in the organizing context. The largest labor unions (those with annual receipts of $250,000 or more) must under certain circumstances disclose and itemize disbursements to lawyers, but that rule does not apply when disclosure would expose the union's prospective organizing strategy or provide a tactical advantage to a party in contract negotiations. See the Instructions for the Form LM–2, p22. The Persuader Rule included no similar exemption for employers' consultation with attorneys. Rescinding the Persuader Rule continues to recognize the importance of confidentiality in the attorney-client relationship, consistent with the Instructions for the Form LM–2.

One comment [LMSO–2017–0001–088127; 27 Law Professors page 2] advocated against rescission and noted the difficulty in obtaining evidence on how particular activities would affect the behavior of lawyers. The comment asserted that rescinding the Persuader Rule would preclude obtaining data on its effects and that input from lawyers on how they would change their practices could be ''nothing more than speculative and self-serving.'' [13] Because the Department rescinds the Persuader Rule on the merits rather than with a view to further consideration, this comment's concerns about whether rescission would facilitate a future merits consideration is no longer apropos.[14]

Commenters offered conflicting policy and fact-based arguments about the effects of the Persuader Rule on reporting under the LMRDA. One think tank [Economic Policy Institute, pages 7–8], for example, asserted that the proposed rescission would ''let[] America's working people down'' because, in its view, the Persuader Rule constituted merely a ''modest step toward leveling the playing field for workers by making sure they receive the information they deserve before making a decision on forming a union.'' *Id.* Multiple labor unions made similar comments. A representative of the building trades characterized the accept-or-reject rule as a ''loophole'' that ''resulted in vast underreporting of persuader activities.'' [See LMSO–2017–0001–0797 North America's Building Trades Unions, p3]; [LMSO–2017–0001–0543 AFL–CIO, p. 3–4.] An international union stated, 'While the Department will undoubtedly be inundated with comments from those who assert that the 2016 Rule was a sop to organized labor, the real beneficiaries of this proposal are the employees—the class of individuals for which the protections in Section 203 were intended.'' LMSO–2017–0001–1104 International Brotherhood of Teamsters, p3.] [SAG–AFTRA, pg. 2; UFCW, pg. 2]

The Department is not persuaded. First, some Form LM–20 information would have been stale. As the commenters noted, the 30 day filing deadline for a Form LM–20 is not much shorter than the 38-day median timeframe between the filing of an NLRB petition and the ensuing election, and 90% of the elections are held within 56 days. See 79 FR 74307. Although the Persuader Rule estimated that employers engage consultants at the first signs of union organizing, indicating the persuader agreement

[12] For these reasons, the Department was not persuaded by a comment that advocated retaining the Persuader Rule on the grounds that the Rule's disclosure requirements by their own force exempted lawyers from confidentiality obligations that would otherwise apply. [LMSO–2017–0001–088127; 27 Law Professors page 5–6].

[14] This comment also contended that the Persuader Rule did not compel disclosure of client confidences. [LMSO–2017–0001–088127; 27 Law Professors page 4]. The comment asserts that there is ''no conflict between the regulatory regime administered by the DOL and the ethical responsibilities of lawyers.'' The comment notes that section 204 of the LMRDA expressly exempts ''information that was lawfully communicated to such attorney by any of his clients,'' citing 29 U.S.C. 434. Reporting is required only when the lawyer provides services other than legal services, the comment continues. The comment identifies several other reporting and disclosure requirements imposed on lawyers and concludes that there is ''little evidence'' that these regimes have chilled attorneys from serving their clients. The Department is not persuaded by these arguments. First, it is notable that the comment does not dispute that the Persuader Rule *did* require disclosure of information that, absent the Persuader Rule, would be entitled to the protections of confidentiality. The portions of the Persuader Rule that did not infringe on confidential communications, such as the exemption for communications from a client to an attorney under 29 U.S.C. 434, do not negate those that do, such as the requirement that guidance provided from an attorney to an employer with an intent to persuade employees triggers reporting. The assertion of ''little evidence'' of chilling in other statutory contexts is bare and unquantified and therefore not persuasive and, here, not only did several commenters raise this concern, but a U.S. Distric Court found evidence of actual chilling. NFIB, 2016 WL 3766121, at *10; [Chairwoman Foxx and Walberg, p. 8; Associated General Contractors of America, p. 8; Retail Industry Leaders Association, p.3; Independent Electrical Contractors, p. 6; Seyfarth Shaw, p. 4].

would precede the petition, such promptness is very unlikely to be present in all cases; in cases where it is not, the Form LM–20 may not be filed early enough to be useful.

Second, it is vital to distinguish between information that helps employees make an informed decision about their right to form a union, on the one hand, and information that is significantly less useful, on the other. Information as to whether a person with whom an employee comes into contact is actually working for the employee's employer can help an employee evaluate whether to trust the arguments that that person may advance on the question of unionization. The additional disclosures that the Persuader Rule would have required, by contrast, are likely to be much less helpful. That is because, for any message or conduct that the Persuader Rule newly deemed to be indirect persuasion, employees *already* know that the employer stands behind that message or conduct, because the employer conveys the message or undertakes the conduct at issue. Knowing which advisor, if any, recommended a particular message or conduct is less likely to help employees make an informed decision than knowing that a seemingly-independent third-party is actually in the pay of his or her employer. It is the Department's conclusion that the serious concerns regarding attorney-client confidentiality discussed in this section outweigh any assistance the former knowledge might render.

Third, the relative paucity of LM–20 reports under the Department's longstanding interpretation of the advice exemption does not necessarily indicate under-reporting. Some commenters [Council on Labor Law Equality, p. 9; Independent Electrical Contractors, p. 7; Retail Industry Leaders Association, p. 7] argued that there is no indication that employers or consultants have engaged in misconduct or otherwise circumvented or evaded the LMRDA's reporting requirements under the Department's longstanding prior interpretation. The Department agrees: When comparatively few reports are filed, this can be an indication of non-compliance with the reporting rule *or* it can be an indication of relatively little reportable activity. The latter indicates compliance, not evasion, and, absent further information indicating that the filing of comparatively few reports instead indicates evasion, it provided no basis for the Persuader Rule and its mandatory reporting of activities such as recommending communications or courses of conduct for an employer to accept or reject.

C. The Costs of Additional Use of Form LM–21 Further Support Rescission

A third reason for rescission involves the additional regulatory burdens involving Forms LM–20 and LM–21 imposed by the Rule. The obligation to file the Form LM–20 and the Form LM–21 result from the same event: Persuader activity. Under section 203(b), every person who enters into an agreement or arrangement to undertake persuader activities must file a report with the Secretary that includes a detailed statement of the terms and conditions of such arrangement within 30 days of entering into the agreement, currently accomplished by filing a Form LM–20. The person must then also file annually a report containing a statement of the person's ''receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof,'' and a statement of its disbursements of any kind, in connection with those services and their purposes, currently accomplished by filing a Form LM–21. *See also* 29 CFR 406.3 (Form LM–21 requirements). 57 FR 15929. Thus, by statute, the filing of a Form LM–20 necessitates the filing of a Form LM–21, so long as any disbursement is made pursuant to the reportable persuader agreement or arrangement.

An increase in the range and number of activities that constitute ''persuader activity'' would increase the number of Form LM–20 and Form LM–21 filers. Each form imposes a unique recordkeeping and reporting burden on the filer. For example, a consultant/law firm that contracted with an employer and engaged in persuader activity under the Rule would have to file a Form LM–20 disclosing the arrangement with the employer. According to the instructions, the consultant would also have to file a Form LM–21 on which it reports the full name and address of employers from whom receipts were received directly or indirectly on account of labor relations advice or services, as well as the total amount of receipts. In addition, the consultant's disbursements to officers and employees would be disclosed when made in connection with such labor relations advice or services. And the consultant would report in the aggregate the total amount of the disbursements attributable to this labor relations services and advice, with a breakdown by office and administrative expenses, publicity, fees for professional service, loans, and other disbursement categories. Finally, the consultant would be required to itemize its persuader-related disbursements, the recipient of the disbursements, and the purpose of the disbursements.[15]

The Department recognized in the final rule that the Persuader Rule would make some labor relations consultants and employers who had previously not been required to file at all under the LMRDA responsible for filing both forms LM–20 *and* LM–21, but did not fully consider that burden. Instead, it considered only the burden arising from the Form LM–20 and deferred consideration of the burden arising from Form LM–21 to a separate rulemaking. It did so, in part, because it intended to engage in parallel rulemaking for reform of the scope and detail of the Form LM–21. 57 FR 15992, fn 88. In the meantime, the Department issued a separate special enforcement policy that addressed the potential that new filers might have unique difficulties in filing the Form LM–21. Under that special enforcement policy, the filers of Form LM–20 who were also required to file a Form LM–21 were not required to complete two parts of that form. See *https://www.dol.gov/olms/regs/compliance/ecr/lm21_specialenforce.htm.*

The Department has now considered the burdens that the Persuader Rule would have imposed on the expanded Form LM–21 filers and concluded that they would have been substantial. As described below, under the Persuader Rule, many more labor relations consultants would have had to complete the Form LM–21, and they would have needed to devote additional time and resources to do so.

As discussed in the Economic Analysis below, the Department estimates that total number of Form LM–20 filers would have been 2,149. Consequently, there would also have been 2,149 Form LM–21 reports filed. This is an increase from the previously estimated 358 Form LM–21 reports. Thus the Persuader Rule would have created more filers of the Form LM–21. See *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201604-1245-001.*

These filers would have spent additional time completing the form, far more than the 35 minutes previously estimated by the Department.[16] Each filer of Form LM–21 is assumed to have already read the Form LM–20 form and

[15] The Department does not opine here on whether the statute requires consultants who have entered into persuader agreements or arrangements to list on the Form LM–21 non-persuader clients, *i.e.,* employers with whom they did not into persuader agreements or arrangements. *See Donovan* v. *Rose Law Firm,* 768 F.2d 964, 974 (8th Cir. 1985).

[16] See *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201604-1245-001.*

instructions and therefore knows whether it must file the Form LM–21. No additional reading time is therefore necessary to make this determination. Nevertheless, the completion of the Form LM–21 would have been complicated by the Persuader Rule because the statutory term ''advice'' was broadened and expanded by the Persuader Rule, with no explanation of how the revised definition applied to the Form LM–21. This lack of clarity increases the burden of the Form LM–21. Due to this increased complexity, completing the form would have thus consumed 154.5 minutes. This equals a $631,181 Form LM–21 burden arising from the Persuader Rule and this burden was not considered by the Department when issuing that rule.

These additional costs of more than $631,000—which the Persuader Rule did not properly quantify or consider—are substantial and constitute an additional and important policy factor prompting rescission of the Persuader Rule to avoid unnecessary burden on the private sector.

D. Rescinding the Persuader Rule Will Preserve Limited Departmental Resources for Competing Priorities

A fourth reason for rescission of the Persuader Rule is the allocation of scarce resources to different priorities. The Department has the ''right to shape [its] enforcement policy to the realities of limited resources and competing priorities.'' *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am.* v. *Dole,* 869 F.2d 616, 620 (D.C. Cir. 1989). Under the prior interpretation of the advice exemption, there were significantly fewer reports due and accordingly fewer investigative resources needed for enforcing the rules on filing timely and complete reports. Further, under the prior interpretation, case investigations generally involved obtaining and reviewing the written agreement and interviewing employees. In contrast, enforcement of the Persuader Rule would likely have involved a lengthier and more complicated investigation, examining in detail the actions of consultants, their interactions with the employers' supervisors and other representatives, and the content of attorney communications. The investigator would have been required to review both the direct reporting category and the four indirect persuader categories. This would have been a substantially more resource-intensive process that pulled limited resources away from other vital priorities. The Department does not believe that this allocation of resources is warranted.[17]

One comment [LMSO–2017–0001–1097; Ranking Members Scott and Sablan Comment Letter page 4] stated that the Department's concern for limited resources ''does not account for the discrepancy between unions' broad disclosure requirements and employers' meager obligations,'' but that comment did not assess the Persuader Rule's burden on the Department. The comment asserted that ''the Form LM–2 that unions must file often consumes hundreds of pages, whereas employers' LM–10, LM–20 and LM–21 are four, two and two pages, respectively.'' But the resources filers spend completing their reports are not the same as the resources the Department spends administering the program. In addition, the length of the report does not correlate with the investigatory burden on the Department. The greater number of reports and the increased complexity of the investigations under the Persuader Rule mean persuader reports would have been resource intensive for the Department. In contrast to labor unions, which must file an annual report, persuader reports are required only when an employer or labor relations consultant actually engages in the identified persuader activities in the fiscal year. At the end of the fiscal year, the Department cannot know whether a particular employer or consultant owes a report, which substantially increases the time and expense of monitoring for delinquent employer and consultant reports.[18]

Ultimately, the Department has determined that its scarce resources are better allocated elsewhere than on the enforcement of the Persuader Rule. The Department has wide ranging priorities and responsibilities, including helping Americans find the jobs they need, closing the skills gap, protecting employees from hazardous working conditions, enforcing child labor protections, and many other critical initiatives. Among its other priorities, the Department promotes union democracy and financial integrity in private sector labor unions through standards for union officer elections and union trusteeships and safeguards for union assets, and it promotes labor union and labor-management transparency through reporting and disclosure requirements for labor unions and their officials, employers, labor relations consultants, and surety companies. Reporting by employers and labor relations consultants who make arrangements to persuade employees with regard to their rights to organize and bargain collectively is an important piece of this effort and DOL's broader mission, but it is just one piece. Rescission of the expansion of the advice exemption will not change the Department's robust enforcement of these core reporting requirements, which have protected the LMRDA's vital objectives for decades.

IV. Effect of Rescission

The reporting requirements in effect under this rescission are the same as they existed before the rescission. The Forms and Instructions, available on the Department's website, are those pre-existing the Rule. These are the Forms and Instructions currently being used by filers, in light of the litigation and court order discussed in section 2(A), above. *See National Federal of Independent Business* v. *Perez* (N.D. Tex. 5:16-cv-00066-c), Slip Op. p.89–90; 2016 WL 3766121; 2016 WL 8193279.

V. Analysis Conducted in Accordance With Executive Order 12866, Regulatory Planning and Review, Executive Order 13563, Improved Regulation and Regulatory Review, and Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

Under Executive Order 12866, the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive Order and review by OMB. 58 FR 51735. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more, or adversely affects in a material way a

[17] While the Department could avoid some or all of this burden by declining to enforce, or enforcing on a limited basis, the Persuader Rule, rescinding the Persuader Rule will afford the regulated community greater certainty than simply adopting a non-enforcement policy.

[18] A labor union raised concern that the rescission of the rule would also rescind the requirement that Form LM–10 and Form LM–20 be filed electronically. (LMSO–2017–0001–0110; American Federation of Teachers pp 2–3). ''While, perhaps, reasonable minds may differ on the application of the advice exemption, one is hard pressed to think of a fair reason why persuaders should not have to file timely, intelligible forms via electronic means—just as unions have had to do for over a decade.'' The comment stated that paper filing is more costly for the Department and results in delays in public disclosure. The commenter states, ''full repeal of the original Rule does workers, the public, and researchers a real disservice,'' and concludes that the Department should retain mandatory electronic filing of LM–10, LM–20, and LM–21 reports. Although outside the scope of the regulatory action, the Department will consider this request, as it moves to making all forms available for electronic filing.

sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. *Id.* OMB has determined that this final rule is a significant regulatory action under section 3(f)(1) of Executive Order 12866.

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; it is tailored to impose the least burden on society consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected the approach that maximizes net benefits. Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

A. The Need for Rulemaking

As explained above in Part II, Section A, today's final rule to rescind the Persuader Rule is part of the Department's continuing effort to effectuate the reporting requirements of the LMRDA. The LMRDA generally reflects the obligation of unions and employers to conduct labor-management relations in a manner that protects employees' rights to choose whether to be represented by a union for purposes of collective bargaining. The LMRDA's reporting provisions promote these rights by requiring unions, employers, and labor relations consultants to publicly disclose information about certain financial transactions, agreements, and arrangements. The Department believes that a fair and transparent government regulatory regime must consider and balance the interests of labor relations consultants, employers, labor organizations, their members, and the public. It should reflect close consideration of possible statutory interpretations and both direct and indirect burdens flowing from the Rule, particularly in sensitive areas, such as the attorney-client relationship. Any change to a labor relations consultant or employer's recordkeeping, reporting and business practices should be based on a demonstrated and significant need for information, along with consideration of the burden associated with such reporting and any increased costs associated with the change.

In its Notice of Proposed Rulemaking, the Department assumed the position that the rescission of the Persuader Rule would result in a burden reduction equal to the difference between the rule as it stood prior to the Persuader Rule and the Persuader Rule. 82 FR 26881. In utilizing this methodology, the Department estimated that the rescission of the Persuader Rule would result in annual cost savings of $1,198,714.50.

In response to the Notice of Proposed Rulemaking, the Department received a number of comments disagreeing with the Department's cost analysis. Specifically, commenters insisted that the Department failed to arrive at a realistic calculation of the actual cost of compliance and the cost of familiarization. A number of commenters pointed to a lack of definitiveness in the Persuader Rule in identifying whether a report would be required, who would be responsible for submitting a report, and whether sensitive issues would have to be disclosed through the information requested in the report. The commenters argued that these matters were significant determinations that would inevitably result in higher costs.

Additionally, in an order granting the issuance of a preliminary injunction enjoining the Persuader Rule, the U.S. District Court for the Northern District of Texas addressed the burden of the Persuader Rule and the increased costs associated with its implementation. Though the district court did not conduct its own methodology, the court cited and relied upon a third-party report to conclude that the Persuader Rule ''could cost the U.S. economy between $7.5 billion and $10.6 billion during the first year of implementation, and between $4.3 billion and $6.5 billion per year thereafter; the total cost over a ten-year period could be approximately $60 billion—and this would not include the indirect economic effects of raising the cost of doing business in the United States.'' *Nat'l Fed. of Indep. Bus.* v. *Perez,* Case No. 5:16-cv-00066-C, 2016 WL 3766121, at *15 (N.D. Tex. June 27, 2016).[19]

While the Department does not conclude that the Persuader Rule would have resulted in the burden identified by the *NFIB* court, the Department is cognizant of the concerns raised by the commenters in response to the NPRM and has thoroughly analyzed and examined these comments. After a thorough evaluation, the Department agrees that the previous figure failed to account for a number of significant considerations.

Concerning burden, the overarching difficulty associated with the Persuader Rule was the broadening of persuader reporting to certain categories of indirect contact where the employer remained free to accept or reject the recommendations of the consultant. That increase in scope would have made it more difficult to determine whether a report was required and what information the report should contain. In particular, the Persuader Rule would have required close consideration of sensitive matters such as privilege and confidentiality that might have affected how information should be entered onto the forms. And filers would have required more time to review the instructions in detail because of the difficulty in accurately and comprehensively completing such complex forms.[20] To the extent that the expanded reporting requirement would have potentially disclosed sensitive information or chilled efforts to seek help, the impact would have been greater and even more time would have been allocated to completing the forms. For all these reasons, the Department no longer believes it would be accurate to measure the reduced burden simply by comparing the burden figures in the Persuader Rule to the figures that it has replaced.

B. Economic Analysis

For the reasons discussed below, and as relevant here, the Department rejects the following assumptions as made in the Persuader Rule:

- Non-filing employers, human resources firms, and law firms would have spent one hour in total reading instructions (10 minutes) and determining that the rule does not apply to them or their clients (50 minutes) (81 FR 16003);

[19] The rulemaking record contains five comments that cite a study that supports these figures. Diana Furchtgott-Roth, *The High Costs of Proposed New Labor-Law Regulations,* MANHATTAN INSTITUTE, Jan. 2016.

[20] The NPRM for the Persuader Rule proposed that non-filing entities would require an hour to read the instructions and to determine that the rule does not apply to them. It also determined that no ''initial familiarization'' costs would be estimated. 81 FR 16003.

• The number of employers that would have filed Form LM–10 reports would have been 2,777 (81 FR 16004);

• The number of Form LM–10 reports filed would have been 2,777 (81 FR 16004);

• The total burden hours per Form LM–10 filer would have been 147 minutes. (81 FR 16014);

• The number of consultants that would have filed Form LM–20 reports would have been 358 (81 FR 16004);

• The number of Form LM–20 reports filed would have been 4,194 (81 FR 16004);

• The total burden hours per Form LM–20 filer would have been 98 minutes (81 FR 16012);

• The number of consultants that would have filed Form LM–21 reports would have been 358 (81 FR 16004);

• The number of Form LM–21 reports filed would have been 358 (81 FR 16004);

• Issues arising from the reporting requirements of the Form LM–21 would not have been appropriate for consideration under the Persuader Rule (81 FR 1600);

As relevant here, the Department accepts the following assumptions made in the Persuader Rule:

• Employers, business associations, and consultants (human resources firms, law firms, and labor relations consultants) would not have borne ''initial familiarization'' costs (81 FR 16003);

• Non-filing entities would have comprised those employers, business associations, and consultants (human resources firms, law firms, and labor relations consultants) that are not otherwise estimated to be filing (81 FR 16003);

• The number of non-filing consultants would have been 39,298 (81 FR 16016–17);

• The number of non-filing employers would have been 185,060 (81 FR 16017);

• Attorneys would have filed reports on behalf of consultants and employers (81 FR 16003);

• The estimated recordkeeping and reporting costs should be based on Bureau of Labor Statistics (BLS) data of the average hourly wage of a lawyer, including benefits (81 FR 16003);

• A lawyer (SOC 23–1011) has a fully-loaded wage of $114 (median hourly base wage of $56.81 plus fringe benefits and overhead costs of 100% of the base wage) [21]

[21] Source: Bureau of Labor Statistics, Occupational Employment Statistics, May 2016 National Employment and Wages Estimates. (*https://www.bls.gov/oes/current/oes_nat.htm*).

Based on the comments received, the Department makes the following assumptions:

• Non-filing employers, human resources firms, and law firms would have spent 2.75 hours in total reading instructions (45 minutes) for the Form LM–10 or the Form LM–20 and determining that the rule does not apply to them or their clients (120 minutes);

• The number of employers that would have filed Form LM–10 reports would have been 13,297;

• The number of Form LM–10 reports filed would have been 13,297;

• The total burden hours per Form LM–10 would have been 930 minutes;

• The number of consultants that would have filed Form LM–20 reports would have been 2,149;

• The number of Form LM–20 reports filed would have been 14,714;

• The total burden hours per Form LM–20 would have been 900 minutes;

• The number of consultants that would have filed Form LM–21 reports would have been 2,149;

• The number of Form LM–21 reports filed would have been 2,149;

• The total burden hours per Form LM–21 would have been 154.5 minutes.

Based on the comments received, and upon review of the litigation, the Department concludes that the Persuader Rule underestimated the burden with regard to the amount of time necessary for non-filers to read the form and instructions, the number of filers of Form LM–10 and Form LM–20, and the number of hours necessary to complete these forms. It also erred in failing to estimate the increase in the number of Form LM–21 filers and the increased burden the Persuader Rule caused through the Form LM–21.

The Burden on Non-Filers to Read the Forms

In the Persuader Rule, non-filing entities (employers and law firms/consultants) were estimated to need one hour in total to read the instructions (10 minutes) and determine that the rule does not apply to them or their clients (50 minutes). 57 FR 16003, 16007. This was not accurate. ''A more realistic assessment of the costs of these new forms to business would estimate a higher number of hours per firm, since businesses will need to spend time each year determining whether they are obligated to file.'' [Diana Furtchgott Roth, *The High Costs of Proposed New Labor-Law Regulations,* Manhattan Institute, Jan. 2016, at 8 n.16]. The U.S. District Court accepted as fact that the Department failed to adequately consider potential filers, concluding that ''[t]he department should have examined what the cost would be if all potentially affected employers and advisers were to file,'' and therefore that the Department did not provide ''an honest assessment of the potential effect of the proposed rule.'' *Nat'l Fed. of Indep.,* 2016 WL 3766121, at *15.

The Department estimates that, under the Persuader Rule, non-filing entities would have spent 2.75 hours total reading the instructions of the Form LM–10 or the Form LM–20 (45 minutes) to determine that the rule does not apply to them or their clients (120 minutes).

The additional reading time would have been necessary because of the vagueness of the Persuader Rule. The Persuader Rule broadened persuader reporting to certain categories of indirect contact where the employer remained free to accept or reject the recommendations of the consultant. That increase in scope would have made it more difficult to determine whether a report was required. One commenter reported, for example, ''DOL's new Rule creates a regulatory scheme that is so confusing and convoluted, with so many illogical exceptions and mandates, that neither employers nor their advisors, including labor law experts, can understand how to comply with it.'' [Associated Builders and Contractors of Arkansas LMSO–2017–0001–1096, p.13]. Another commenter noted, ''most of the cost of compliance will come from learning about the new rule and preparing the information to be recorded on the form.'' [Furchgott-Roth, p7, see fn 16.] Because the rule was vague as to the activities that resulted in reporting obligations, it would have taken more than an hour for an employer or a consultant to read, understand, and apply it to determine whether filing was required.

Besides vagueness, the sensitivity of the information to be included on the form would also have increased the amount of time required of non-filers. The Persuader Rule would have required close consideration of sensitive matters such as privilege and confidentiality that might have affected how information should be entered onto the forms. And filers would have required more time to review the instructions in detail because of the difficulty in accurately determining whether a report was owed. To the extent that the expanded reporting requirement would have potentially disclosed sensitive information or chilled efforts to seek help, the impact would have been greater and even more time would have been allocated to the determination. The Department now

concludes that non-filers would have spent 2.75 hours in total reading instructions (45 minutes) and determining that the rule does not apply to them or their clients (120 minutes).

The Department has not altered the time spent by non-filing employers on reading the Form LM–21 to determine that filing is not required. The review time spent on reading the Form LM–20 will provide employers with information on the regulatory regime and non-filers of Form LM–10 will have no obligation to file the Form LM–21.

The Number of Filers

The Department erred in its estimate of the number of filers. The Department had largely derived its estimates of the number of filers of both the LM–20 and LM–10 forms from the total number of representation and decertification elections supervised by the NLRB and the NMB. The Department assumed that, in 75% of such cases, the employer would utilize a consultant who will engage in reportable activity.[22] [81 FR 15964–65, 16004]. The Department considered only representation elections, but acknowledged that other reports will result from ''activities related to collective bargaining and other union avoidance efforts outside of representation petitions, such as organizing efforts that do not result in the filing of a representation petition.'' Id at 160004. The burden analysis would have benefited from the Department estimating a number from this acknowledged additional source of reports. Today, the Department estimates that five times the number of reports as those coming from election petitions would have resulted from non-election cases. As noted by the Department in the Persuader Rule, there is no reliable basis for estimating reports in the many areas outside of representation petitions. A commenter provided, however, ''given the narrow view the Department intends to take with respect to the advice exemption and the broad view of reporting obligations, it is likely that the vast majority of reportable activity will not involve representation or decertification campaigns at all.'' [U.S. Chamber of Commerce LMSO–2017–0001–1147]. As 2,104 reports are associated with representation elections we assume that there would have been another 10,520 ($2{,}104 \times 5 = 10{,}520$) associated with non-election activity, thus making the non-election activity akin to a ''vast majority.'' *See id.;* 81 FR 16004. Adding this to the election related reports equals a total of 12,624 reports (2,104 + 10,520 = 12,624). Adding this to the projected number of seminars, which is 2,090, the total number of reports would have been 14,714.[23] *See* 81 FR 16005. Assuming that there are 5.875 reports per filer, a determination made by the Persuader Rule (81 FR 16005),[24] the total number of Form LM–20 filers would have been 2,149 (12,624 \ 5.875 = 2,148.7).[25] This is an increase from the 358 filers determined by the Persuader Rule and is the result of counting the number of reports arising from non-representation/decertification persuader activity.

To determine the number of Form LM–10 filers, the Department combines the estimated 12,624 non-seminar persuader agreements between employers and law firms or other consultant firms, calculated for the Form LM–20, with 672.6 (the annual average number of Form LM–10 reports registered from FY 10–14 submitted pursuant to sections 203(a)(1)–(3), the non-persuader agreement or arrangement provisions). Seminar persuader agreements are not included because employers who attend a seminar were not required, under the Persuader Rule, to file a Form LM–10. This yields a total estimate of approximately 13,297 revised Form LM–10 reports (12,624 + 672.6 = 13,296.6) and thus 13,297 form LM–10 filers.

Firms that file LM–20 forms are also required by law to file LM–21 forms. ''Many law firms have never filed an LM–21 form because of the previous Interpretation from the Department. Under the New Interpretation, such firms would be required to file LM–21 forms with the Department.'' [Worklaw Network, LMSO–2017–0001–0253, p10]. As each filer of Form LM–20 reporting persuader activity must also file a Form LM–21, so long as receipts and disbursements were attributable to the persuader agreement or arrangement, the Department estimates that 2,149 Form LM–21 reports will be filed.

Time Necessary To Complete the Forms

The Persuader Rule underestimated the time necessary for filers to complete the forms. The rule's complexities not only increased the amount of time necessary for non-filing entities to read the instructions to understand whether to file, it also increased the amount of time it would require of filing entities to complete the form. As one commenter stated ''the lawyer or consultant must guess as to whether the client's object, in whole or in part, directly or indirectly, was to persuade or influence employees.'' [Seyfarth Shaw, LMSO–2017–0001–1062, p4]. As the table below shows, for Form LM–10, maintaining and gathering records and reading the instructions to determine applicability of the form and how to complete it was estimated by the Persuader Rule to take a total of 50 minutes. Upon reflection and review of the comments, it is clear that the time would have been much higher: A total of 306 minutes. The increased time was necessary because of the difficulty in categorizing activity as advice or persuader activity. ''Instructions . . . meant to clarify the rule demonstrate the lack of a clear distinction between reportable 'persuader activity' and exempt 'advice' under the new rule.'' House Report 114–739 (REPORT together with MINORITY VIEWS [To accompany H.J. Res. 87) LMSO–2017–0001–1151]. This lack of clarity increased the amount of time it would have taken to complete the Form LM–10 and Form LM–20.

In addition, the difficulty in discerning state of mind would have exacerbated the difficulty in completing the forms. The reporting obligation of an employer and its consultant would have turned on the subjectively perceived determination of each as to whether the policies developed were for the purpose of persuading employees with regard to unionizing and collective bargaining. As a commenter noted, ''In reality, there is no way to make this determination with any degree of confidence—particularly where both the employer and the

[22] The Department separately estimated the number of reports attributable to seminars. 81 FR 16005.

[23] The Persuader Rule explained the basis of the determination that 2,090 Form LM–20 reports would report the holding of a seminar. 81 FR 16004. To estimate the number of reportable seminars the Department utilized the reporting data for ''business associations'' from the U.S. Census Bureau's North American Industry Classification System Codes (NAICS), NAICS 813910, which includes trade associations and chambers of commerce. Of the 15,808 total entities in this category, the Department assumed that each of the 1,045 business associations that operate year round and have 20 or more employees would sponsor, on average, one union avoidance seminar for employers. Additionally, the Department assumed that all of the 1,045 identified business associations would contract with a law or consultant firm to conduct that seminar. Each of these parties would file a report, resulting in 2,090 reports.

[24] The Persuader Rule explained the relationship between the number of filers and the number of reports. The Department used its existing data on Form LM–20 reports. It determined that consultants, including law firms, file an annual average of approximately 5.875 reports a year. 81 FR 16004. Having determined the number of reports, the Department derived the number of filers.

[25] The number of reports of seminars are not counted when calculating the number of filers because, as determined in the Persuader Rule, the same law firms and consultants that handle organizing campaigns will be the ones that present (and report) seminars. 81 FR 16005.

lawyer/consultant have to make their own independent determination as to whether the work performed is reportable.'' [Proskauer, LMSO–2017–0001–0851, p10]. Although ''intent to persuade'' is and has always been an element in Form LM–20 and Form LM–10 reporting, the structure of the Persuader Rule made this difficult determination more frequent. Under the accept-or-reject test, issues of intent need not be considered absent direct contact between consultant and employee. Without such a clear delineation, the determination of intent would have come up routinely. This analysis is complicated where here, by definition, there are multiple parties involved, each with its own views and its own purpose in making the arrangement or agreement. As a result, in the Form LM–20 and LM–10 tables below, the Department increased the time estimated for the categories of questions that require analysis of the terms, objects and activities of the arrangement or agreement.

The Form LM–21

The burden of the Form LM–21 would also have been increased by the Persuader Rule. The Department recognizes that many difficult questions with regard to identifying persuader activity and how to fill out the form would have been undertaken for the Form LM–20 and resolved by the time the Form LM–21 must be completed. Nevertheless, the completion of the Form LM–21 would have been complicated by the Persuader Rule. The instructions required consultants to make efforts to allocate between ''receipts in connection with labor relations advice or services'' (which are subject to a reporting obligation) and other receipts for employers other than persuader clients. The same is true for disbursements. See Form LM–21, sections B and C. [26] Nevertheless, the term ''advice'' was narrowed by the Persuader Rule, with no explanation of how the revised definition applied to the Form LM–21. Under the Form LM–21, receipts and disbursement in connection with ''labor relations advice and services,'' must be reported. Under the reporting structure, labor relations advice is distinct from persuader activity but under the Persuader Rule there was no category of activity that was persuasive but nevertheless exempt (as advice). Further complicating the matter, the Department gave no guidance as to whether the revised definition of ''advice'' applied, or did not apply, to the Form LM–21. This lack of clarity increases the burden of the Form LM–21. Completing the form would have consumed 154.5 minutes.

The analysis covers a 10-year period (2018 through 2027) to ensure it captures major cost savings that accrue over time. In this analysis, we have sought to present cost savings discounted at 7 and 3 percent, respectively, following OMB guidelines.[27]

The Department has undertaken an analysis of the cost savings to covered employers, labor relations consultants, and others associated with complying with the requirements which are being rescinded by this rule. These cost savings are associated with both reporting and recordkeeping for Forms LM–10, LM–20, and LM–21.

The Persuader Rule was enjoined before it became applicable, so if the impacts of this final rule are assessed relative to current practice, the result would be that there is no impact. If, on the other hand, the Rule's effects are assessed relative to a baseline in which regulated entities comply with the Rule, the rescission would result in annualized cost savings of $92.89 million (with a 3 and 7 percent discount rate).

Under the Rule, employers would have needed to devote additional time and resources to the task of determining their responsibilities for complying with the rule. The Department used: (1) The number of private sector firms with 5 or more employees in addition to the number of consulting and lawyer offices; (2) the median hourly wage of a chief executive and a lawyer; and (3) the number of hours necessary to comply with the Rule. According to data from the U.S. Census Bureau's Statistics of U.S. Businesses, in 2015, there were 5,900,731 private firms in the United States. Of these businesses, 2,256,994 had five or more employees.[28] There are 6,461 Human Resource Management Consultant service firms (NAICS code 511612) and 165,435 Offices of Lawyers firms (NAICS code 541110).[29]

The Department determined that 185,060 [30] of the 2,256,994 private sector firms with five or more employees would have to review the rule and determine whether or not they have any obligation to file a Form LM–10 report. For this analysis, we estimated that for each of the 185,060 firms, a labor relations specialist (SOC 13–1075) with a fully-loaded wage of $60 (median hourly base wage of $29.96 plus fringe benefits and overhead costs of 100% of the base wage) would have spent 2.75 hours determining the firm's obligations relating to Form–10. The annualized cost for assessing compliance requirements for these potential filers would have been $30.53 million with 3 and 7 percent discount rate ($185{,}060 \times \$60 \times 2.75$ hours).

Once these employers determined that they needed to file Form LM–10, they would have also incurred reporting and recordkeeping costs associated with filling out the form. The Department estimates lawyers (SOC 23–1011) at a fully-loaded wage of $114 (median hourly base wage of $56.81 plus fringe benefits and overhead costs of 100% of the base wage) [31] for 13,297 firms would have spent 15.5 hours to complete the form. Using the methodology discussed above, the annualized recordkeeping cost for those who actually file Form LM–10 would therefore have been $23.50 million with 3 and 7 percent discount rate ($13{,}297 \times \$114 \times 15.5$ hours).

The Department estimates that 39,298 of 171,896 consulting and law offices would have to review the rule to determine whether or not they have any obligation to file a Form LM–20 report. For this analysis, we assume that for the 39,298 consulting and law offices, a lawyer with a fully-loaded wage of $114 (median hourly base wage of $56.81 plus fringe benefits and overhead costs of 100% of the base wage) [32] would have spent 2.75 hours determining their obligations relating to Form-20. The annualized cost for assessing

[26] The Form LM–21's Part B (Statement of Receipts) requires the filing law firm/consultant to report all receipts from employers in connection with labor relations advice or services regardless of the purposes of the advice or services. Part C (Statement of Disbursements) requires the filer to report all disbursements made by the reporting organization in connection with labor relations advice or services rendered to the employers listed in Part B.

[27] OMB Circular No. A–4, ''Regulatory Analysis,'' M–03–21 (Sept. 2003).

[28] Source: U.S. Census Bureau, Statistics of U.S. Businesses, 2015. (*https://www.census.gov/data/tables/2015/econ/susb/2015-susb-annual.html*).

[29] Source: U.S. Census Bureau, Statistics of U.S. Businesses, 2015. (*https://www.census.gov/data/tables/2015/econ/susb/2015-susb-annual.html*).

[30] The Department's methodology for estimating 185,060 is explained in the 2016 Final Rule, 81 FR at 16016–16017. In summary, the estimate is based on multiplying the ratio of estimated filing employers to filing consultants (7.76) by the total number of non-filing law firms and consultants (23,848), which is composed of the number of labor and employment firms (17,387) and human resources consultants (6,461). Other methodologies not described in detail herein can be referenced in the 2016 final rule.

[31] Source: Bureau of Labor Statistics, Occupational Employment Statistics, May 2016 National Employment and Wages Estimates. (*https://www.bls.gov/oes/current/oes_nat.htm*).

[32] Source: Bureau of Labor Statistics, Occupational Employment Statistics, May 2016 National Employment and Wages Estimates. (*https://www.bls.gov/oes/current/oes_nat.htm*).

compliance requirements for potential Form LM–20 filers would have been $12.32 million with 3 and 7 percent discount rate (39,298 × $114 × 2.75 hours).

Once the consulting and law offices determined that they needed to fill out Form LM–20, they would have also incurred reporting and recordkeeping costs associated with completing the form. The Department assumes labor relations specialists completing 14,714 forms would take 15 hours to complete the form. Using the methodology discussed above, the annual recordkeeping cost for those who actually file form LM–20 would therefore have been $25.16 million with 3 and 7 percent discount rate (14,714 × $114 × 15 hours).

The Department estimates that 39,298 consulting and law offices would have to review the rule to determine whether or not they have any obligation to file a Form LM–21 report. For this analysis, we assume that, for the 39,298 consulting and law offices, a lawyer (SOC 23–1011) with a fully-loaded wage of $114 would have spent ten minutes determining the office's obligations relating to Form-21. The annualized cost for assessing compliance requirements for potential Form LM–21 filers would have been $0.75 million with 3 and 7 percent discount rate (39,298 × $114 × 0.167 hours).

Once the consulting and law offices determined that they needed to fill out Form LM–21, they would have also incurred reporting and recordkeeping costs associated with completing the form. The Department assumes labor relations specialists completing 2,149 forms would take 2.58 hours to complete the form. Using the methodology discussed above, the annual recordkeeping cost for those who actually file Form LM–21 would therefore have been $0.63 million with 3 and 7 percent discount rates (2,149 × $114 × 2.58 hours).

Summary

The total annualized cost savings associated with this rule can be calculated by adding together the savings to potential filers of both Form LM–10, Form LM–20, and Form LM–21. There are also savings to actual filers of Form LM–10, Form LM–20, and Form LM–21. As shown in Table A, the total annualized cost savings are $92.89 million with a discount rate of 3 and 7 percent. For a perpetual time horizon, the annualized cost savings are the same at $92.89 million with a discount rate of 7 percent.

TABLE A—TOTAL COST SAVINGS

Cost savings summary	10-Year annualization		Perpetual annualization
	7% Discount rate	3% Discount rate	7% Disount rate
Form LM–10 Potential Filers (determining whether to file Form–10)	$30,534,900	$30,534,900	$30,534,900
Reporting and Recordkeeping for Form LM–10 reports	23,495,799	23,495,799	23,495,799
Form LM–20 Potential Filers (determining whether to file Form–20)	12,319,923	12,319,923	12,319,923
Reporting and Recordkeeping for Form LM–20 reports	25,160,940	25,160,940	25,160,940
Form LM–21 Potential Filers (determining whether to file Form–21)	748,155	748,155	748,155
Reporting and Recordkeeping for Form LM–21 reports	632,064	631,181	631,181
Total Cost Savings	92,891,781	92,890,898	92,890,898

TABLE B—FORM LM–10 RECORDKEEPING AND REPORTING BURDEN

Burden description: Form LM–10	Section of form	Persuader rule recurring burden (in minutes)	Recurring burden hours (in minutes) revised
Maintaining and gathering records	Recordkeeping Burden	25	126
Reading the instructions to determine applicability of the form and how to complete it.	Reporting Burden	25	180
Reporting LM–10 file number	Item 1.a	0.5	0.5
Identifying if report filed under a Hardship Exemption	Item 1.b	0.5	0.5
Identifying if report is amended	Item 1.c	0.5	0.5
Fiscal Year Covered	Item 2	0.5	0.5
Reporting employer's contact information	Item 3	2	2
Reporting president's contact information if different than 3	Item 4	2	2
Identifying Other Address Where Records Are Kept	Item 5	2	2
Identifying where records are kept	Item 6	0.5	2
Type of Organization	Item 7	0.5	0.5
Reporting union or union official's contact information (Part A)	Item 8	4	4
Date of Part A payments	Item 9.a	0.5	0.5
Amount of Part A payments	Item 9.b	0.5	0.5
Kind of Part A payments	Item 9.c	0.5	0.5
Explaining Part A payments	Item 9.d	5	5
Identifying recipient's name and contact information	Item 10	4	4
Date of Part B payments	Item 11.a	0.5	0.5
Amount of Part B payments	Item 11.b	0.5	0.5
Kind of Part B payments	11.c	0.5	0.5
Explaining Part B payments	11.d	5	5
Part C: Identifying object(s) of the agreement or arrangement	Part C	1	360

TABLE B—FORM LM–10 RECORDKEEPING AND REPORTING BURDEN—Continued

Burden description: Form LM–10	Section of form	Persuader rule recurring burden (in minutes)	Recurring burden hours (in minutes) revised
Identifying name and contact information for individual with whom agreement or arrangement was made.	Item 12	4	4
Indicating the date of the agreement or arrangement	Item 13.a	0.5	0.5
Detailing the terms and conditions of agreement or arrangement	Item 13.b	5	90
Identifying specific activities to be performed	Item 14.a	5	60.5
Identifying period during which performed	Item 14.b	0.5	0.5
Identifying the extent performed	Item 14.c	1	1
Identifying name of person(s) through whom activities were performed	Item 14.d	2	2
Identify the Subject Group of Employee(s)	Item 14.e	5	5
Identify the Subject Labor Organization(s)	Item 14.f	1	1
Indicating the date of each payment pursuant to agreement or arrangement.	Item 15.a	0.5	0.5
Indicating the amount of each payment	Item 15.b	0.5	0.5
Indicating the kind of payment	Item 15.c	0.5	0.5
Explanation for the circumstances surrounding the payment(s)	Item 15.d	5	30
Part D: Identifying purpose of expenditure(s)	Part D	1	1
Part D: Identifying recipient's name and contact information	Item 16	4	4
Date of Part D payments	Item 17.a	0.5	0.5
Amount of Part D payments	Item 17.b	0.5	0.5
Kind of Part D payments	Item 17.c	0.5	0.5
Explaining Part D payments	Item 17.d	5	5
Checking Responses	N/A	5	5
Signature and verification	Items 18–19	20	20
Total Recordkeeping Burden Hour Estimate Per Form LM–10 Filer		25	126
Total Reporting Burden Hour Estimate Per Form LM–10 Filer		122	804
Total Burden Estimate Per Form LM–10 Filer		147	930

TABLE C—FORM LM–20 RECORDKEEPING AND REPORTING BURDEN

Burden description: Form LM–20	Section of revised form	Persuader rule recurring burden (in minutes)	Recurring burden hours (in minutes) revised
Maintaining and gathering records	Recordkeeping Burden	15	126
Reading the instructions to determine applicability of the form and how to complete it.	Reporting Burden	20	180
Reporting LM–20 file number	Item 1.a	0.5	0.5
Identifying if report filed under a Hardship Exemption	Item 1.b	0.5	0.5
Identifying if report is amended	Item 1.c	0.5	0.5
Reporting filer's contact information	Item 2	2	2
Identifying Other Address Where Records Are Kept	Item 3	2	2
Date Fiscal Year Ends	Item 4	0.5	0.5
Type of Person	Item 5	0.5	0.5
Full Name and Address of Employer	Item 6	10	10
Date of Agreement or Arrangement	Item 7	0.5	0.5
Person(s) Through Whom Agreement or Arrangement Made	Items 8(a) and (b)	2	2
Object of Activities	Item 9	1	360
Terms and Conditions	Item 10	5	120
Nature of Activities	Item 11.a	5	61
Period During Which Activity Performed	Item 11.b	0.5	0.5
Extent of Performance	Item 11.c	0.5	0.5
Name and Address of Person Through Whom Performed	Items 11.d	2	2
Identify the Subject Group of Employee(s)	Item 12.a	5	5
Identify the Subject Labor Organization(s)	Item 12.b	1	1
Checking Responses	N/A	5	5
Signature and verification	Items 13–14	20	20
Total Recordkeeping Burden Hour Estimate Per Form LM–20 Filer		15	126
Total Reporting Burden Hour Estimate Per Form LM–20 Filer		83	774
Total Burden Estimate Per Form LM–20 Filer		98	900

TABLE D—FORM LM–21 RECORDKEEPING AND REPORTING BURDEN

Burden Description Form LM–21	Section of form	Persuader rule recurring burden (in minutes)	Recurring burden hours (in minutes) revised
Maintaining and gathering records	Recordkeeping Burden	10	10
Reading the instructions to determine applicability of the form and how to complete it.	Reporting Burden	10	10
Reporting LM–21 file number	Item 1	0.5	0.5
Period covered by report	Item 2	0.5	0.5
Part A: Reporting filers information	Item 3	0.5	0.5
Identifying Other Address where Records Are Kept	Item 4	0.5	0.5
Part B: Identifying Employer Name and Address	Item 5a	0.5	120
Termination Date	Item 5b	0.5	0.5
Amount of Receipts	Item 5c	0.5	0.5
Total of Receipts from All Employers	Item 6	0.5	0.5
Part C: Disbursements to Officers and Employees	Item 7		
Name(s)	Item 7a	0.5	0.5
Salary	Item 7b	0.5	0.5
Expenses	Item 7c	0.5	0.5
Total for Each Officer and Employee	Item 7d	0.5	0.5
Total Disbursements to All Officers and Employees	Item 8	1	1
Office and Administrative Expense	Item 9	0.5	0.5
Publicity	Item 10	0.5	0.5
Fees for Professional Services	Item 11	0.5	0.5
Loans Made	Item 12	0.5	0.5
Other Disbursements	Item 13	0.5	0.5
Total Disbursements for Reporting Period	Item 14	1	1
Part D: Schedule of Disbursements for Reportable Activity			
Name of Employer	Item 15a	0.5	0.5
Trade Name (if applicable)	Item 15b	0.5	0.5
Identify to whom payment was made	Item 15c	0.5	0.5
Amount of Payment	Item 15d	0.5	0.5
Purpose of Payment	Item 15e	0.5	0.5
Total Disbursements for Reporting Period	Item 16	1	1
President Signature and Date	Item 17	0.5	0.5
Treasurer Signature and Date	Item 18	0.5	0.5
Total Burden Estimate Per Form LM–21 Filer		35	154.5

VI. Regulatory Flexibility Analysis (RFA)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, to consider alternatives to minimize that impact, and to solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must determine whether a proposed or final rule would have a significant economic impact on a substantial number of those small entities. 5 U.S.C. 603 and 604. As part of a regulatory proposal, the RFA requires a federal agency to prepare, and make available for public comment, an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities. 5 U.S.C. 603(a).

The Final Rule will result in cost savings to small consultants and employers because it contains no new collection of information and relieves the additional burden that would have been imposed upon employers and labor relations consultants by the regulations published on Mar. 24, 2016. From the regulatory impact analysis above, the annualized cost savings per employer who filed Form LM–10 are estimated at $1,932.[33] The annualized cost savings per labor relation consultant who filed Form LM–20 and Form LM–21 is $2,337.[34] The cost savings to small entities, however, are not significant and below one percent of their annual gross revenues. The average annual gross revenue for the smallest businesses with 5 to 9 employees ranges from $389,846 for Accommodation and Food Services (NAICS code: 11) to $4.91 million for Wholesale Trade (NAICS code: 53). Therefore, the Department certifies that this rule does not have a significant economic impact on a substantial number of small entities.

[33] The annualized cost savings (with a 7 percent discount rate) for an employer from relieving the reporting and recordkeeping requirements for Form LM–10 is $1,932 ($60 × 2.75 hours + $114 × 15.5 hours).

[34] The annualized cost savings (with a 7 percent discount rate) for a consulting and law office from relieving the reporting and recordkeeping requirements for Form LM–20 and Form LM–21 is $2,337 ($114 × 17.75 hours + $114 × 2.747 hours).

VII. Paperwork Reduction Act (PRA)

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* provides that no person is required to respond to a collection of information unless it displays a valid OMB control number. In order to obtain PRA approval, a Federal agency must engage in a number of steps, including estimating the burden the collection places on the public and seeking public input on the proposed information collection.

This rule contains no new information collection requirements for purposes of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). The Department notes that, consistent with the previously mentioned injunction, the agency has already amended the information collection approval for Forms LM–10 and LM–20 and their instructions to reapply the pre-2016 versions. When

issuing its approval, the OMB issued clearance terms providing the previously approved versions of these forms will remain in effect until further notice. See ICR Reference Number 201604–1245–001.

As the rule still requires an information collection, the Department is submitting, contemporaneous with the publication of this document, an information collection request (ICR) to revise the PRA clearance to address the clearance term. A copy of this ICR, with applicable supporting documentation, including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov website at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201710-1245-001* (this link will only become active on the day following publication of this document) or from the Department by contacting Andrew Davis on 202–693–0123 (this is not a toll-free number) / email: *OLMS-Public@dol.gov.*

Type of Review: Revision of a currently approved collection.

Agency: Office of Labor-Management Standards.

Title: Labor Organization and Auxiliary Reports.

OMB Number: 1245–0003.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 2,488,213.

Number of Annual Responses: 2,488,528.

Frequency of Response: Varies.

Estimated Total Annual Burden Hours: 6,362,032.

Estimated Total Annual Other Burden Cost: $0.

VIII. Regulatory Impact

A. Unfunded Mandates Reform

This rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or in increased expenditures by the private sector of $100 million or more.

B. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 29 CFR Parts 405 and 406

Labor management relations, Reporting and recordkeeping requirements.

Text of Rule

Accordingly, for the reasons provided above, the Department amends parts 405 and 406 of title 29, chapter IV of the Code of Federal Regulations as set forth below:

PART 405—EMPLOYER REPORTS

■ 1. The authority citation for part 405 continues to read as follows:

Authority: Secs. 203, 207, 208, 73 Stat. 526, 529 (29 U.S.C. 433, 437, 438); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

§ 405.5 [Amended]

■ 2. Amend § 405.5 by removing the phrase ''the instructions for Part A of the Form LM–10'' and adding in its place ''the second paragraph under the instructions for Question 8A of Form LM–10''.

§ 405.7 [Amended]

■ 3. Amend § 405.7 by removing the phrase ''Part D of the Form LM–10'' and adding in its place ''Question 8C of Form LM–10''.

PART 406—REPORTING BY LABOR RELATIONS CONSULTANTS AND OTHER PERSONS, CERTAIN AGREEMENTS WITH EMPLOYERS

■ 4. The authority citation for part 406 continues to read as follows:

Authority: Secs. 203, 207, 208, 73 Stat. 526, 529 (29 U.S.C. 433, 437, 438); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

■ 5. Amend § 406.2(a) by revising the last two sentences of the paragraph to read as follows:

§ 406.2 Agreement and activities report.

(a) * * * The report shall be filed within 30 days after entering into an agreement or arrangement of the type described in this section. If there is any change in the information reported (other than that required by Item C. 10, (c) of the Form), it must be filed in a report clearly marked ''Amended Report'' within 30 days of the change.

* * * * *

Signed in Washington, DC, this 9th day of July, 2018.

Arthur F. Rosenfeld,

Director, Office of Labor-Management Standards.

[FR Doc. 2018–14948 Filed 7–17–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0914]

RIN 1625–AA00

Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the upper reaches of Taylor Bayou Turning Basin in Port Arthur, TX. This action is necessary to provide protection for the levee and temporary protection wall located at the north end of the turning basin until permanent repairs can be effected. This regulation prohibits persons and vessels from entering the safety zone unless authorized by the Captain of the Port Marine Safety Unit Port Arthur (COTP) or a designated representative.

DATES: This rule is effective without actual notice from July 18, 2018 through January 31, 2023. For the purposes of enforcement, actual notice will be used from July 11, 2018 through July 18, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0914 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Scott Whalen, Marine Safety Unit Port Arthur, U.S. Coast Guard; telephone 409–719–5086, email *scott.k.whalen@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Marine Safety Unit Port Arthur
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking

§ Section
USACE U.S. Army Corps of Engineers
U.S.C. United States Code

II. Background Information and Regulatory History

On August 14, 2017, the Coast Guard established a temporary safety zone for the upper reaches of Taylor Bayou Basin in Port Arthur, TX.[1] That emergency action was necessary to protect the damaged flood protection levee and bulkhead during stabilization efforts. The U. S. Army Corps of Engineers (USACE) and the local drainage district initiated and completed emergency repairs to protect against potential storm surge during hurricane season. Permanent repairs to the flood protection wall are now necessary. They are extensive and expected to take approximately five to seven years. Damage to the temporary repairs would make the surrounding community susceptible to flooding during storm surge or extreme tide events that may endanger persons and property in the surrounding community. The USACE has requested, and the Coast Guard concurs, that protection measures must be instituted until permanent repairs are completed.

On April 16, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX (83 FR 16267). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this temporary safety zone. During the comment period that ended on June 15, 2018, we received one comment.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with repairs of the flood protection wall.

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 Marine Safety Unit Port Arthur (COTP) has determined that potential hazards associated with the condition of the flood protection wall will be safety concern until permanent repairs can be effected. Potential damage to the temporary repairs would make the surrounding community susceptible to flooding during storm surge or extreme tide events that may endanger persons and property in the surrounding community. The purpose of this rule is to ensure the safety of the surrounding community and to protect persons, vessels, and the environment during permanent repairs to the Taylor Bayou Turning Basin flood protection wall.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published on April 16, 2018, which was in support of the proposed rule. We also updated the regulatory text of this rule from the proposed rule in the NPRM to reflect the date of signature as the start of the enforcement period.

This rule establishes a temporary safety zone for navigable waters of Taylor Bayou Turning Basin north of latitude 29° 50′57.45′ N until January 31, 2023. These coordinates are based on WGS 84. The duration of the zone is intended to ensure the safety of persons, vessels, and the environment until permanent repairs to the flood protection system are completed. This section will be enforced from July 11, 2018 through January 31, 2023. No person or vessel is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

As used in this section, a designated representative means a Coast Guard coxswain, officer or petty officer, or a federal, state or local officer designated by or assisting the COTP in the enforcement of the safety zone. To request permission to enter, contact COTP or a designated representative on VHF–FM channel 16, or contact Vessel Traffic Service (VTS) Port Arthur on VHF–FM channel 65A or by telephone at 409–719–5070. Those persons or vessels permitted to enter the safety zone must comply with all lawful directions given by the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771. This regulatory action determination is based on the size, location, duration, and entities impacted by the safety zone. The safety zone affects approximately 350-yards of Taylor Bayou Turning Basin north of latitude 29° 50′57.45′ N. A facility receives vessels within this zone and that facility would be permitted to receive vessels based on previously agreed to maneuvering calculations and plans.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary 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 (Public Law 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

[1] See the temporary final rule titled Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX, Docket No. USCG–2017–0797 (83 FR 4843).

Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary safety zone that would prohibit persons and vessels from entering the upper reaches of Taylor Bayou Turning Basin unless authorized by the COTP or a designated representative. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

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

PART 165—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. 0170.2.

■ 2. Add § 165.T08–0914 to read as follows:

§ 165.T08–0914 Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX.

(a) *Location.* The following area is a safety zone: Navigable waters of Taylor Bayou Turning Basin north of latitude 29°50′57.45′ N. These coordinates are based on WGS 84.

(b) *Definition.* As used in this section, a *designated representative* means a Coast Guard coxswain, officer or petty officer, or a federal, state or local officer designated by or assisting the Captain of the Port Marine Safety Unit Port Arthur (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in § 165.23 of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or a designated representative.

(2) To request permission to enter, contact COTP or a designated representative on VHF–FM channel 16, or contact Vessel Traffic Service (VTS) Port Arthur on VHF–FM channel 65A or by telephone at 409–719–5070. Those persons or vessels permitted to enter the safety zone must comply with all lawful directions given by the COTP or a designated representative.

(d) *Enforcement date.* This rule is effective without actual notice from July 18, 2018 through January 31, 2023. For the purposes of enforcement, actual notice will be used from July 11, 2018 through July 18, 2018.

Dated: July 11, 2018.

Jacqueline Twomey,

Captain, U.S. Coast Guard, Captain of the Port Marine Safety Unit Port Arthur.

[FR Doc. 2018–15295 Filed 7–17–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0164; FRL–9980–92—Region 5]

Air Plan Approval; Ohio; Ohio NSR $PM_{2.5}$ Precursors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, under the Clean Air Act (CAA), revisions to Ohio's state implementation plan (SIP) as requested by the Ohio Environmental Protection Agency (OEPA) on March 10, 2017, and supplemented on July 18, 2017. The revisions to Ohio's SIP implement certain EPA regulations for particulate matter smaller than 2.5 micrometers ($PM_{2.5}$) for nonattainment areas by establishing definitions related to $PM_{2.5}$ and defining $PM_{2.5}$ precursors. The revisions also incorporate the findings of a comprehensive precursor demonstration performed by OEPA, which determined that volatile organic compounds (VOC) and ammonia (NH_3) are an insignificant source of $PM_{2.5}$ for the purpose of new source review in nonattainment areas in Ohio.

DATES: This final rule is effective on August 17, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2017–0164. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Charmagne Ackerman, Environmental Engineer, at (312) 886–0448 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charmagne Ackerman, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0448, *ackerman.charmagne@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background

On March 10, 2017, OEPA submitted to EPA revisions to Ohio Administrative Code (OAC) chapter 3745–31–01. The revisions were made to implement the ''Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements.'' Subsequently, on July 18, 2017, OEPA submitted to EPA a letter clarifying the March 10, 2017 submittal. OEPA clarified that limited portions of OAC 3745–31–01 should be included as a SIP revision. The revisions to OAC 3745–31–01, specifically, subparagraph (LLL)(6), paragraph (NNN), paragraph (WWWW), paragraph (NNNNN), paragraph (VVVVV), and subparagraph (LLLLLL)(2)(ee) will make the rule consistent with 40 CFR 51.165 and 40 CFR 52.21.

On March 29, 2018 (83 FR 13457), EPA published a notice of proposed rulemaking (NPR) proposing approval of Ohio's March 10, 2017 SIP revision and clarification letter allowing for the approval of revisions to OAC 3745–31–01. The specific details of Ohio's March 10, 2017 SIP revision submittal, Ohio's clarifying letter, and the rationale for EPA's approval are discussed in the NPR and will not be restated here. EPA received three comments during the comment period on the proposed action. None of the comments were relevant to the rulemaking.

II. What action is EPA taking?

EPA is approving the SIP revision submittal. Ohio's SIP revisions comply with regulations that EPA promulgated to address the $PM_{2.5}$ NAAQS. EPA finds that these revisions implement the NNSR rules by defining precursors for $PM_{2.5}$, as required by EPA's regulations.

EPA is approving the revisions to OAC 3745–31–01, specifically subparagraph (LLL)(6), paragraph (NNN), paragraph (WWWW), paragraph (NNNNN), paragraph (VVVVV), and subparagraph (LLLLLL)(2)(ee). EPA finds that the revisions are consistent with Federal requirements.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Ohio Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 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 September 17, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 9, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

40 CFR part 52 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.*

■ 2. In § 52.1870, the table in paragraph (c) is amended under ''Chapter 3745–31 Permit-to Install New Sources and Permit-to-Install and Operate Program'' by revising the entry for ''3745–31–01'' and adding an second entry for ''3745–31–01'' in numerical order to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED OHIO REGULATIONS

Ohio citation	Title/subject	Ohio effective date	EPA approval date	Notes
*	*	*	*	*
Chapter 3745–31 Permit-to Install New Sources and Permit-to-Install and Operate Program				
3745–31–01	Definitions	5/29/2014	6/2/2015, 80 FR 36477	Except for (I), (NNN), (SSS)(1)(b), (QQQQ), (WWWW), (JJJJJ), (NNNNN), (VVVVV), (BBBBBB) and (LLLLLL)(2)(y).
3745–31–01	Definitions	3/20/2017	7/18/2018, [Insert **Federal Register** citation].	Only (LLL)(6), (NNN), (WWWW), (NNNNN), (VVVVV), and (LLLLLL)(2)(ee)
*	*	*	*	*

* * * * *

[FR Doc. 2018–15254 Filed 7–17–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0099; FRL–9980–96—Region 5]

Air Plan Approval; Minnesota; Flint Hills Sulfur Dioxide (SO_2) Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Minnesota sulfur dioxide (SO_2) State Implementation Plan (SIP) for the Flint Hills Resources, LLC Pine Bend Refinery (FHR) as submitted on February 8, 2017. The SIP revision pertains to the installation and removal of certain equipment at the refinery and amendments to certain emission limits, resulting in an overall decrease of SO_2 emissions from FHR.

DATES: This final rule is effective on August 17, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2017–0099. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Anthony Maietta, Environmental Protection Specialist, at (312) 353–8777 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *maietta.anthony@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is being addressed by this document?

On February 8, 2017, the Minnesota Pollution Control Agency (MPCA) submitted a request for EPA to approve into the Minnesota SIP the conditions cited as ''Title I Condition: 40 CFR 50.4(SO_2 SIP); Title I Condition: 40 CFR 51; Title I Condition: 40 CFR pt. 52, subp. Y'' in FHR's revised joint Title I/Title V document, Permit No. 03700011–101 (joint document 101). On April 26, 2018 (83 FR 18255), EPA proposed to approve MPCA's February 8, 2017 submittal.

MPCA's submittal demonstrated that joint document 101 contains amended SIP conditions that, when combined, provide FHR with the ability to more efficiently upgrade hydrocarbons that are distilled from FHR's crude units into transportation fuels, primarily diesel. The amended SIP conditions allow FHR to increase fuel production and operate more efficiently and closer to the facility's overall distillation capacity. MPCA's submittal demonstrated that the amended SIP revisions reduce allowable SIP-based SO_2 emissions by 95.402 pounds per hour or 249.169 tons per year. After review, EPA proposed to approve MPCA's request to revise Minnesota's SO_2 SIP for FHR, reflected in conditions labeled ''Title I Condition: 40 CFR 50.4(SO_2 SIP); Title I Condition: 40 CFR 51; Title I Condition: 40 CFR pt. 52, subp. Y'' in joint document 101.

II. What comments did we receive on the proposed action?

Our April 26, 2018 proposed rule provided a 30-day review and comment period. The comment period closed on May 29, 2018. EPA received one comment that was not relevant to the proposed action.

III. What action is EPA taking?

EPA is approving a revision to Minnesota's SO_2 SIP for FHR, as submitted by MPCA on February 8, 2017, and reflected in conditions labeled ''Title I Condition: 40 CFR 50.4(SO_2 SIP); Title I Condition: 40 CFR 51; Title I Condition: 40 CFR pt. 52, subp. Y'' in joint document 101.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Minnesota Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the Clean Air Act as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air 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 (Public Law 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 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 EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 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 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 September 17, 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, Reporting and recordkeeping requirements, Sulfur oxides.

[1] 62 FR 27968 (May 22, 1997).

Dated: July 9, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

40 CFR part 52 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.*

■ 2. In § 52.1220, the table in paragraph (d) is amended by revising the entry for ''Flint Hills Resources Pine Bend, LLC'' to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED MINNESOTA SOURCE—SPECIFIC PERMITS

Name of source	Permit No.	State effective date	EPA approval date	Comments
*	*	*	*	*
Flint Hills Resources Pine Bend, LLC..	03700011–101	1/13/2017	7/18/2018, [Insert **Federal Register** citation].	Only conditions cited as ''Title I Condition: 40 CFR Section 50.4(SO_2 SIP); Title I Condition: 40 CFR 51; Title I Condition: 40 CFR pt. 52, subp. Y''.
*	*	*	*	*

* * * * *

[FR Doc. 2018–15253 Filed 7–17–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 18–699; MB Docket No. 18–43; RM–11797]

Radio Broadcasting Services; Connerville, Oklahoma

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of The Chickasaw Nation, the Audio Division amends the FM Table of Allotments by allotting FM Channel 247A at Connerville, Oklahoma, as a Tribal Allotment and a first local Tribal-owned service to the community. A staff engineering analysis indicates that Channel 247A can be allotted at Connerville, Oklahoma, as proposed, consistent with the minimum distance separation requirements of the Commission's rules with a site restriction 9.40 km (5.84 miles) southwest of the community. The reference coordinates are 34–25–00 NL and 96–43–53 WL.

DATES: Effective August 20, 2018.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 18–43, adopted July 5, 2018, and released July 6, 2018. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW, Washington, DC 20554. The full text is also available online at *http://apps.fcc.gov/ecfs/.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will send a copy of the *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 309, 310, 334, 336, and 339.

■ 2. In § 73.202(b), the table is amended under Oklahoma by adding Connerville, Channel 247A, in alphabetical order to read as follows:

§ 73.202 Table of Allotments.

* * * * *

(b) * * *

Channel No.
* * * * *
Oklahoma
* * * * *
Connerville 247A
* * * * *

* * * * *

[FR Doc. 2018–15309 Filed 7–17–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

RIN 0648–XG334

Pacific Island Pelagic Fisheries; False Killer Whale Take Reduction Plan; Closure of Southern Exclusion Zone

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

ACTION: Temporary rule; area closure; request for comments.

SUMMARY: NMFS is closing the Southern Exclusion Zone (SEZ) to deep-set longline fishing through December 31, 2018, for all vessels registered under the Hawaii longline limited access program, as a result of the fishery reaching the established annual trigger of two observed false killer whale mortalities or serious injuries (M&SI) in the fishery

within the U.S. Exclusive Economic Zone (EEZ) around Hawaii. This action is necessary to comply with False Killer Whale Take Reduction Plan (Plan) regulations that establish the SEZ closure trigger and procedures to limit M&SI of false killer whales in the Hawaii deep-set longline fishery.

DATES: Effective July 24, 2018, through December 31, 2018.

NMFS must receive comments by August 17, 2018.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2018–0085, by either 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-2018-0085.* Click the ''Comment Now'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), attention Kevin Brindock, Protected Resources, 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

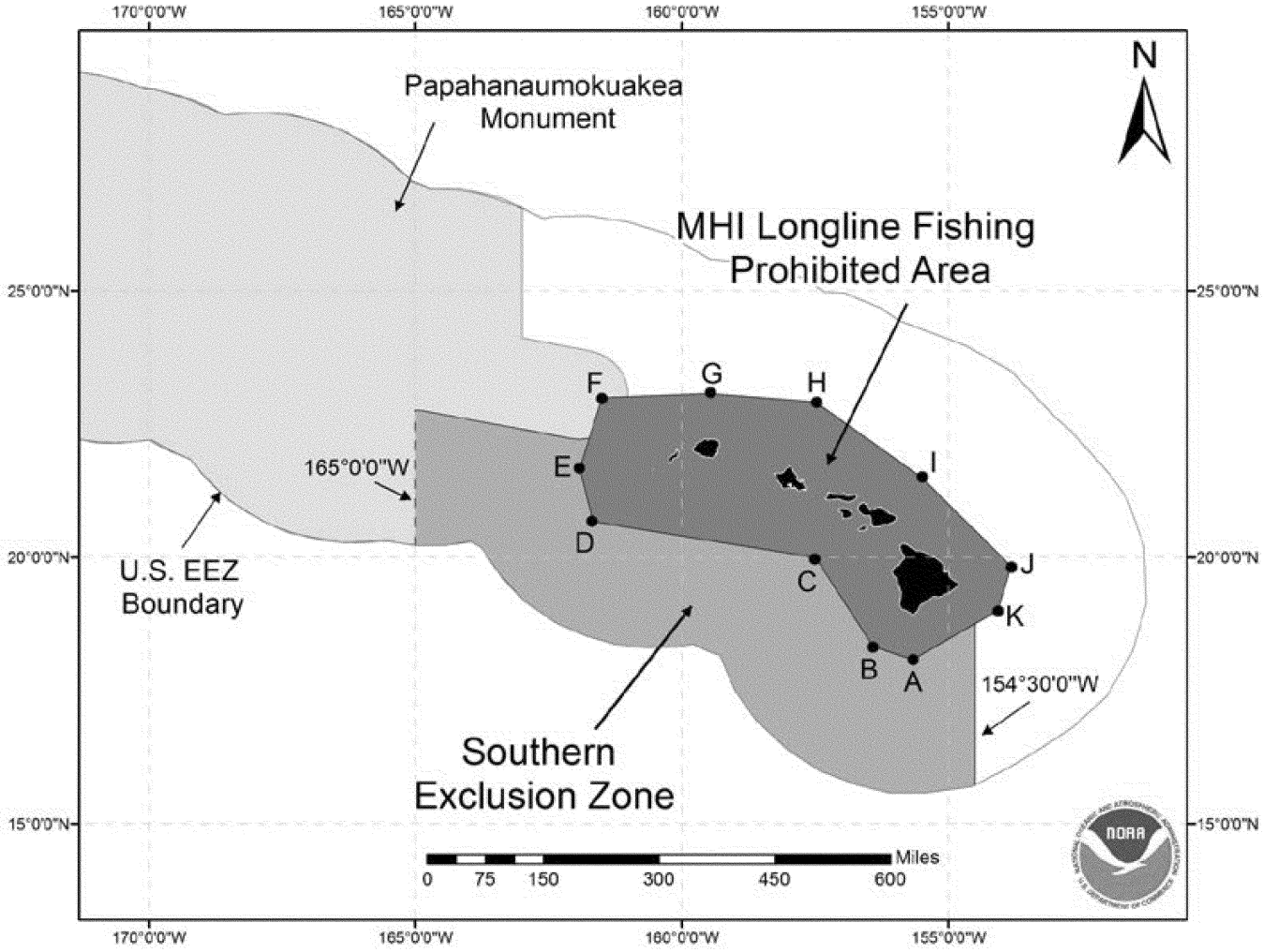
Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, 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).

FOR FURTHER INFORMATION CONTACT: Kevin Brindock, Protected Resources, NMFS Pacific Islands Regional Office, 808–725–5146, *kevin.brindock@noaa.gov;* or Kristy Long, NMFS Office of Protected Resources, 301–526–4792, *kristy.long@noaa.gov.*

SUPPLEMENTARY INFORMATION: The False Killer Whale Take Reduction Plan (Plan) was implemented on December 31, 2012, pursuant to section 118(f) of the Marine Mammal Protection Act (MMPA) to reduce the level of incidental M&SI of the Hawaii pelagic and Hawaii insular stocks of false killer whales in the Hawaii longline fisheries (77 FR 71260; November 29, 2012). The Plan, based on consensus recommendations from the False Killer Whale Take Reduction Team, included the creation of an SEZ that would be closed to deep-set longline fishing if a certain number (trigger) of false killer whale M&SI are observed in the deep-set fishery in the EEZ. As described in the Plan regulations (50 CFR 229.37(d)(2)), the SEZ is bounded on the east at 154° 30′ W longitude, on the west at 165° W longitude, on the north by the boundaries of the Main Hawaiian Islands Longline Fishing Prohibited Area and Papahanaumokuakea Marine National Monument, and on the south by the EEZ boundary (see Fig. 1). The trigger for closing the SEZ is two observed false killer whale M&SI in the deep-set longline fishery.

BILLING CODE 3510–22–P

Figure 1. Southern Exclusion Zone.



BILLING CODE 3510–22–C

NMFS-certified fishery observers documented a total of four false killer whales hooked and released injured during deep-set trips in the U.S. EEZ, one each on February 8, May 23, May 24, and June 3, 2018. NMFS followed the procedures outlined in the final rule and criteria in the NMFS process for distinguishing serious from non-serious injuries of marine mammals (NMFS Policy Directive PD 02–238 and NMFS Instruction 02–238–01) to evaluate these injuries, and determined that all four were serious injuries. Therefore, NMFS has determined that the SEZ trigger (*i.e.,* two M&SI) has been met, and closing the SEZ to deep-set longline fishing is required to comply with the Plan.

In accordance with 50 CFR 229.37(e)(6), NMFS must publish notification that the SEZ will be closed to deep-set longline fishing beginning at a specified date, which is not earlier than 7 days and not later than 15 days after the date of filing the closure notice for public inspection at the Office of the Federal Register, until the end of the fishing year in which the trigger is reached. During the closure, it is prohibited to fish using deep-set longline gear in the SEZ.

This document serves as advance notification to fishermen, the fishing industry, and the general public that the SEZ will be closed to deep-set longline fishing from July 24, 2018, through December 31, 2018.

NMFS will consider public comments on this temporary rule. NMFS must receive comments by the date provided in the **DATES** section, not postmarked or otherwise transmitted by this date.

Classification

There is good cause to waive prior notice and an opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B). Providing an opportunity for prior notice and comment would be contrary to the public interest because the SEZ closure has been triggered by a second observed serious injury and mortality, and immediate closure of the SEZ is necessary for the remainder of 2018 to prevent additional mortalities or serious injuries, which may have unsustainable impacts on the Hawaii pelagic stock of the false killer whale. Furthermore, prior notice and comment is unnecessary because the take reduction plan final rule (77 FR 71259, November 29, 2012) that implements the procedure for closing the SEZ (codified at 50 CFR 229.37(d)(2) and (e)) has already been subject to an extensive public process, including the opportunity for prior notice and comment. All that remains is to notify the public of the second observed mortality and serious injury of

a pelagic false killer whale resulting from commercial longline operations, and the longline closure of the SEZ for the remainder of the 2018 fishing year. Although this action is being implemented without the opportunity for prior notice and comment, NMFS is soliciting and will respond to public comments from those affected by or otherwise interested in this rule.

The NOAA Assistant Administrator for Fisheries (AA) also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3). Failing to waive the 30-day delay in effectiveness would likely result in additional interactions and possible mortality and serious injuries to the Hawaii pelagic false killer whale stock. Under the MMPA, NMFS must reduce mortality and serious injury of marine mammal stocks protected by a take reduction plan regulations. This includes taking action to close the SEZ immediately upon a second observed mortality and serious injury resulting from commercial longlining in the EEZ. Accordingly, the SEZ closure must be implemented immediately to ensure compliance with the provisions of the MMPA and the take reduction plan regulations. Nevertheless, NMFS recognizes the need for fishermen to have time to haul their gear and relocate to areas outside of the SEZ; thus, NMFS makes this action effective 7 days after filing this document in the **Federal Register**.

This action is required by 50 CFR 229.37(e)(3), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.*

Dated: July 13, 2018.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2018–15332 Filed 7–17–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 180209155–8589–02]

RIN 0648–BH77

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Limits in Purse Seine and Longline Fisheries, Restrictions on the Use of Fish Aggregating Devices in Purse Seine Fisheries, and Transshipment Prohibitions

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

ACTION: Final rule.

SUMMARY: Under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act), NMFS issues this final rule that establishes limits on fishing effort by U.S. purse seine vessels in the U.S. exclusive economic zone and on the high seas between the latitudes of 20° N and 20° S in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention); restrictions regarding the use of fish aggregating devices (FADs) for U.S. purse seine fishing vessels; limits on the catches of bigeye tuna by U.S. longline vessels in the Convention area; prohibitions on U.S. vessels used to fish for highly migratory species from engaging in transshipment in a particular area of the high seas (the Eastern High Seas Special Management Area or EHSSMA); and removal of existing reporting requirements for vessels transiting the EHSSMA. The rule also makes corrections to outdated cross references in existing regulatory text. This action is necessary to satisfy the obligations of the United States under the Convention, to which it is a Contracting Party.

DATES: This rule is effective on July 18, 2018, except for the revised reporting requirements in 50 CFR 300.218(g), which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). NOAA will publish a document in the **Federal Register** announcing the effective date for the revised reporting requirements upon OMB approval.

Compliance dates: The compliance date for the amendment to 50 CFR 300.223(b), the FAD prohibition period, is July 18, 2018. The compliance date for the amendment to 50 CFR 300.225, the EHSSMA transshipment prohibition, is January 1, 2019.

ADDRESSES: Copies of supporting documents prepared for this final rule, including the regulatory impact review (RIR), the 2015 programmatic environmental assessment (PEA), the 2012 environmental assessment, and supplemental information report (SIR) prepared for National Environmental Policy Act (NEPA) purposes, as well as the proposed rule (83 FR 21748; May 10, 2018), are available via the Federal e-rulemaking Portal, at *www.regulations.gov* (search for Docket ID NOAA–NMFS–2018–0050). Those documents are also available from NMFS at the following address: Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

A final regulatory flexibility analysis (FRFA) prepared under authority of the Regulatory Flexibility Act is included in the Classification section of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Rini Ghosh, NMFS PIRO, 808–725–5033.

SUPPLEMENTARY INFORMATION: On May 10, 2018, NMFS published a proposed rule in the **Federal Register** (83 FR 21748). The proposed rule was open for public comment until May 25, 2018.

This final rule is issued under the authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) (16 U.S.C. 6901 *et seq.*), which authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission). The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act

(MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS. A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the western and central Pacific Ocean (WCPO), can be found on the WCPFC website at: *www.wcpfc.int/doc/convention-area-map.*

This final rule implements specific provisions of two recent Commission decisions: Conservation and Management Measure (CMM) 2017–01, ''Conservation and Management Measure for Bigeye, Yellowfin, and Skipjack tuna in the Western and Central Pacific Ocean;'' and CMM 2016–02, ''Conservation and Management Measures for Eastern High Seas Pocket Special Management Area.'' The rule also makes corrections to outdated cross references in existing regulatory text. The preamble to the proposed rule provides background information on the Convention and the Commission, the provisions that are being implemented in this rule, and the basis for the proposed regulations, which is not repeated here.

The Action

The elements of the final rule are detailed below. The administrative changes to correct outdated references in existing regulatory text are described at the end.

Some of the provisions in CMM 2017–01 apply only to calendar year 2018, while others are applicable until February 10, 2021. Because the Commission likely will continue to implement similar management measures regarding FADs and longline bigeye tuna catch limits beyond 2018, and to avoid a lapse in the management of the fishery, most of the elements of CMM 2017–01 in the final rule will remain effective until they are replaced or amended. However, the elements implementing the purse seine effort limits will be effective for 2018 only, as explained further below.

Longline Bigeye Tuna Catch Limits

Under the final rule, there is a calendar year catch limit of 3,554 metric tons (mt) of bigeye tuna for U.S. longline vessels fishing in the Convention Area that would remain effective until replaced. In the proposed rule, NMFS stated that it was possible that the limit for 2018 would be adjusted downward to account for any overage of the 2017 limit. However, NMFS has confirmed that the 2017 limit was not exceeded so no adjustment of the 2018 limit is needed.

The calendar year longline bigeye tuna catch limit will apply only to U.S-flagged longline vessels operating as part of the U.S. longline fisheries. The limit will not apply to U.S. longline vessels operating as part of the longline fisheries of American Samoa, CNMI, or Guam. Existing regulations at 50 CFR 300.224(b), (c), and (d) detail the manner in which longline-caught bigeye tuna is attributed among the fisheries of the United States and the U.S. Participating Territories.

Consistent with the basis for the limits prescribed in CMM 2017–01 and with regulations issued by NMFS to implement bigeye tuna catch limits in U.S. longline fisheries as described below, the catch limit is measured in terms of retained catches—that is, bigeye tuna that are caught by longline gear and retained on board the vessel.

1. Announcement of the Limit Being Reached

As set forth under the existing regulations at 50 CFR 300.224(e), if NMFS determines that the limit is expected to be reached in a calendar year, NMFS will publish a document in the **Federal Register** to announce specific fishing restrictions that will be effective from the date the limit is expected to be reached until the end of the calendar year. NMFS will publish notification of the restrictions at least 7 calendar days before the effective date to provide vessel owners and operators with advance notice. Periodic forecasts of the date the limit is expected to be reached will be made available to the public, such as by posting on a website, to help vessel owners and operators plan for the possibility of the limit being reached.

2. Restrictions After the Limit Is Reached

As set forth under the existing regulations at 50 CFR 300.224(f), if the limit is reached, the restrictions that will be in effect will include the following:

a. Retain on board, transship, or land bigeye tuna: Starting on the effective date of the restrictions and extending through December 31 of the given calendar year, it will be prohibited to use a U.S. fishing vessel to retain on board, transship, or land bigeye tuna captured in the Convention Area by longline gear, except as follows:

First, any bigeye tuna already on board a fishing vessel upon the effective date of the restrictions can be retained on board, transshipped, and/or landed, provided that they are landed within 14 days after the restrictions become effective. A vessel that had declared to NMFS pursuant to 50 CFR 665.803(a) that the current trip type is shallow-setting is not subject to this 14-day landing restriction, so these vessels will be able to land bigeye tuna more than 14 days after the restrictions become effective.

Second, bigeye tuna captured by longline gear can be retained on board, transshipped, and/or landed if they are caught by a fishing vessel registered for use under a valid American Samoa Longline Limited Access Permit, or if they are landed in American Samoa, Guam, or CNMI. However, the bigeye tuna must not be caught in the portion of the U.S. EEZ surrounding the Hawaiian Archipelago, and must be landed by a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.801.

Third, bigeye tuna captured by longline gear can be retained on board, transshipped, and/or landed if they are caught by a vessel that is included in a specified fishing agreement under 50 CFR 665.819(d), in accordance with 50 CFR 300.224(f)(iv).

b. Transshipment of bigeye tuna to certain vessels: Starting on the effective date of the restrictions and extending through December 31 of the calendar year, it will be prohibited to transship bigeye tuna caught in the Convention Area by longline gear to any vessel other than a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.801.

c. Fishing inside and outside the Convention Area: To help ensure compliance with the restrictions related to bigeye tuna caught by longline gear in the Convention Area, two additional, related prohibitions would be in effect starting on the effective date of the restrictions and extending through December 31 of the calendar year. First, vessels are prohibited from fishing with longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip that is in progress at the time the announced restrictions go into effect. In that exceptional case, the vessel still must land any bigeye tuna taken in the Convention Area within 14 days of the effective date of the restrictions, as described above. Second, if a vessel is used to fish using longline gear outside the Convention Area and enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing while the vessel is in the Convention Area;

specifically, the hooks, branch or dropper lines, and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use. These two prohibitions do not apply to the following vessels: (1) Vessels on declared shallow-setting trips pursuant to 50 CFR 665.803(a); and (2) vessels operating for the purposes of this rule as part of the longline fisheries of American Samoa, Guam, or the CNMI. This second group includes vessels registered for use under valid American Samoa Longline Limited Access Permits and vessels landing their bigeye tuna catch in one of the three U.S. Participating Territories, so long as these vessels conduct fishing activities in accordance with the conditions described above, and vessels included in a specified fishing agreement under 50 CFR 665.819(d), in accordance with 50 CFR 300.224(f)(iv).

FAD Restrictions

There is a FAD prohibition period from July through September in each calendar year in the Convention Area between the latitudes of 20° N and 20° S (inclusive of the EEZs and high seas in the Convention Area), and an additional two-month FAD prohibition period just on the high seas in that area in November and December in each calendar year. Under CMM 2017–01, the United States can choose to implement the additional two-month FAD prohibition period in either April and May or November and December. As stated in the preamble to the proposed rule, based on the expected economic impacts on U.S. fishing operations and the nation as a whole, and expected environmental and other effects, NMFS expects that a high seas FAD prohibition period in November and December may be somewhat more cost-effective than a FAD prohibition period in April and May. NMFS specifically sought public comment on which option is more appropriate. Four comment letters were received in support of implementing the additional high seas FAD prohibition period in November and December, and one comments letter was received requesting that consideration be given to having the additional prohibiton period take place in April and May in future years, as detailed in the comment summary and response section below.

As currently defined in 50 CFR 300.211, a FAD is ''any artificial or natural floating object, whether anchored or not and whether situated at the water surface or not, that is capable of aggregating fish, as well as any object used for that purpose that is situated on board a vessel or otherwise out of the water. The definition of FAD does not include a vessel.'' Under this final rule, the regulatory definition of a FAD would not change. Although the definition of a FAD does not include a vessel, the restrictions during the FAD prohibition periods include certain activities related to fish that have aggregated in association with a vessel, or drawn by a vessel, as described below.

The prohibitions applicable to the FAD-related measures are in existing regulations at 50 CFR 300.223(b)(1)(i)–(v). Specifically, during the July–September FAD prohibition periods in each calendar year, and on the high seas in November and December, owners, operators, and crew of fishing vessels of the United States equipped with purse seine gear shall not do any of the following activities in the Convention Area in the area between 20° N latitude and 20° S latitude:

(1) Set a purse seine around a FAD or within one nautical mile of a FAD;

(2) Set a purse seine in a manner intended to capture fish that have aggregated in association with a FAD or a vessel, such as by setting the purse seine in an area from which a FAD or a vessel has been moved or removed within the previous eight hours, setting the purse seine in an area in which a FAD has been inspected or handled within the previous eight hours, or setting the purse seine in an area into which fish were drawn by a vessel from the vicinity of a FAD or a vessel;

(3) Deploy a FAD into the water;

(4) Repair, clean, maintain, or otherwise service a FAD, including any electronic equipment used in association with a FAD, in the water or on a vessel while at sea, except that a FAD may be inspected and handled as needed to identify the FAD, identify and release incidentally captured animals, un-foul fishing gear, or prevent damage to property or risk to human safety; and a FAD may be removed from the water and if removed may be cleaned, provided that it is not returned to the water; and

(5) From a purse seine vessel or any associated skiffs, other watercraft or equipment, submerge lights under water; suspend or hang lights over the side of the purse seine vessel, skiff, watercraft or equipment, or direct or use lights in a manner other than as needed to illuminate the deck of the purse seine vessel or associated skiffs, watercraft or equipment, to comply with navigational requirements, and to ensure the health and safety of the crew. These prohibitions would not apply during emergencies as needed to prevent human injury or the loss of human life, the loss of the purse seine vessel, skiffs, watercraft or aircraft, or environmental damage.

This final rule revises the introductory paragraph of 50 CFR 300.223(b)(1) to make it clearer that the prohibitions apply only to owners, operators, and crew of purse seine fishing vessels. NMFS has recently received inquiries as to whether the prohibitions apply to the owners, operators, and crew of vessels using other gear types. This final rule also makes a technical change to 50 CFR 300.223(b)(1)(iv)(B) to clarify that, during the FAD prohibition periods, a FAD may be removed from the water to be repaired, cleaned, maintained, or otherwise serviced, provided that it is not returned to the water. This minor change ensures consistency with the introductory language in that paragraph.

Under the final rule, an active FAD is defined as a FAD that is equipped with a buoy with a clearly marked reference number allowing its identification and equipped with a satellite tracking system to monitor its position, as specified by the definition of instrumented buoy in CMM 2017–01.

CMM 2017–01 specifies that the buoy shall be activated exclusively on board the vessel. In order to implement this provision, the final rule specifies that the tracking equipment must be turned on while the FAD is onboard the vessel and before it is deployed in the water. In accordance with CMM 2017–01, under the final rule, each U.S. purse seine vessel would have a limit of 350 active drifting FADs in the Convention Area at any one time.

Purse Seine Fishing Effort Limits

In the past, NMFS has implemented the U.S. purse seine fishing effort limits on the high seas and in the U.S. EEZ adopted by the Commission as a single combined limit in a combined area of the high seas and U.S. EEZ termed the Effort Limit Area for Purse Seine or ELAPS. CMM 2017–01 and predecessor conservation and management measures have always treated the high seas and EEZ limits separately, and these decisions do not provide Members, Cooperating Non-members, and Participating Territories (collectively referred to here as ''members'') the express authority to combine them. Nevertheless, NMFS' reasoning for combining the high seas and U.S. EEZ limits was that it afforded more operational flexibility to the fleet and there were no substantial conservation effects to living marine resources for treating the two areas separately or

combined, so long as the overall effort remained equal or less than the sum of the two limits.

For several years the United States has argued that the Commission's purse seine effort limits are having a disproportionate burden on the economy of American Samoa, particularly fish processing facilities like the one tuna cannery in operation. At the most recent regular session of the Commission in December 2017, the Commission finally took consensus action to lessen that burden. Specifically, Paragraph 29 of CMM 2017–01 allows the United States to address the impact of the Commission limits on American Samoa tuna processing by transfering 100 fishing days from the U.S. EEZ effort limit to the high seas effort limit, and to potentially regain these transferred days in the U.S. EEZ effort limit, provided that limit has been reached by October 1, 2018 (subject to certain landing requirements). This provision is applicable to 2018 only.

In light of CMM 2017–01's Paragraph 29 allowing the United States to transfer some of its EEZ days to the high seas in 2018, there is a need to reconsider NMFS' past practice of combining the U.S. high seas limit and U.S. EEZ limit.

CMM 2017–01 specifies separate EEZ (Attachment 1, Table 1) and high seas (Attachment 1, Table 2) purse seine effort limits for the United States. However, previous CMMs on tropical tunas also specified separate EEZ and high seas effort limits for the United States. The new provision included in CMM 2017–01 that was not included in previous CMMs on tropical tunas is the transfer provision in Paragraph 29. In the past, there was no express constraint on NMFS' ability to transfer the entire U.S. EEZ limit to the high seas limit and the entire high seas limit to the U.S. EEZ limit. However, in light of the new transfer provision in CMM 2017–01 for 2018, specifying clear rules and guidelines for the number and manner a transfer of days between the high seas limit and U.S. EEZ must take place, NMFS believes that the U.S. EEZ and high seas purse seine effort limits for 2018 must be implemented separately. That is, NMFS needs to separately enforce the high seas and U.S. EEZ days in order to ensure that the high seas fishing effort limit—as augmented under paragraph 29 by 100 days from the U.S. EEZ—is not exceeded. Accordingly, NMFS will not combine the two limits under a single ELAPS limit for 2018. This change is consistent with the plain reading of CMM 2017–01, which specifies a separate limit for the U.S. EEZ and a separate limit for the high seas for the United States, as well as the transfer provisions in Paragraph 29.

In the proposed rule, NMFS had stated that all of the elements for CMM 2017–01 would remain in place until they are replaced or modified. However, based on the time-limited application of Paragraph 29, and the comments received regarding the purse seine effort limits, as detailed in the Comments and Response section below, NMFS believes that it is appropriate to implement the purse seine effort limits in this final rule for 2018 only. Implementation of Commission-specified purse seine effort limits in future years, including whether the limits for the U.S. EEZ and high seas are combined or implemented separately and how transfers between the limits may take place, will be determined after consideration of future decisions adopted by the Commission.

CMM 2017–01 specifies a limit of 1,270 fishing days per year for the high seas and a limit of 558 fishing days per year for the U.S. EEZ. Applying the provisions of Paragraph 29, the final rule would establish a limit of 1,370 fishing days on the high seas and a separate limit of 458 fishing days in the U.S. EEZ. These numbers utilize the provision of CMM 2017–01 provided to alleviate the economic hardship experienced by American Samoa during a fishery closure and transfer 100 fishing days from the U.S. EEZ effort limit to the high seas effort limit.

CMM 2017–01 also specifies that the United States may add an additional 100 fishing days to its annual purse seine fishing effort limit in the U.S. EEZ if the limit in the U.S. EEZ is reached by October 1, 2018. Thus, under the final rule, in the event that NMFS expects that the U.S. EEZ effort limit would be reached by October 1, 2018, NMFS would publish a document in the **Federal Register**, no later than seven days prior to October 1, to increase the U.S. EEZ effort limit by 100 fishing days for 2018.

The meaning of ''fishing day'' is defined at 50 CFR 300.211; that is, any day in which a fishing vessel of the United States equipped with purse seine gear searches for fish, deploys a FAD, services a FAD, or sets a purse seine, with the exception of setting a purse seine solely for the purpose of testing or cleaning the gear and resulting in no catch.

NMFS will monitor the number of fishing days spent in the U.S. EEZ and on the high seas using data submitted in logbooks and other available information. If and when NMFS determines that a limit is expected to be reached by a specific future date, it will publish a document in the **Federal Register** announcing that the purse seine fishery in the area where the limit is expected to be reached will be closed starting on a specific future date and will remain closed until the end of the calendar year. NMFS will publish that document at least seven days in advance of the closure date. Starting on the announced closure date, and for the remainder of calendar year, it will be prohibited for U.S. purse seine vessels to fish in the area where the limit is expected to be reached, except that such vessels would not be prohibited from bunkering (refueling) during a fishery closure. NMFS published an interim rule on August 25, 2015 (see 80 FR 51478) to remove the restriction that prohibited U.S. purse seine vessels from conducting bunkering during fishery closures of the ELAPS. NMFS will continue those regulations as part of this final rule so that bunkering would be allowed during any fishery closures of the U.S. EEZ or high seas due to reaching a limit in a given calendar year.

Under existing regulations at 50 CFR 300.218(g), NMFS can direct U.S. purse seine vessel owners and operators to provide daily FAD reports, specifying the number of purse seine sets made on FADs during that day. NMFS promulgated this regulation to help track a limit on the number of FAD sets that was applicable in previous years but recognizes that this information is also valuable to help predict when a fishing effort limit is expected to be reached with greater certainty. Thus, under this final rule, NMFS is revising the existing regulations so that NMFS can direct U.S. purse seine vessel owners and operators to provide reports on the fishing activity of the vessel (*e.g.,* setting, transiting, searching), location, and type of set, in order to obtain better data for tracking the fishing effort limits.

Eastern High Seas Special Management Area

This final rule removes the requirements at 50 CFR 300.222(oo) and 50 CFR 300.225 for U.S. commercial fishing vessels to provide reports prior to entering or exiting the EHSSMA. This final rule also prohibits all U.S. commercial fishing vessels fishing for highly migratory species (HMS) from engaging in transshipments in the EHSSMA, beginning on January 1, 2019.

Administrative Changes to Existing Regulations

The regulations at 50 CFR 300.217(b) and 300.218(a)(2)(v) contain outdated cross references that are corrected in this final rule. In § 300.217, paragraph (b)(1) is revised to provide a cross

reference to § 300.336(b)(2), not § 300.14(b), and in § 300.218(a)(2)(v), the cross reference is to § 300.341(a) instead of to § 300.17(a) and (b). Sections 300.14(b) and 300.17(a) and (b) no longer exist and have been replaced through a new regulatory action implementing provisions of the High Seas Fishing Compliance Act (16 U.S.C. 5501 *et seq.*).

Comments and Responses

NMFS received nine comment letters on the proposed rule. The comments are summarized below, followed by responses from NMFS.

Comment 1: Two commenters provided general statements of support for the limits and restrictions that would be implemented in the rule. One of the commenters expressed support for more stringent fishing limits for all waters. According to the commenters, overfishing has devastating ecological and economic consequences.

Response: NMFS acknowledges and notes the comments.

Comment 2: Representatives of the Hawaii Longline Association (HLA) provided comments supporting the establishment of the 3,554 mt longline bigeye tuna catch limit. HLA also requested that NMFS proceed carefully, but quickly, with the process to implement regulations under a separate rulemaking that would allow longline bigeye tuna catch to be attributed to the U.S. participating territories in the WCPFC in 2018 under specified fishing agreements. This would allow any fish landed immediately after the 3,554 mt limit is reached in 2018 to be attributed to the U.S. territory that is a party to the specified fishing agreement and would prevent a fishery closure. HLA noted that, in past years, the Hawaii deep-set longline fishery has been closed for extended periods of time in the WCPO, even though a specified fishing agreement had been executed and approved, because NMFS delayed its issuance of territory specification regulations. Thus, some U.S. deep-set longline vessels were unable to fish for no reason other than administrative delay.

Response: NMFS is proceeding with the separate rulemaking to implement regulations that would provide for longline bigeye tuna catch to be attributed to the U.S. participating territories in the WCPFC in 2018 under specified fishing agreements as expeditiously as possible.

Comment 3: Representatives from different sectors of the U.S. purse seine fleet provided comments regarding implementation of the purse seine effort limits for the U.S. EEZ and high seas areas. One commenter expressed support for having separate limits for the high seas and for the U.S. EEZ, while five commenters objected to the establishment of separate purse seine effort limits for the U.S. EEZ and high seas areas. The commenters that objected stated that for the past nine years, NMFS has combined those two areas with their associated limits into one area (the Effort Limit Area for Purse Seine, or ELAPS) to provide flexibility to the U.S. WCPO purse seine industry, and the process has worked very well. They claimed that by creating separate limits for the U.S. EEZ and the high seas now, NMFS will, if it proceeds with the proposed rule, effectively reduce fishing opportunities for the U.S. fleet by over 400 days. They stated that the proposed rule provides no explanation for why this previous reasoning no longer applies or why NMFS has changed its position on this important issue. According to the commenters, it appears that the significant change to implement separate limits is being proposed to merely aid monitoring, but there is no apparent reason why sufficient monitoring cannot occur to satisfy CMM 2017–01 under a combined limit and none is provided by NMFS. According to one commenter, NMFS is required by law to provide a rationale for its decision and to carefully address and explain its changes in position. The commenter stated that NMFS' proposal to implement separate effort limits is arbitrary and capricious, and therefore unlawful under the Administrative Procedure Act (APA).

Response: As stated above and in the preamble to the proposed rule, NMFS acknowledges that in the past NMFS has implemented the U.S. purse seine fishing effort limits on the high seas and in the U.S. EEZ adopted by the Commission as a single combined limit in a combined area of the high seas and U.S. EEZ termed the Effort Limit Area for Purse Seine or ELAPS. NMFS' reasoning for combining the high seas and U.S. EEZ limits was that it afforded more operational flexibility to the fleet and there are no substantial differences in terms of effects to living marine resources between the two approaches—treating the two areas separately or combining the areas—so long as the overall effort remained equal or less than the sum of the limits of the two areas. Although NMFS agrees with the comment that a single combined effort limit would afford more operational flexibility to the fleet, as explained above, the plain reading of Paragraph 29 of CMM 2017–01, which includes specific rules and guidelines for the United States for transferring fishing days between the high seas effort limit area and the U.S. EEZ effort limit area, precludes NMFS from doing so in 2018.

As noted above, for several years the United States has argued that the Commission's purse seine effort limits are having a disproportionate burden on the American Samoa economy, particularly fish processing facilities like the one tuna cannery in operation. At its 14th regular session in December 2017, the Commission took positive steps to lessen that burden. CMM 2017–01 now allows the United States to address the impact of the Commission limits on American Samoa tuna processing by transfering 100 fishing days from the U.S. EEZ effort limit to the high seas effort limit, and to potentially regain these transferred days in the U.S. EEZ effort limit provided that limit has been reached by October 1, 2018 (subject to certain landing requirements). The Commission's decision was intended to provide U.S. purse seiners with an increase of 100 fishing days for 2018 along with an incentive to land their catch in American Samoa.

Commission decisions have always identified separate high seas and EEZ fishing effort limits for CCMs. The new provision included in CMM 2017–01 that was not included in previous CMMs on tropical tunas is the transfer provision in Paragraph 29. In the past, there was no express constraint on NMFS' ability to transfer the entire U.S. EEZ limit to the high seas limit and the entire high seas limit to the U.S. EEZ limit. However, in light of the new transfer provision in CMM 2017–01 for 2018, specifying clear rules and guidelines for the number of days available for transfer and the manner in which a transfer of days between the high seas limit and U.S. EEZ limit must take place, NMFS believes that the U.S. EEZ and high seas purse seine effort limits for 2018 must be implemented separately. That is, NMFS must separately enforce the high seas and U.S. EEZ fishing effort limits in order to ensure that the high seas fishing effort limit of 1,370 days—as augmented under paragraph 29 by 100 days from the U.S. EEZ—is not exceeded. Enforcing only a single combined limit of 1,828 days could result in the augmented high seas limit being exceeded, in violation of CMM 2017–01.

CMM 2017–01 specifies a limit of 1,270 fishing days per year for the high seas and a limit of 558 fishing days per year for the U.S. EEZ, and includes specific rules and guidelines for transferring fishing days from the U.S.EEZ limit to the high seas limit. The

final rule establishes a limit of 1,370 fishing days on the high seas and a separate limit of 458 fishing days in the U.S. EEZ (or 558 days if the limit is reached by October 1, 2018) for 2018 in accordance with the transfer provisions set forth in Paragraph 29 of CMM 2017–01 and in order to implement CMM 2017–01 in accordance with the Commission's clear intent. NMFS is not implementing the separate limits merely to aid in monitoring, as the commenters suggest, but rather to implement the clear requirements of CMM 2017–01.

It is important to note that, under the final rule, the overall number fishing days in the high seas and U.S. EEZ remain the same (1,828) as the overall number of fishing days allowed in previous years, and could actually be higher (1,928) if the certain conditions described above are met. Accordingly, NMFS disagrees that enforcing separate high seas and EEZ limits under the final rule—which NMFS believes is compelled by a plain reading of CMM 2017–01—unfairly reduces the number of available fishing days to some foreign-built U.S. purse seiners. These foreign-built U.S. purse seine vessels primarily fish under licenses issued pursuant to the South Pacific Tuna Treaty (SPTT) and, because they do not have fishery endorsements on their U.S. Coast Guard Certificates of Documentation, they are generally prohibited from fishing within the U.S. EEZ. However, these restrictions on operating within the U.S. EEZ have long been in effect (see 46 U.S.C. 12113).

Currently, 9 of the 37 U.S. purse seine vessels with WCPFC Area Endorsements have that fishery endorsement, so these vessels would be able to continue fishing up to the 458 day limit in the U.S. EEZ (or 558 day limit, if the U.S. EEZ limit is reached by October 1, 2018) when the limit in the high seas is reached in 2018. Furthermore, the foreign-built U.S.-flagged vessels, which are ineligible to fish within the U.S. EEZ, retain the option of shifting their fishing effort either to foreign zones under the SPTT or into the eastern Pacific Ocean (EPO). Please also see below for the response to Comment 4 on the potential loss of 400 fishing days to the fleet.

NMFS is implementing separate limits in 2018, because of the language in Paragraph 29 of CMM 2017–01 for 2018. Implementation of Commission-specified purse seine effort limits in future years, including whether the limits for the U.S. EEZ and high seas are combined or implemented separately and how transfers between the limits may take place, will be determined after consideration of future decisions adopted by the Commission.

Comment 4: Several comments from U.S. purse seine industry representatives related to NMFS' assessment of the economic effects of the proposed purse seine fishing effort limits. One commenter stated that NMFS appears to believe that its proposal to split the ELAPS is a mere administrative matter with no substantial consequences. This and other commenters stated that the proposal would have very significant impacts on many vessels in the U.S. purse seine fleet, potentially costing them millions of dollars in lost fishing opportunities.

One commenter stated that NMFS underestimates the severe economic impact the proposed rule would have on the U.S. purse seine fleet, and another stated that the regulatory impact review (RIR) prepared for the proposed rule makes no meaningful attempt to quantify the costs of the proposed splitting of the ELAPS limits. The commenter stated that based on the history of fishing in the U.S. EEZ, as presented in the RIR, and absent a strong El Niño and in an average year, almost 440 fishing days would go unused as a result of the fishing days under the U.S. EEZ limit not being available on the high seas. Under the current ELAPS arrangement, those 440 fishing days are available to the entire purse seine fleet. Another commenter also stated that 440 fishing days would go unused, effectively reducing the allocation of fishing days to the U.S. fleet, and additional commenters similarly stated that having separate limits for the U.S. EEZ and the high seas would result in the fishing days under the U.S. EEZ being unused or wasted. Two commenters stated that the cost of ''upfront'' fishing days under the SPTT ($12,500 per fishing day, according to one commenter) can be used to estimate the value of those lost fishing days, and went on to comment that the aggregate cost to the 25 purse seine vessels without fishery endorsements on their U.S. Coast Guard Certificates of Documentation would be about $5,500,000 per year, or $220,000 per vessel per year.

Several commenters provided comments stating that alternative fishing opportunities—in the event the U.S. EEZ and/or the high seas are closed to fishing—would be constrained in the latter half of the year, when the high seas would more likely be closed. With respect to the opportunity of fishing in foreign EEZs, several commenters pointed out the high access fees required for such fishing. With respect to fishing in the EPO, several commenters pointed out the limited fishing capacity available in the EPO, and noted that the high seas portion of the area of overlap between the WCPFC and Inter-American Tropical Tuna Commission (IATTC) would be subject to the proposed high seas limit. One commenter stated that NMFS has indicated in the past that there was no additional capacity available to place vessels on the list of U.S. vessels eligible to fish in the EPO, and asked for clarication of this option, given that it appears to be one of the key alternatives available to vessels impacted by the proposed rule.

With respect to the alternative of not fishing, one commenter stated that NMFS' statement that a vessel would have some variable costs reduced if it is forced to stop fishing is a ridiculous statement because it does not reflect the reality of a bank's view on missed payments, and that NMFS' statement that vessels could use non-fishing time to do maintenance and repair assumes there will be money left to do so. The same commenter stated that NMFS' analysis fails to take into account that, of the $10 million grossed by the fleet, $2 million net comes off the top for access fees under the SPTT.

One commenter stated that the proposed rule's costs to many vessels in the U.S. purse seine fleet would be to the benefit of only a few U.S. vessels, and more broadly, their foreign competitors. The commenter explained that under the MSA, NMFS may not provide sector preference within the fleet, but in this case a defacto sector preference under the MSA is beneficial to foreign nations, by allowing them to take advantage of U.S. fleet interests, reducing U.S. fleet access, and increasing costs for the U.S. fleet, while providing further benefits to foreign nations whose interests are not necessarily aligned with the interests of the U.S. Government.

One commenter stated that having separate limits for the U.S. EEZ and the high seas would put the vessels that support American Samoa at an economic disadvantage.

Several commenters stated that having separate limits would hurt the cannery and possible employment for the people of American Samoa. These commenters stated that there is not a consistent amount of fish in the U.S. EEZ for the vessels to be able to fish there, and that closing the U.S. EEZ and the high seas earlier would cause vessels to operate further from American Samoa, making it less likely that they will unload in American Samoa.

One commenter stated that the proposed rule would needlessly increase the U.S. fisheries trade deficit by just more than $21 million.

Response: First, NMFS notes that it has revised the RIR from the original version, dated April 2018, that was made available with the proposed rule. The original version included provisional estimates for certain 2017 fishery performance indicators, including the numbers of fishing days used in the U.S. EEZ and on the high seas. Those estimates have since been finalized and corrections to other estimates have been made, and the revised RIR has been updated accordingly. The revised analysis does not alter the conclusions or determinations made in the original RIR.

NMFS agrees that a combined limit would afford more operational flexibility to the fleet as a whole, but as explained above, NMFS believes a plain reading of Paragraph 29 of CMM 2017–01—which provides benefits to American Samoa and provides for up to 100 additional vessel days if certain conditions are met—precludes NMFS from implementing a combined limit for 2018. However, NMFS has updated its analysis to include the combined limit in the FRFA and revised RIR for comparison purposes.

NMFS agrees that a combined limit would effectively make more fishing days available to those U.S. purse seine vessels without fishery endorsements on their U.S. Coast Guard Certificates of Documentation than would this action. However, NMFS does not agree that ''almost 440 fishing days would go unused,'' as stated by one commenter in comparing the two approaches. NMFS recognizes that U.S. vessels that are already ineligible to fish within the U.S. EEZ would have fewer days to use on the high seas in 2018 than in previous years, but overall days available to the fleet remain consistent with previous years, and may actually increase to 1,928 days if certain conditions under CMM 2017–01 are met. Also, because the vast majority of U.S. purse seine effort in the region already is concentrated in foreign zones under the provisions of the SPTT, NMFS does not anticipate substantial impacts resulting from unused EEZ days.

NMFS does not believe that the proposal to establish separate purse seine fishing effort limits for the U.S. EEZ and the high seas is a mere administrative matter with no substantial consequences. To the contrary, NMFS concluded in the initial regulatory flexibility analysis (IRFA) and the RIR that either of the two limits, and especially the high seas limit, could be reached in any of the years 2018–2020, and that the closure of any fishing grounds for any amount of time can be expected to bring adverse impacts to affected entities. With respect to the proposed high seas limit of 1,370 fishing days, NMFS noted that the proposed level had been met or exceeded in three of the last nine years, a history that suggests a substantial likelihood of the proposed high seas limit being reached in any of the years 2018–2020. NMFS stated that the severity of the impacts of a closure of the high seas or the U.S. EEZ would be greatly dependent on the length of the closure and the most favored fishing ground during the closure. As an indication of the possible impacts, NMFS cited a study of the closure of the ELAPS in 2015 in which the overall losses to the combined sectors of the vessels, canneries and support companies from the closure were estimated to be between $11 and $110 million, depending on the period considered. NMFS further noted the study suggested that there were impacts from the 2015 ELAPS closure on the American Samoa economy, and that a connection existed between U.S. purse seine vessels and the broader American Samoa economy. As a further indication of the possible impacts to producers in the fishery of lost fishing days as a result of one or both limits being reached (*i.e.,* an indication of the upper bound of those impacts), NMFS provided information in the RIR and IRFA on revenues in the fleet, including the fact that, with an indicative fleet size of 35 vessels, the fleet could have gross ex-vessel revenues of more than $1 million per day, on average. The losses to producers in the purse seine fishery as a result of one or both of the limits being reached would likely not reach that maximum rate because, as explained in the RIR and IRFA, there are next-best opportunities to fishing on the high seas or in the U.S. EEZ, including fishing in foreign EEZs under the SPTT, fishing in the EPO, and not fishing.

NMFS described in the RIR and IRFA some of the factors that might make each of those alternative opportunities relatively attractive or unattractive, and acknowledges that under the regulations implementing IATTC decisions at 50 CFR part 300, subpart C the available capacity for U.S. purse seine vessels that wish to fish in the EPO and be listed on the IATTC vessel register is limited. However, vessels with SPTT licenses may take one trip per year for up to 90 days in duration in the EPO for a total of 32 trips for the fleet in a calendar year, without being listed on the IATTC vessel register. With respect to the possibility of fishing in foreign EEZs in the Convention Area during a closure of the high seas and/or U.S. EEZ, NMFS agrees that the access fees under the SPTT, such as the 2018 fee of $12,500 per fishing day to fish in the waters of many of the Pacific Island parties to the SPTT, give an indication of the cost of a closure of the high seas, since fishing on the high seas does not require payment of such access fees. The high seas appear to be generally less favorable fishing grounds than foreign EEZs, and thus, U.S. vessels appear to be already paying the $12,500 access fee even before the U.S. high seas limit is reached and the area is closed. Thus, $12,500 is probably an overestimate of the cost per day of the high seas being closed.

NMFS recognizes, and explained in the RIR and IRFA, that the proposed purse seine fishing effort limits would affect vessels with fishery endorsements on their U.S. Coast Guard Certificates of Documentation differently than those vessels without fishery endorsements, as those without fishery endorsements are not authorized to fish in the U.S. EEZ, and would not have access to the fishing days available under the limit for the U.S. EEZ. NMFS agrees that if the proposed limits for the U.S. EEZ and high seas were combined into a single limit for the ELAPS, as done in the past, the vessels without fishery endorsements would have access to the entirety of the combined limit (*i.e.,* competitively, with all other vessels in the U.S. fleet).

NMFS recognizes, and explained in the RIR and IRFA, that the proposed purse seine fishing effort limits in the U.S. EEZ and high seas could cause a race to fish in those respective areas, with possible consequent effects on the timing of catches and cannery deliveries and costs in terms of the health and safety of crew members as well as the economic performance of vessels.

NMFS recognizes, and explained in the RIR and IRFA, that there are constraints to alternative opportunities in the event the U.S. EEZ and/or high seas are closed to fishing, and NMFS acknowledges the specific constraints pointed out by the commenters. NMFS agrees that the alternative ''next best'' opportunities may not fully compensate for the losses associated with not being able to fish in the U.S. EEZ and/or on the high seas in the event they are closed. NMFS' main point in those portions of the RIR and IRFA is to identify and describe what appear to be among the most attractive alternative opportunities (including not fishing at all), and thereby give at least a

qualitative idea of the opportunity costs associated with the proposed fishing effort limits.

Regarding the comment that the NMFS analysis fails to take into account that, of the $10 million grossed by the fleet, $2 million net comes off the top for access fees under the SPTT, NMFS agrees that gross ex-vessel revenues overestimate the possible losses to fishing businesses as a result of this action.

Regarding the comment that the proposed rule's costs to many vessels in the U.S. purse seine fleet would be to the benefit of a few U.S. vessels, and more broadly, their foreign competitors, NMFS agrees that restrictions on U.S. fishing vessels could put some of them at a competitive disadvantage relative to foreign fleets, but this rule implements a WCPFC decision that broadly applies to all the major purse seine fleets in the WCPO. Moreover, as discussed above, NMFS does not believe it continues to have discretion to combine the high seas and U.S. EEZ purse seine effort limits for the United States for 2018. NMFS has not identified any alternative ways to implement the WCPFC decisions that would be more advantageous to U.S. fishing vessels. While NMFS acknowledges that some foreign-built U.S. vessels may be impacted differently than vessels with fishery endorsements that can fish in the U.S. EEZ, NMFS is satisfied that the final rule treats all vessels fairly and achieves conservation consistent with U.S. obligations under the Convention.

Regarding the comment that having separate limits for the U.S. EEZ and the high seas would put the vessels that support American Samoa at an economic disadvantage, NMFS notes that Paragraph 29 of CMM 2017–01, which specifies the separate effort limits, was specifically negotiated to alleviate the economic hardship of American Samoa.

NMFS acknowledges the comments about the economic impacts of the proposed fishing effort limits on the cannery in American Samoa and employment for the people of American Samoa. As explained in the RIR by reference to the study of the impacts of the ELAPS closure in 2015, a closure of the high seas and/or U.S. EEZ could impact the American Samoa economy. However, as stated in the RIR, because the cannery in Pago Pago also handles deliveries from the fishing fleets of other nations, as well as from other domestic fleets, the cannery might not be appreciably affected in terms of income or employment.

NMFS acknowledges the comment that the action would increase the U.S. fisheries trade deficit by just more than $21 million. NMFS does not have information to verify the commenter's estimate of the impacts of the rule on the U.S. fisheries trade deficit. However, NMFS believes that promulgation of this rule is necessary to carry out the U.S. international obligations under the Convention.

Comment 5: Four U.S. purse seine industry representatives provided comments indicating that they supported having the additional two-month FAD prohibition period on the high seas take place in November and December, as set forth in the proposed rule, rather than in April and May. One U.S. purse seine industry representative provided comments requesting that NMFS look closely at the practical effect of having the additional two-month FAD prohibition period in November and December instead of April and May before deciding on the prohibition period in future years. The commenter stated that the U.S. fleet and the American Samoa economy may function better with having the prohibition period take place in April and May. According to the commenter, fishing in the high seas will be impacted by the timing of the FAD prohibition period. The proposed rule does not allocate the limited number of high seas days to eligible boats. Therefore, the commenter believes that there will be a race to fish on the high seas. Vessels that are unable to operate during the first part of the year, or for as long as the high seas are open, will suffer an economic loss. That will include boats that are under repair. Additionally, the supply of tuna to the American Samoa canneries could be negatively impacted due to a high seas prohibition period. That is because the high seas fishing grounds are relatively close to American Samoa. Vessels that cannot fish in the high seas may have to shift their areas of operation far from American Samoa, thereby depriving the territory of tuna supply. If the FAD prohibition period is in November and December and there are no high seas days remaining at that time, there would be a reduction in fish supply to American Samoa. A high seas FAD prohibiton period in April and May, or an allocation of high seas days, or both, would mitigate this risk. The commenter encourages NMFS to take these concerns into consideration.

Response: As described in Attachment 1 of the RIR, NMFS acknowledges that there are pros and cons to both the late (November and December) and early (April and May) FAD prohibition period options for 2018, and that on balance, the late option is expected to have less direct economic impact on fishing businesses associated with the U.S. WCPO purse seine fishery. CMM 2017–01 specifies that the additional two-month FAD prohibition period is for calendar year 2018 only. However, as explained in the proposed rule, the regulations to implement the additional two-month high seas FAD closure will be in effect until they are replaced or amended, and the supporting analytical documents assess the effects of implementation of the rule for a three-year period. NMFS will collect data related to the 2018 high seas FAD prohibition period and conduct the appropriate analysis to support proposed regulations for future years, taking into consideration the economic impacts to fishing businesses, including canneries in American Samoa.

Comment 6: Two U.S. purse seine industry representatives provided comments stating that the 15-day comment period on the proposed rule was insufficient. One of the commenters stated that issue of the separate limits for the high seas and U.S. EEZ alone warrants at least a 30-day comment period. The commenter stated that the 15-day comment is contrary to applicable law, and the rationale provided in the proposed rule for the 15-day comment period—that Section 304(b) of the MSA provides for a 15-day comment period on these types of fishery rules—is insufficient. Provisions of the WCPFC Implementation Act and the APA apply to this rulemaking.

Response: NMFS acknowledges that lengthier public review and comment periods may be provided for some proposed rules. As noted by the commenter, NMFS is promulgating this final rule under the authority of the WCPFC Implementation Act and in accordance with the rulememaking provisions of the APA. Neither the WCPFC Implemation Act nor the APA specify a minimum comment period for proposed rules. However, we noted that Section 304(b) of the MSA specifically allows for a 15-day comment period for fisheries management rules. Furthermore, NMFS explained in the preamble of the proposed rule that it had good cause to provide a 15-day comment period in order to meet the implementation requirements of CMM 2017–01. Based on the nature and extent of the comments received on the proposed rule and the need to make the rule effective in a timely manner, NMFS believes that the 15-day comment period on the proposed rule was sufficient. Moreover, the comments do not indicate that any commenter was prejudiced by the 15-day comment period.

Comment 7: Two U.S. purse seine industry representatives expressed concern that the regulations would be in effect for longer than one year. One commenter stated that once issued, regulations tend not to be changed, even when outdated or superseded, and asked that the agency enable necessary regulatory changes to be made expeditiously, such as by interim rulemaking, particularly when restrictions will be relaxed. The other commenter noted that although CMM 2017–01 was agreed upon as a three-year measure, certain key purse seine-related provisions (among others) were considered especially contentious. According to the commenter, some believed that CMM 2017–01 weakened several measures applied in 2017 relating to FAD management and high seas purse seine effort controls. The commenter noted that these contentious provisions are applicable for only one year, and could change in 2019. The commenter stated that several Pacific island countries have indicated that portions of CMM 2017–01 will need to be re-evaluated. The commenter stated that NMFS does not have the authority to implement any three-year provisions for FADs and purse seine effort controls in specific areas.

Response: NMFS acknowledges that some of the provisions in CMM 2017–01 apply only to calendar year 2018, while others are applicable until February 10, 2021, and that the Commission is scheduled to discuss a number of the provisions during its annual meeting in December 2018. However, as explained in the preamble to the proposed rule, because the Commission likely will continue to implement similar management measures regarding FADs and longline bigeye tuna catch limits beyond 2018, and to avoid a lapse in the management of the affected fisheries, NMFS is implementing all of the elements of CMM 2017–01, except for the purse seine effort limits, in this rule so that they will remain effective until they are replaced or amended. Due to the comments received regarding implementation of the purse seine effort limits and the fact that Paragraph 29 of CMM 2017–01 is specified for 2018 only, NMFS is implementing the purse seine effort limits for 2018 only.

The WCPFC Implementation Act at Section 16 U.S.C. 6904(a) authorizes the promulgation of regulations as may be necessary to carry out the United States international obligations under the Convention, including recommendations and decisions adopted by the Commission. Instead of applying a piecemeal approach for implementation of the provisions of CMM 2017–01, NMFS has determined that it is necessary to implement all the applicable provisions, except for the purse seine effort limits, so that they will remain effective until they are replaced or amended. Since the Commission's regular session annually occurs in December, this approach avoids a lapse in management of affected fisheries and also provides the regulated community with advance notice regarding regulations that will be in effect in future years. In past years, NMFS has implemented Commission decisions for specific calendar years, and this approach has caused both a lapse in management of the affected fisheries in subsequent calendar years, as well as last minute notification to the regulated community of the entry into force of specific restrictions and requirements. If the Commission adopts changed or new provisions at its December meeting, NMFS would implement those provisions in a timely manner.

Comment 8: Two representatives of the U.S. purse seine industry provided comments regarding the restrictions on the number of active FADs per vessel. One commenter stated that the 350-active buoy limit per vessel is consistent with the limit already implemented by the IATTC. The commenters both stated that it is industry practice for purse seine vessels to share buoys. For example, if a buoy drifts beyond the limits of economic operation of one vessel, it might be transferred to another vessel for fishing or retrieval. One commenter requested that the rule provide for sharing and transferring active buoys without reducing the 350-active buoy limit for any one vessel, and also requested that the definition of a buoy be standardized with that of the IATTC to avoid confusion. The other commenter asked how enforcement and reporting of the active FAD limit per vessel would take place, and requested that the administrative and record-keeping burden created by this element of the rule be evaluated under the Paperwork Reduction Act (PRA).

Response: NMFS appreciates the need for consistency with the regulations recently promulgated to implement IATTC Resolution C–17–02, ''Conservation Measures for Tropical Tunas in the Eastern Pacific Ocean during 2018–2020 and Amendment to Resolution C–17–01,'' which also includes limits on the number of active FADs per purse seine vessel (see 83 FR 15503; published April 11, 2018). However, Resolution C–17–02 and CMM 2017–01 include some different provisions regarding the active FAD limits. Thus, the differences between the regulations implementing the active FAD provisions in IATTC Resolution C–17–02 and this final rule are due to the differences in the separate IATTC and WCPFC decisions.

NMFS believes that it would be premature to implement a reporting requirement to monitor and enforce the active FAD requirements in the final rule, because the WCPFC Secretariat has not yet developed a system to receive such reports. Thus, the active FAD limits in this final rule would be monitored and enforced without a reporting requirement. NMFS may seek adoption of a Commission-wide active FAD reporting requirement at the upcoming WCPFC annual meeting in December or further consistency with the IATTC resolution.

The regulations regarding active FADs in the final rule do not preclude the sharing or transferring of active FAD buoys. The regulations limit U.S. vessel owners and operators to no more than 350 drifting active buoys per vessel in the Convention Area at any one time. Thus, when an active FAD buoy is transferred to and tracked by a new vessel, it would be part of the new vessels's active FAD limit. The regulations regarding active FADs do not impose any new recordkeeping or reporting requirements and thus, are not subject to the PRA.

Comment 9: One representative of the U.S. purse seine industry provided comments requesting that the regulations address unintentional setting on FADs. According to the commenter, it is possible that a purse seine vessel may not see a FAD or something that meets the definition of a FAD floating within a mile of the vessel. The commenter requested that the prohibition on setting on FADs during the FAD prohibition periods be based on an intentional or negligent standard. The commenter stated that if a vessel has followed reasonable search and look-out precautions and does not see a FAD by electronic or visual means and has made a notation in the logbook, that should be sufficient evidence that there was no intent to set on a FAD.

Another commenter stated that NMFS is arbitrarily picking and choosing how to implement various FAD definitions. Although NMFS is proposing consistency with the definition of active FAD for the regulations implementing the IATTC Resolution C–17–02 and this final rule, the general FAD definition in the regulations implementing WCPFC definitions at 50 CFR 300.211 is different than and not consistent with the general FAD definition in the IATTC regulations at 50 CFR 300.21. According

to the commenter, NMFS' approach to defining FAD generally provides very little direction to the U.S. purse seine fishery and creates regulatory confusion, which can result in NMFS unfairly prosecuting alleged FAD violations. The commenter requests that NMFS promptly address these overarching FAD definitional issues.

Response: The FAD definitions that NMFS has promulgated and continues to promulgate in regulations implementing IATTC and WCPFC decisions stem from the language and intent of those separate IATTC and WCPFC decisions. On August 4, 2009, NMFS published a final rule implementing the purse seine provisions of CMM 2008–01 (74 FR 38544). The rule provided, *inter al*ia, that owners, operators, and crew of fishing vessels of the United States shall not set a purse seine around a FAD or within one nautical mile of a FAD. The one nautical mile boundary helps ensure that fishing on schools of fish in association with FADs does not occur. NMFS has not proposed any change to this standard, and notes that an intentional or negligent standard could undermine the effectiveness of the prohibition.

NMFS understands the benefit of consistency in definitions, as vessels in the U.S. purse seine fleet sometimes fish in both the WCPO and the EPO. However, NMFS believes that it is premature to modify the definition of FAD set forth at 50 CFR 300.211 before it has an opportunity to further consider the consequences of modifying this definition. NMFS has scheduled a separate public meeting to discuss FAD definitions and the concerns raised by industry and will take the outcomes of that public meeting into consideration when developing future regulations, as appropriate (see 83 FR 26011, published June 5, 2018, for information regarding the public meeting). NMFS notes that modifying the definition at this stage could be inconsistent with the United States' obligations as a WCPFC member.

Comment 10: One purse seine industry representative provided comments stating that he did not understand why the proposed rule requires the daily reporting on FAD sets, given the number of FAD sets is not restricted in the Convention Area. The commenter stated he saw no reason for daily reporting, particularly since each FAD set will always be reported at the end of each fishing trip.

Response: As stated in the preamble to the proposed rule, NMFS is slightly revising the existing regulations regarding daily reporting on FAD sets so that NMFS can direct U.S. purse seine vessel owners and operators to provide reports on the fishing activity of the vessel (*e.g.,* setting, transiting, searching), location, and type of set, in order to obtain better data for tracking the fishing effort limits. Thus, the changes in the final rule from existing reporting requirements are intended to better track purse seine fishing effort and are not connected to a FAD set limit. As the commenter correctly notes, the final rule does not implement a FAD set limit.

Comment 11: One purse seine industry representative stated that he had hoped that the agency would use this rulemaking to address the area of overlap between the IATTC and WCPFC convention areas (overlap area). The commenter stated his belief that the United States is the only flag State that enforces both the WCPFC and IATTC management measures in the overlap area. According to the commenter, besides the unnecessary burden of carrying two observers when operating in the overlap area, fishing in the overlap area requires the use of limited high seas fishing days. The commenter requested that the Unites States apply only IATTC management measures in the overlap area, retroactive to January 1, 2018.

Response: NMFS recently published an advance notice of proposed rulemaking to solicit public input on management of the overlap area and encourages the commenter to provide input on that separate action (see 83 FR 27305, published June 12, 2018).

Comment 12: One purse seine industry representative commented that NMFS' implementation of separate purse seine effort limits for the high seas and the U.S. EEZ goes against the policies of the current Administration. According to the commenter, the Administration has sought deregulations in favor of small businesses, and other industries have benefitted from this. The commenter stated that the President signed an Executive Order stating that for every new regulation, two old regulations should be removed. The commenter requested clarification on why the rule is not expected to be an Executive Order 13771 regulatory action.

Response: NMFS is promulgating this regulation under the authority of the WCPFC Implementation Act to carry out the obligations of the United States under the Convention, including the decisions of the Commission. The final rule implements recent WCPFC decisions. The final rule is not considered an Executive Order 13771 regulatory action because it is not considered economically significant under Executive Order 12886 as it is not expected to have an annual effect on the economy of $100 million or more.

Comment 13: One purse seine industry representative commented that there is no conservation value in high seas area closures as they are not an effective way of managing pelagic species. The commenter stated that the high seas limits are a strictly economic device being pushed by various members of the Commission. Another purse seine industry representative stated that the separate effort limits provide no conservation benefits.

Response: NMFS agrees that there are no substantial differences between implementing a combined limit and separate limits in terms of effects on living marine resources, as described in the PEA. The potential for beneficial effects on living marine resources from the effort limits would stem from whether implementation of effort limits would lead to an overall reduction in fishing effort in the WCPO (see the discussion of cumulative impacts in the PEA).

Changes From Proposed Rule

One change from the proposed regulations have been made in these final regulations. The purse seine fishing effort limits specified at 50 CFR 300.223(a) are being implemented for calendar year 2018 only.

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this final rule is consistent with the WCPFC Implementation Act and other applicable laws.

Administrative Procedure Act

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for the provisions regarding the FAD prohibition period for purse seine vessels set forth at 50 CFR 300.223(b)(2)(i). The FAD prohibition period is intended to reduce or otherwise control fishing pressure on bigeye tuna in the WCPO in order to maintain this stock to levels capable of producing maximum sustainable yield on a continuing basis. The Commission adopted a start date of July 1, 2018, for the first FAD prohibition period. Delaying the effective date of this provision increases the risk that the Commission's FAD prohibition period will become effective prior to the effective date of the final rule, resulting in the United States' non-compliance with its international obligations, which is contrary to the requirements of the WCPFC Implementation Act, and in turn contrary to the public interest.

Coastal Zone Management Act (CZMA)

NMFS determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management programs of American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the State of Hawaii. Determinations to Hawaii and each of the Territories were submitted on March 12, 2018, for review by the responsible state and territorial agencies under section 307 of the CZMA. Responses to the determination were received from Hawaii, CNMI, and Guam. CNMI and Guam concurred that the proposed project would be conducted in a manner that is consistent with the coastal management programs in CNMI and Guam. The State of Hawaii, noting that the U.S. WCPO purse seine fishery and the longline fisheries operate outside of the jurisdiction of the Hawaii CZM Program enforceable policies, confirmed that they would not be submitting a response to the determination. No response was received from American Samoa. NMFS presumes American Samoa's concurrence, pursuant to 15 CFR 930.41(a).

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act (RFA)

A final regulatory flexibility analysis (FRFA) was prepared as required by section 604 of the RFA. The FRFA incorporates the initial regulatory flexibility analysis (IRFA) prepared for the proposed rule. The analysis in the IRFA is not repeated here in its entirety. A description of the action, why it is being considered, and the legal basis for this action are contained above in the **SUMMARY** section and this **SUPPLEMENTARY INFORMATION** section of the preamble of this final rule. The FRFA analysis follows:

Significant Issues Raised by Public Comments in Response to the IRFA

NMFS did not receive any comments that responded specifically to the IRFA, but several comments on the proposed rule from U.S. purse seine industry representatives related to NMFS' assessment of the economic effects of the proposed rule, and thus could be relevant to the IRFA. See the discussion above summarizing Comments 3, 4, 5, and 12 and providing NMFS' responses to those comments.

Description of Small Entities to Which the Rule Will Apply

For Regulatory Flexibility Act purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 114111) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

The final rule applies to owners and operators of U.S. commercial fishing vessels used to fish for HMS in the Convention Area, including longline vessels (except those operating as part of the longline fisheries of American Samoa, CNMI, or Guam), purse seine vessels, and albacore troll vessels. Based on the number of U.S. vessels with a WCPFC Area Endorsement, which is required to fish on the high seas in the Convention Area, the estimated numbers of affected longline, purse seine, and albacore troll fishing vessels are 158, 37, and 22, respectively.

Based on limited financial information about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes that all of the affected longline and albacore troll vessels, and slightly more than half of the vessels in the purse seine fleet, are small entities as defined by the RFA; that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than $11 million. Within the purse seine fleet, analysis of average revenue, by vessel, for the three years of 2014–2016 reveals that average annual revenue among vessels in the fleet was about $10.2 million, and the annual averages were less than the $11 million threshold for 22 vessels in the fleet.

Recordkeeping, Reporting, and Other Compliance Requirements

The reporting, recordkeeping and other compliance requirements of this final rule are described earlier in the preamble. The classes of small entities subject to the requirements and the types of professional skills necessary to fulfill the requirements are described below for each of the first four elements of the final rule. The fifth element of the final rule, which provides administrative changes to existing regulations, is not considered further in this FRFA, as it is of a housekeeping nature and will not have any substantive effects on any entities.

1. Longline Bigeye Tuna Catch Limits

This element of the final rule will not establish any new reporting or recordkeeping requirements. The new compliance requirement is for affected vessel owners and operators to cease retaining, landing, and transshipping bigeye tuna caught with longline gear in the Convention Area if and when the bigeye tuna catch limit of 3,554 mt (reduced by the amount of any overages in the preceding year) is reached in any of the years 2018–2020, for the remainder of the calendar year, subject to the exceptions and provisos described in other sections of this **SUPPLEMENTARY INFORMATION** section of the preamble. Although the restrictions that would come into effect in the event the catch limit is reached would not prohibit longline fishing, *per se,* they are sometimes referred to in this analysis as constituting a fishery closure.

Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess. The costs of complying with this requirement are described below to the extent possible.

Complying with this element of the final rule could cause foregone fishing opportunities and result in associated economic losses in the event that the bigeye tuna catch limit is reached in any of the years 2018–2020 and the restrictions on retaining, landing, and transshipping bigeye tuna are imposed for portions of those years. These costs cannot be projected quantitatively with any certainty. The annual limit of 3,554 mt can be compared to catches in 2005–2008, before limits were in place. The average annual catch in that period was 4,709 mt. Based on that history, as well as fishing patterns in 2009–2016, when limits were in place, there appears to be a relatively high likelihood of the limits being reached in 2018–2020. In 2015, for example, which saw exceptionally high catches of bigeye tuna, the limit of 3,502 mt was estimated to have been reached by, and the fishery was closed on, August 5 (see temporary rule published July 28, 2015; 80 FR 44883). The fishery was subsequently re-opened for vessels included in agreements with the governments of the CNMI and Guam under regulations implementing Amendment 7 to the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region (Pelagics FEP) (50 CFR 665.819). In 2016, the limit of 3,554 mt was estimated to have been reached by September 9, 2016, and in 2017, the

limit of 3,138 mt was estimated to have been reached by September 1, 2017. Thus, if bigeye tuna catch patterns in 2018–2020 are like those in 2005–2008, the limit will be reached in the fourth quarter of the year, and if they are like those in 2015, 2016, or 2017, the limit will be reached in the third quarter of the year.

If the bigeye tuna limit is reached before the end of any of the years 2018–2020 and the Convention Area longline bigeye tuna fishery is consequently closed for the remainder of the calendar year, it can be expected that affected vessels would shift to the next most profitable fishing opportunity (which might be not fishing at all). Revenues from that next best alternative activity reflect the opportunity costs associated with longline fishing for bigeye tuna in the Convention Area. The economic cost of the final rule is not the direct losses in revenues that would result from not being able to fish for bigeye tuna in the Convention Area, but rather the difference in benefits derived from that activity and those derived from the next best activity. The economic cost of the final rule on affected entities is examined here by first estimating the direct losses in revenues that would result from not being able to fish for bigeye tuna in the Convention Area as a result of the catch limit being reached. Those losses represent the upper bound of the economic cost of the final rule on affected entities. Potential next-best alternative activities that affected entities could undertake are then identified in order to provide a (mostly qualitative) description of the degree to which actual costs would be lower than that upper bound.

Upper bounds on potential economic costs can be estimated by examining the projected value of longline landings from the Convention Area that would not be made as a result of reaching the limit. For this purpose, it is assumed that, absent this final rule, bigeye tuna catches in the Convention Area in each of the years 2018–2020 would be 5,000 mt, slightly more than the average in 2005–2008. Under this scenario, imposition of the annual limits of 3,554 mt would result in 29 percent less bigeye tuna being caught each year than under no action. In the deep-set fishery, catches of marketable species other than bigeye tuna would likely be affected in a similar way if vessels do not shift to alternative activities. Assuming for the moment that ex-vessel prices would not be affected by a fishery closure, under the final rule, revenues in 2018–2020 to entities that participate exclusively in the deep-set fishery would be approximately 29 percent less than under no action. Average annual ex-vessel revenues (from all species) per mt of bigeye tuna caught during 2005–2008 were about $14,190/mt (in 2014 dollars, derived from the latest available annual report on the pelagic fisheries of the western Pacific Region (Western Pacific Regional Fishery Management Council, 2014, Pelagic Fisheries of the Western Pacific Region: 2012 Annual Report. Honolulu, Western Pacific Fishery Management Council)). If there are 128 active vessels in the fleet, as there were during 2005–2008, on average, then under the no-action scenario of fleet-wide anual catches of 5,000 mt, each vessel would catch 39 mt/yr, on average. Reductions of 29 percent in 2018–2020 as a result of the limits would be about 11 mt per year. Applying the average ex-vessel revenues (from all species) of $14,190 per mt of bigeye tuna caught, the reductions in ex-vessel revenue per vessel would be $160,000 per year, on average.

In the shallow-set fishery, affected entities will bear limited costs in the event of the limit being reached (but most affected entities also participate in the deep-set fishery and might bear costs in that fishery, as described below). The cost will be about equal to the revenues lost from not being able to retain or land bigeye tuna captured while shallow-setting in the Convention Area, or the cost of shifting to shallow-setting in the EPO, which is to the east of 150 degrees W longitude, whichever is less. In the fourth calendar quarters of 2005–2008, almost all shallow-setting effort took place in the EPO, and 97 percent of bigeye tuna catches were made there, so the cost of a bigeye tuna fishery closure to shallow-setting vessels appear to be very limited. During 2005–2008, the shallow-set fishery caught an average of 54 mt of bigeye tuna per year from the Convention Area. If the bigeye tuna catch limit is reached even as early as July 31 in any of the years 2018–2020, the Convention Area shallow-set fishery would have caught at that point, based on 2005–2008 data, on average, 99 percent of its average annual bigeye tuna catches. Imposition of the landings restriction at that point in any of the years 2018–2020 would result in the loss of revenues from approximately 0.5 mt (1 percent of 54 mt) of bigeye tuna, which, based on recent ex-vessel prices, would be worth no more than $5,000. Thus, expecting about 27 vessels to engage in the shallow-set fishery (the annual average in 2005–2012), the average of those potentially lost annual revenues would be no more than $200 per vessel. It should be noted that for 2018, shallow-set longline fishing is no longer an available opportunity, as the fishery was closed, effective May 8, 2018, for the remainder of 2018 (see temporary rule published May 11, 2018; 83 FR 21939). The remainder of this analysis focuses on the potential costs of compliance in the deep-set fishery.

It should be noted that the impacts on affected entities' profits will be less than impacts on revenues when considering the costs of operating vessels, because costs would be lower if a vessel ceases fishing after the catch limit is reached. Variable costs can be expected to be affected roughly in proportion to revenues, as both variable costs and revenues would stop accruing once a vessel stops fishing. But affected entities' costs also include fixed costs, which are borne regardless of whether a vessel is used to fish—*e.g.,* if it is tied up at the dock during a fishery closure. Thus, profits will likely be adversely impacted proportionately more than revenues.

As stated previously, actual compliance costs for a given entity might be less than the upper bounds described above, because ceasing fishing will not necessarily be the most profitable alternative opportunity when the catch limit is reached. Two alternative opportunities that are expected to be attractive to affected entities include: (1) Deep-set longline fishing for bigeye tuna in the Convention Area in a manner such that the vessel is considered part of the longline fishery of American Samoa, Guam, or the CNMI; and (2) deep-set longline fishing for bigeye tuna and other species in the EPO. These two opportunities are discussed in detail below. Four additional opportunities are: (3) Shallow-set longline fishing for swordfish (for deep-setting vessels that would not otherwise do so; but as noted above, this opportunity is no longer available in 2018), (4) deep-set longline fishing in the Convention Area for species other than bigeye tuna, (5) working in cooperation with vessels operating as part of the longline fisheries of the Participating Territories—specifically, receiving transshipments at sea from them and delivering the fish to the Hawaii market, and (6) vessel repair and maintenance. A study by NMFS of the effects of the WCPO bigeye tuna longline fishery closure in 2010 (Richmond, L., D. Kotowicz, J. Hospital and S. Allen, 2015, Monitoring socioeconomic impacts of Hawai'i's 2010 bigeye tuna closure: Complexities of local management in a global fishery, Ocean & Coastal Management 106:87–96) did not identify the occurrence of any

alternative activities that vessels engaged in during the closure, other than deep-setting for bigeye tuna in the EPO, vessel maintenance and repairs, and granting lengthy vacations to employees. Based on those findings, NMFS expects that alternative opportunities (3), (4), (5) and (6) are probably unattractive relative to the first two alternatives, and are not discussed here in any further detail. NMFS recognizes that vessel maintenance and repairs and granting lengthy vacations to employees are two alternative activities that might be taken advantage of if the fishery is closed, but no further analysis of their mitigating effects is provided here.

Before examining in detail the two potential alternative fishing opportunities that appear to be the most attractive to affected entities, it is important to note that under the final rule, once the limit is reached and the WCPO bigeye tuna fishery is closed, fishing with longline gear both inside and outside the Convention Area during the same trip will be prohibited (except in the case of a fishing trip that is in progress when the limit is reached and the restrictions go into effect). For example, after the restrictions go into effect, during a given fishing trip, a vessel could be used for longline fishing for bigeye tuna in the EPO or for longline fishing for species other than bigeye tuna in the Convention Area, but not for both. This reduced operational flexibility will bring costs, because it will constrain the potential profits from alternative opportunities. Those costs cannot be quantified.

A vessel could take advantage of the first alternative opportunity (deep-setting for bigeye tuna in a manner such that the vessel is considered part of the longline fishery of one of the three U.S. Participating Territories), by three possible methods: (a) Landing the bigeye tuna in one of the three Participating Territories, (b) holding an American Samoa Longline Limited Access Permit, or (c) being considered part of a Participating Territory's longline fishery, by agreement with one or more of the three Participating Territories under the regulations implementing Amendment 7 to the Pelagics FEP (50 CFR 665.819). In the first two circumstances, the vessel would be considered part of the longline fishery of the Participating Territory only if the bigeye tuna were not caught in the portion of the U.S. EEZ around the Hawaiian Islands and were landed by a U.S. vessel operating in compliance with a permit issued under the regulations implementing the Pelagics FEP or the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species.

With respect to the first method of engaging in alternative opportunity 1 (1.a.) (landing the bigeye tuna in one of the Participating Territories), there are three potentially important constraints. First, whether the fish are landed by the vessel that caught the fish or by a vessel to which the fish were transshipped, the costs of a vessel transiting from the traditional fishing grounds in the vicinity of the Hawaiian Archipelago to one of the Participating Territories would be substantial. Second, none of these three locales has large local consumer markets to absorb substantial additional landings of fresh sashimi-grade bigeye tuna. Third, transporting the bigeye tuna from these locales to larger markets, such as markets in Hawaii, the U.S. west coast, or Japan, would bring substantial additional costs and risks. These cost constraints suggest that this alternative opportunity has limited potential to mitigate the economic impacts of the final rule on affected small entities.

The second method of engaging in the first alternative opportunity (1.b.) (having an American Samoa Longline Limited Access Permit), will be available only to the subset of the Hawaii longline fleet that has both Hawaii and American Samoa longline permits (dual permit vessels). Vessels that do not have both permits could obtain them if they meet the eligibility requirements and pay the required costs. For example, the number of dual permit vessels increased from 12 in 2009, when the first WCPO bigeye tuna catch limit was established, to 23 in 2016. The previously cited NMFS study of the 2010 fishery closure (Richmond *et al.* 2015) found that bigeye tuna landings of dual permit vessels increased substantially after the start of the closure on November 22, 2010, indicating that this was an attractive opportunity for dual permit vessels, and suggesting that those entities might have benefitted from the catch limit and the closure.

The third method of engaging in the first alternative opportunity (1.c.) (entering into an Amendment 7 agreement), was also available in 2011–2017 (in 2011–2013, under section 113(a) of Pub. L. 112–55, 125 Stat. 552 *et seq.,* the Consolidated and Further Continuing Appropriations Act, 2012, continued by Pub. L. 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013; hereafter, ''section 113(a)''). As a result of agreements that were in place in 2011–2014, the WCPO bigeye tuna fishery was not closed in any of those years. In 2015, 2016, and 2017 the fishery was closed but then reopened when agreements went into effect. Participation in an Amendment 7 agreement would likely not come without costs to fishing businesses. As an indication of the possible cost, the terms of the agreement between American Samoa and the members of the Hawaii Longline Association (HLA) in effect in 2011 and 2012 included payments totaling $250,000 from the HLA to the Western Pacific Sustainable Fisheries Fund, equal to $2,000 per vessel. It is not known how the total cost was allocated among the members of the HLA, so it is possible that the owners of particular vessels paid substantially more than or less than $2,000.

The second alternative opportunity (2) (deep-set fishing for bigeye tuna in the EPO), will be an option for affected entities only if it is allowed under regulations implementing the decisions of the IATTC. NMFS has issued a final rule to implement the IATTC's most recent resolution on the management of tropical tuna stocks (83 FR 15503; April 11, 2018). The final rule establishes an annual limit of 750 mt on the catch of bigeye tuna in the EPO by vessels at least 24m in length in each of the years 2018–2020. Annual longline bigeye tuna catch limits have been in place for the EPO in most years since 2004. Since 2009, when the limit was 500 mt, it was reached in 2013 (November 11), 2014 (October 31), and 2015 (August 12). In 2016 NMFS forecasted that the limit would be reached July 25 and subsequently closed the fishery, but later determined that the catch limit had not been reached and re-opened the fishery on October 4, 2016 (81 FR 69717). The limit was not reached in 2017.

The highly seasonal nature of bigeye tuna catches in the EPO and the relatively high inter-annual variation in catches prevents NMFS from making a useful prediction of whether and when the EPO limits in 2018–2020 are likely to be reached. If it is reached, this alternative opportunity would not be available for large longline vessels, which constitute about a quarter of the fleet.

Historical fishing patterns can provide an indication of the likelihood of affected entities making use of the opportunity of deep-setting in the EPO in the event of a closure in the WCPO. The proportion of the U.S. fishery's annual bigeye tuna catches that were captured in the EPO from 2005 through 2008 ranged from 2 percent to 22 percent, and averaged 11 percent. In 2005–2007, that proportion ranged from

2 percent to 11 percent, and may have been constrained by the IATTC-adoped bigeye tuna catch limits established by NMFS (no limit was in place for 2008). Prior to 2009, most of the U.S. annual bigeye tuna catch by longline vessels in the EPO typically was made in the second and third quarters of the year; in 2005–2008 the percentages caught in the first, second, third, and fourth quarters were 14, 33, 50, and 3 percent, respectively. These data demonstrate two historical patterns—that relatively little of the bigeye tuna catch in the longline fishery was typically taken in the EPO (11 percent in 2005–2008, on average), and that most EPO bigeye tuna catches were made in the second and third quarters, with relatively few catches in the fourth quarter when the proposed catch limit would most likely be reached. These two patterns suggest that there could be substantial costs for at least some affected entities that shift to deep-set fishing in the EPO in the event of a closure in the WCPO. On the other hand, fishing patterns since 2008 suggest that a substantial shift in deep-set fishing effort to the EPO could occur. In 2009, 2010, 2011, 2012, 2013, 2014, 2015, and 2016 the proportions of the fishery's annual bigeye tuna catches that were captured in the EPO were about 16, 27, 23, 19, 36, 35, 47, and 36 percent, respectively, and most bigeye tuna catches in the EPO were made in the latter half of the calendar years.

The NMFS study of the 2010 closure (Richmond *et al.* 2015) found that some businesses—particularly those with smaller vessels—were less inclined than others to fish in the EPO during the closure because of the relatively long distances that would need to be travelled in the relatively rough winter ocean conditions. The study identified a number of factors that likely made fishing in the EPO less lucrative than fishing in the WCPO during that part of the year, including fuel costs and the need to limit trip length in order to maintain fish quality and because of limited fuel storage capacity.

In addition to affecting the volume of landings of bigeye tuna and other species, the catch limits could affect fish prices, particularly during a fishery closure. Both increases and decreases appear possible. After a limit is reached and landings from the WCPO are prohibited, ex-vessel prices of bigeye tuna (*e.g.,* that are caught in the EPO or by vessels in the longline fisheries of the three U.S. Participating Territories), as well as of other species landed by the fleet, could increase as a result of the constricted supply. This would mitigate economic losses for vessels that are able to continue fishing and landing bigeye tuna during the closure. For example, the NMFS study of the 2010 closure (Richmond *et al.* 2015) found that ex-vessel prices during the closure in December were 50 percent greater than the average during the previous five Decembers. (It is emphasized that because it was an observational study, neither this nor other observations of what occurred during the closure can be affirmatively linked as effects of the fishery closure.)

Conversely, a WCPO bigeye tuna fishery closure could cause a decrease in ex-vessel prices of bigeye tuna and other products landed by affected entities if the interruption in the local supply prompts the Hawaii market to shift to alternative (*e.g.,* imported) sources of bigeye tuna. Such a shift could be temporary—that is, limited to 2018–2020—or it could lead to a more permanent change in the market (*e.g.,* as a result of wholesale and retail buyers wanting to mitigate the uncertainty in the continuity of supply from the Hawaii longline fisheries). In the latter case, if locally caught bigeye tuna fetches lower prices because of stiffer competition with imported bigeye tuna, then ex-vessel prices of local product could be depressed indefinitely. The NMFS study of the 2010 closure (Richmond *et al.* 2015) found that a common concern in the Hawaii fishing community prior to the closure in November 2010 was retailers having to rely more heavily on imported tuna, causing imports to gain a greater market share in local markets. The study found this not to have been borne out, at least not in 2010, when the evidence gathered in the study suggested that few buyers adapted to the closure by increasing their reliance on imports, and no reports or indications were found of a dramatic increase in the use of imported bigeye tuna during the closure. The study concluded, however, that the 2010 closure caused buyers to give increased consideration to imports as part of their business model, and it was predicted that tuna imports could increase during any future closure. To the extent that ex-vessel prices would be reduced by this action, revenues earned by affected entities would be affected accordingly, and these impacts could occur both before and after the limit is reached, and as described above, possibly after 2020.

The potential economic effects identified above will vary among individual business entities, but it is not possible to predict the range of variation. Furthermore, the impacts on a particular entity will depend on both that entity's response to the final rule and the behavior of other vessels in the fleet, both before and after the catch limit is reached. For example, the greater the number of vessels that take advantage—before the limit is reached—of the first alternative opportunity (1), fishing as part of one of the Participating Territory's fisheries, the lower the likelihood that the limit will be reached.

The fleet's behavior in 2011 and 2012 is illustrative. In both those years, most vessels in the Hawaii fleet were included in a section 113(a) arrangement with the government of American Samoa, and as a consequence, the U.S. longline catch limit was not reached in either year. Thus, none of the vessels in the fleet, including those not included in the section 113(a) arrangements, were prohibited from fishing for bigeye tuna in the Convention Area at any time during those two years. The fleet's experience in 2010 (before opportunities under section 113(a) or Amendment 7 to the Pelagics FEP were available) provides another example of how economic impacts could be distributed among different entities. In 2010 the limit was reached and the WCPO bigeye tuna fishery was closed on November 22. As described above, dual permit vessels were able to continue fishing outside the U.S. EEZ around the Hawaiian Archipelago and benefit from the relatively high ex-vessel prices that bigeye tuna fetched during the closure.

In summary, based on potential reductions in ex-vessel revenues, NMFS has estimated that the upper bound of potential economic impacts of the final rule on affected longline fishing entities could be roughly $160,000 per vessel per year, on average. The actual impacts to most entities are likely to be substantially less than those upper bounds, and for some entities the impacts could be neutral or positive (*e.g.,* if one or more Amendment 7 agreements are in place in 2018–2020 and the terms of the agreements are such that the U.S. longline fleet is effectively unconstrained by the catch limits).

2. FAD Restrictions

This element of the final rule does not establish any new reporting or recordkeeping requirements. The new requirement is for affected vessel owners and operators to comply with the FAD restrictions described earlier in the **SUPPLEMENTARY INFORMATION** section of the preamble, including FAD prohibition periods throughout the Convention Area from July 1 through September 30 in each of the years 2018–2020 and FAD prohibition periods just on the high seas in the Convention Area from November 1 through December 31 in each of the same years. There also is

a limit of 350 active FADs that may be deployed per vessel at any given time. Anecdotal information from the U.S. purse seine fishing industry indicates that U.S. purse seine vessels have not ever deployed more than 350 active FADs at any given time, so NMFS does not expect that the limit will be constraining or otherwise affect the behavior of purse seine operations, and it is not considered further in this FRFA.

Fulfillment of the element's requirements is not expected to require any professional skills that the vessel owners and operators do not already possess. The costs of complying with the requirements are described below to the extent possible.

The proposed FAD restrictions would substantially constrain the manner in which purse seine fishing could be conducted in the specified areas and periods in the Convention Area; in those areas and during those periods, vessels would be able to set only on free, or ''unassociated,'' schools.

With respect to the three-month FAD closure throughout the Convention Area: Assuming that sets would be evenly distributed through the year, the number of annual FAD sets would be expected to be about three-fourths the number that would occur without a seasonal FAD closure. For example, during 2014–2016, the proportion of all sets that were made on FADs when FAD setting was allowed was 50 percent. As an indicative example, if the fleet makes 8,000 sets in a given year (somewhat more than the 2014–2016 average of 7,420 sets per year) and 50 percent of those are FAD sets, it would make 4,000 FAD sets. If there is a three-month closure and 50 percent of the sets outside the closure are FAD sets, and sets are evenly distributed throughout each year, the annual number of FAD sets would be 3,000. This can be compared to the estimated 2,494 annual FAD sets that were made in 2014–2016, on average, when there were three-month FAD closures.

With respect to the two-month high seas FAD closure: The effects of this element are difficult to predict. If the high seas are closed to all purse seine fishing during November–December as a result of the fishing effort limit being reached, the high seas FAD closure during those two months would have no additional effect whatsoever. If the high seas are not closed to fishing, the prohibition on FAD setting would make the high seas less favorable for fishing than they otherwise would be, because only unassociated sets would be allowed there. It is not possible to characterize how influential that factor would be, however. Thus, it is not possible to predict the effects in terms of the spatial distribution of fishing effort or the proportion of fishing effort that is made on FADs.

With respect to both the three-month FAD closure and two-month high seas FAD closure: As for the limits on fishing effort, vessel operators might choose to schedule their routine maintenance periods so as to take best advantage of the available opportunities for making FAD sets, such as during the FAD closures. However, the limited number of vessel maintenance facilities in the region might constrain vessel operators' ability to do this.

It is emphasized that the indicative example given above is based on the assumption that the FAD set ratio would be 50 percent during periods when FAD sets are allowed, as well as that sets are distributed evenly throughout the year. These assumptions are weak from several perspectives, so the results should be interpreted with caution. First, as described above, FAD set ratios have varied widely from year to year, indicating that the conditions that dictate ''optimal'' FAD set ratios for the fleet vary widely from year to year, and cannot be predicted with any certainty. Second, the optimal FAD set ratio during open periods might depend on how long and when those periods occur. For example, FAD fishing might be particularly attractive soon after a closed period during which FADs aggregated fish but were not fished on. These factors are not explicitly accounted for in this analysis, but the 50 percent FAD ratio used in this analysis was taken from 2014–2016, when there was a three-month FAD closure, so it is probably a better indicator for the action alternatives than FAD set ratios for years prior to 2009, when no seasonal FAD closures were in place. With respect to the distribution of sets through the year, the existence of collective limits on fishing effort might create an incentive for individual vessels to fish harder earlier in the year than they otherwise would, resulting in a ''race to fish.'' Limitations on fishing effort throughout the Convention Area could cause vessels to fish (irrespective of set type or the timing of FAD closures) harder earlier in a given year than they would without the limits. However, any such effect is not expected to be great, because most vessels in the fleet tend to fish virtually full time, leaving little flexibility to increase fishing effort at any particular time of the year.

Vessels in the U.S. WCPO purse seine fleet make both unassociated sets and FAD sets when not constrained by regulation, so one type of set is not always more valuable or efficient than the other type. Which set type is optimal at any given time is a function of immediate conditions in and on the water, but probably also of such factors as fuel prices (unassociated sets involve more searching time and thus tend to bring higher fuel costs than FAD sets) and market conditions (*e.g.,* FAD fishing, which tends to result in greater catches of lower-value skipjack tuna and smaller yellowfin tuna and bigeye tuna than unassociated sets, might be more attractive and profitable when canneries are not rejecting small fish). Clearly, the ability to do either type of set is valuable, and constraints on the use of either type can be expected to bring adverse economic impacts to fishing operations. Thus, the greater the constraints on the ability to make FAD sets, the greater the expected economic impacts of the action. Because the factors affecting the relative value of FAD sets and unassociated sets are many, and the relationships among them are not well known, it is not possible to quantify the expected economic impacts of the FAD restrictions. However, it appears reasonable to conclude the following: First, the FAD restrictions will adversely impact producer surplus relative to the no-action alternative. The fact that the fleet has made such a substantial portion of its sets on FADs in the past indicates that prohibiting the use of FADs in the specified areas and periods could bring substantial costs and/or revenue losses. Second, vessel operators might be able to mitigate the impacts of the FAD restrictions by scheduling their routine vessel and equipment maintenance during the FAD closures, but this opportunity might be constrained by the limited vessel maintenance facilities in the region.

3. Purse Seine Fishing Effort Limits

This element of the final rule does not establish any new reporting or recordkeeping requirements, but the existing ''Daily FAD reports'' required at 50 CFR 300.218(g) are slightly revised, and renamed ''Daily purse seine fishing effort reports'' and slightly modify the type of information collected.

There are annual limits of 1,370 and 458 fishing days on the high seas and in the U.S. EEZ, respectively, in the Convention Area. In addition, there is a mechanism to increase the U.S. EEZ limit in a given year to 558 fishing days if 458 fishing days are used by October 1 of that year.

Fulfillment of this element's requirements is not expected to require any professional skills that the vessel owners and operators do not already

possess. The costs of complying with the requirements are described below to the extent possible.

Regarding the modification to the daily reporting requirement, the specific information required in the reports are slightly modified from those of the existing ''Daily FAD reports,'' but the costs of compliance are not expected to change.

Regarding the fishing effort limits, if and when the fishery on the high seas or in the U.S. EEZ is closed as a result of a limit being reached in any of the years 2018–2020, owners and operators of U.S. purse seine vessels will have to cease fishing in that area for the remainder of the calendar year. Closure of the fishery in either of those areas could thereby cause foregone fishing opportunities and associated economic losses if the area contains preferred fishing grounds during such a closure. Historical fishing rates in the two areas give a rough indication of the likelihood of the limits being reached.

Regarding the U.S. EEZ, from 2009 through 2017, no more than 47 percent of the proposed limit of 458 fishing days was ever used (and no more than the 39 percent of the possible limit of 558 fishing days). This history suggests a relatively low likelihood of the EEZ limit being reached in 2018–2020. However, the allowance for an extra 100 fishing days if the 458 fishing days are used by October 1 could provide an incentive for the fleet to use more fishing days in the EEZ than it otherwise would. Furthermore, this would be the first time that separate limits would be established for the EEZ and the high seas, so the incentives for individual vessels in the fleet will change relative to previous years. A minority of the fleet is authorized to fish in the U.S. EEZ (9 of the 37 vessels in the fleet have fishery endorsements on their U.S. Coast Guard Certificates of Documentation, which are required to fish in the U.S. EEZ; the majority of U.S. purse seine fishing activity in the Convention Area takes place in the waters of Pacific Island Parties to the SPTT, pursuant to the terms of the SPTT). With a separate limit for the U.S. EEZ, this minority might take more advantage of it than it has in the past.

Regarding the high seas, from 2009 through 2017, between 29 and 134 percent of the annual limit of 1,370 fishing days was used, and at least 100 percent was used in three of the nine years. In two years, 2015 and 2016, the ELAPS was closed for part of the year (starting June 15 in 2015, and September 2 in 2016), so more fishing effort might have occurred in those two years were there no limits. This history suggests a substantial likelihood of the high seas limit of 1,370 fishing days being reached in any of the years 2018–2020.

Two factors could have a substantial influence on the amount of fishing effort in the U.S. EEZ and on the high seas in 2018–2020: First, the number of fishing days available in foreign waters (the fleet's main fishing grounds) pursuant to the SPTT will influence the incentive to fish outside those waters, including the U.S. EEZ and high seas. Second, El Niño—Southern Oscillation (ENSO) conditions will influence where the best fishing grounds are.

Regarding fishing opportunities in foreign waters, in December 2016, the United States and the Pacific Island Parties to the SPTT (PIPs) agreed upon a revised SPTT, and under this new agreement U.S. purse seine fishing businesses can purchase fishing days in the EEZs of the PIPs. There are limits on the number of such ''upfront'' fishing days that may be purchased. These limits can influence the amount of fishing in other areas, such as the U.S. EEZ and the high seas, as well as the EPO. For example, if the number of available upfront fishing days is relatively small, fishing effort in the U.S. EEZ and/or high seas might be relatively great. In fact, the number of upfront days available for the Kiribati EEZ, which has traditionally constituted important fishing grounds for the U.S. fleet, is notably small—only 300 fishing days per year. However, the new SPTT regime provides for U.S. purse seine fishing businesses to purchase ''additional'' fishing days through direct bilateral agreements with the PIPs. NMFS cannot project how many additional days will be purchased in any given years, so cannot gauge how the limits on upfront days might influence fishing effort in the U.S. EEZ or on the high seas. Limits on upfront days are therefore not considered here any further.

Additionally, effective January 1, 2015, Kiribati prohibited commercial fishing in the Phoenix Islands Protected Area, which is a large portion of the Kiribati EEZ around the Phoenix Islands. These limitations in the Kiribati EEZ in 2015 probably made fishing in the ELAPS more attractive than it otherwise would be.

Regarding El Niño Southern Oscillation (ENSO) conditions, the eastern areas of the WCPO tend to be comparatively more attractive to the U.S. purse seine fleet during El Niño events, when warm surface water spreads from the western Pacific to the eastern Pacific and large, valuable yellowfin tuna become more vulnerable to purse seine fishing and trade winds lessen in intensity. Consequently, the U.S. EEZ and high seas, much of which is situated in the eastern range of the fleet's fishing grounds, is likely to be more important fishing grounds to the fleet during El Niño events (as compared to neutral or La Niña events). This is supported by there being a statistically significant correlation between annual average per-vessel fishing effort in the ELAPS and the Oceanic Niño Index, a common measure of ENSO conditions, over the life of the SPTT through 2010.

El Niño conditions were present in 2015 and in the first half of 2016, and might have contributed to the relatively high rates of fishing in the ELAPS in those years. ENSO neutral conditions began in the latter half of 2016, and continued until the fourth quarter of 2017, when there was a shift to La Niña conditions, which persisted through early 2018 (and which is consistent with the moderate rates of fishing in the ELAPS in 2017). As of May 10, 2018, the National Weather Service states that in April 2018 ENSO-neutral conditions returned, and are predicted to continue at least through September–November 2018. The Northern Hemisphere 2018–2019 winter has about 50% probability of El Niño conditions (National Oceanic and Atmospheric Administration, National Weather Service, Climate Prediction Center. Web page accessed June 12, 2018: *www.cpc.ncep.noaa.gov/products/analysis_monitoring/enso_advisory/index.shtml*). Thus ENSO conditions are likely to have a largely neutral influence through the Northern Hemisphere fall of 2018, followed by a growing probability of conditions that favor fishing in the ELAPS during the Northern Hemisphere 2018–2019 winter. The influence of ENSO conditions on fishing effort after that cannot be predicted with any certainty.

Another potentially important factor is that the EEZ and high seas limits are competitive limits, so they could cause a ''race to fish'' in the two areas. That is, vessel operators might seek to take advantage of the limited number of fishing days available in the areas before the limits are reached, and fish harder in one or both areas than they would if there were no limits. On the one hand, any such race-to-fish effect might be reflected in the history of fishing in the ELAPS, described above.Anecdotal information from the fishing industry suggests that the limits might have been internally allocated by the fleet in the past, which might have tempered any race to fish. It is not known whether the industry intends to internally allocate the limits established in this final rule.

In summary, although difficult to predict, either the U.S. EEZ or high seas limits could be reached in any of the years 2018–2020, especially the high seas limits. If either limit is reached in a given year, the fleet will be prohibited from fishing in that area for the remainder of the calendar year.

The closure of any fishing grounds for any amount of time can be expected to bring adverse impacts to affected entities (*e.g.,* because the open area might, during the closed period, be less productive than the closed area, and vessels might use more fuel and spend more time having to travel to open areas). The severity of the impacts of a closure would depend greatly on the length of the closure and where the most favored fishing grounds are during the closure. A study by NMFS (Chan, V. and D. Squires. 2016. Analyzing the economic impacts of the 2015 ELAPS closure. NMFS Internal Report) estimated that the overall losses to the combined sectors of the vessels, canneries and vessel support companies from the 2015 ELAPS closure ranged from $11 million and $110 million depending on the counterfactual period considered. These results suggest that there were impacts from the ELAPS closure on the American Samoa economy and a connection between U.S. purse seine vessels and the broader American Samoa economy.

If either the U.S. EEZ or high seas is closed, possible next-best opportunities for U.S. purse seine vessels fishing in the WCPO include fishing in the other of the two areas, fishing in foreign EEZs inside the Convention Area, fishing outside the Convention Area in EPO, and not fishing.

With respect to fishing in the U.S. EEZ or on the high seas: If the U.S. EEZ were closed, the high seas would be available to the fleet until its limit is reached. If the high seas were closed, the U.S. EEZ would be available until its limit is reached, but only for the vessels with fishery endorsements on their Certificates of Documentation (currently 9, including 8 vessels with SPTT licenses and one additional vessel without).

With respect to fishing in the Convention Area in foreign EEZs: As described above, under the SPTT the fleet might have substantial fishing days available in the Pacific Island country EEZs that dominate the WCPO, but it is not possible to predict how many fishing days will be available to the fleet as a whole or to individual fishing businesses.

With respect to fishing in the EPO: The fleet has generally increased its fishing operations in the EPO since 2014, and as of 2017, there were 17 purse seine vessels in the WCPO fleet that are also listed on the IATTC Vessel Register. In order to fish in the EPO, a vessel must be on the IATTC's Regional Vessel Register and categorized as active (50 CFR 300.22(b)), which involves fees of about $14.95 per cubic meter of well space per year (*e.g.,* a vessel with 1,200 m^3 of well space would be subject to annual fees of $17,940). (As an exception to this rule, an SPTT-licensed vessel is allowed to make one fishing trip in the EPO each year without being categorized as active on the IATTC Regional Vessel Register. The trip must not exceed 90 days in length, and there is an annual limit of 32 such trips for the entire SPTT-licensed fleet (50 CFR 300.22(b)(1)).) The number of U.S. purse seine vessels in the WCPO fleet that have opted to be categorized as such has increased in the last few years from zero to 17, probably largely a result of constraints on fishing days in the WCPO and/or uncertainty in future access arrangements under the SPTT. This suggests an increasing attractiveness of fishing in the EPO, in spite of the costs associated with doing so. However, in 2018 vessels probably will not have the opportunity to fish in the EPO year-round. To implement a recent decision of the IATTC, NMFS has published a final rule that requires purse seine vessels to choose between two EPO fishing prohibition periods each year in 2018–2020: July 29–October 8 or November 9–January 19 (72 days in either case). Thus, the opportunity to fish in the EPO might be constrained, depending on when the U.S. EEZ and/or high seas in the WCPFC Area is closed, and which EPO closure period a given vessel operator chooses.

With respect to not fishing at all during a closure of the U.S. EEZ or high seas: This would mean a loss of any revenues from fishing. However, many of the vessels' variable operating costs would be avoided in that case, and it is possible that for some vessels a portion of the time might be used for productive activities like vessel and equipment maintenance.

The opportunity costs of engaging in next-best opportunities in the event of a closure are not known, so the potential impacts cannot be quantified. However, to give an indication of the magnitude of possible economic impacts to producers in the fishery (*i.e.,* an indication of the upper bound of those impacts), information on revenues per day is provided here.

The last five years for which catch estimates for the U.S. WCPO purse seine fleet are available are 2012–2016. Those estimates, adjusted to an indicative fleet size of 35 vessels, equate to annual average catches of skipjack tuna, yellowfin tuna, and bigeye tuna of 236,077 mt, 24,802 mt, and 4,213 mt, respectively, or 265,091 mt in total. Applying an indicative current Bangkok cannery price for skipjack tuna of $1,500 per mt to all three species, the value of annual fleet-wide catches at 2012–2016 average levels would be about $398 million, equivalent to a little more than $1 million per calendar day, on average. It should be noted that cannery prices are fairly volatile; for example, cannery prices are much lower now than prices during most of 2017.

In addition to the effects described above, the purse seine effort limits could affect the temporal distribution of fishing effort in the U.S. purse seine fishery. Since the limits will apply fleet-wide—that is, they will not be allocated to individual vessels—vessel operators might have an incentive to fish harder in the affected areas earlier in each calendar year than they otherwise would. Such a race-to-fish effect might also be expected in the time period between when a closure of the fishery is announced and when it is actually closed, which would be at least seven calendar days. To the extent such temporal shifts occur, they could affect the seasonal timing of fish catches and deliveries to canneries. The timing of cannery deliveries by the U.S. fleet alone (as it might be affected by a race to fish in the EEZ or high seas) is unlikely to have an appreciable impact on prices, because many canneries in the Asia-Pacific region and elsewhere buy from the fleets of multiple nations, as well as other domestic fleets. A race to fish could bring costs to affected entities if it causes vessel operators to forego vessel maintenance in favor of fishing or to fish in weather or ocean conditions that they otherwise would not. This could bring costs in terms of the health and safety of the crew as well as the economic performance of the vessel.

4. Eastern High Seas Special Management Area

This element of the final rule removes a reporting/recordkeeping requirement, the requirement to notify NMFS when entering and exiting the EHSSMA. It also establishes a prohibition on transshipment in the EHSSMA.

Fulfillment of this element's requirements is not expected to require any professional skills that the vessel owners and operators do not already possess. The costs of complying with the requirements are described below to the extent possible.

Regarding the entry/exit notices, when NMFS established the requirement in 2012 (final rule published December 3, 2012; 77 FR 71501), it estimated that each report would require about 15 minutes of labor (at a labor cost of about $60 per hour) and no more than $1 in communication costs, for an estimated total cost of compliance of about $16 per notice. At that time, NMFS estimated that each longline vessel would enter and exit the EHSSMA between zero and approximately four times per year (requiring 0–8 notices per year at an annual cost of $0–128), each purse seine vessel would do so between zero and approximately two times per year (requiring 0–4 notices per year at an annual cost of $0–64), and each albacore troll vessel would do so between zero and two times per year (requiring 0–4 notices per year at an annual cost of $0–64). According to the notices received by NMFS, zero longline vessels and zero albacore troll vessels have entered the EHSSMA from 2013 through 2017, and there have been nine entries/exits by purse seine fishing vessels. In any case, under the final rule, commercial fishing vessels will be relieved of about $16 in compliance costs each time they enter or exit the EHSSMA.

Disproportionate Impacts

As described above, the type of the impacts will vary greatly among fishing gear types (*i.e.,* longline versus albacore troll versus purse seine), and the magnitude of the impacts also could vary greatly by fishing gear type (but they are difficult to quantify and compare). Nevertheless, all the affected entities in the longline and albacore troll fishing sectors are small entities, so there will be no disproportionate impacts between small and large entities within those sectors. In the purse seine fishing sector, slightly more than half the affected entities are small entities. The direct effect of the final rule will be to constrain fishing effort by purse seine fishing vessels, with consequent constraining effects on both revenues (because catches would be less) and operating costs (because less fishing would be undertaken). Although some purse seine fishing entities are larger than others, NMFS is not aware of any differences between the small entities and the large entities (as defined by the RFA) in terms of their capital costs, operating costs, or other aspects of their businesses. Accordingly, there is no information to suggest that the direct adverse economic impacts on small purse seine entities will be disproportionately greater than those on large purse seine entities.

Steps Taken To Minimize the Significant Economic Impacts on Small Entities

NMFS has sought to identify alternatives that would minimize the final rule's economic impacts on small entities (''significant alternatives''). Taking no action could result in lesser adverse economic impacts than the final rule for affected entities (but as described below, for some affected longline entities, the final rule could be more economically beneficial than no-action), but NMFS has rejected the no-action alternative because it would be inconsistent with the United States' obligations under the Convention. Alternatives identified for each of the four elements of the final rule are discussed below.

1. Longline Bigeye Tuna Catch Limits

NMFS has not identified any significant alternatives for this element of the final rule, other than the no-action alternative.

2. FAD Restrictions

NMFS considered in detail one alternative to this element of the final rule, but only with respect to the timing of the two-month FAD closure for the high seas. CMM 2017–01 allows members to choose either November–December, as in this final rule, or April–May. NMFS has compared the expected direct economic impacts of the two alternatives on purse seine fishing businesses in the regulatory impact review prepared for the proposed rule. The analysis finds that a November–December closure is more likely to have a lesser direct economic impact on those businesses than an April–May closure, primarily because the later closure period is more likely to run concurrently with a closure of the high seas in the Convention Area to purse seine fishing (if the fishing effort limit in this final rule is reached), in which case the FAD closure would bring no additional economic impacts. NMFS has rejected the alternative of an April–May FAD closure for that reason. Please see Comment 5 above, for a summary of the comments received on this matter, as well as NMFS' response to those comments.

3. Purse Seine Fishing Effort Limits

In the past, Commission decisions did not expressly limit NMFS' ability to implement the U.S. purse seine fishing effort limits on the high seas and in the U.S. EEZ as a single combined limit in the ELAPS. As described above, for this final rule, in light of the plain language of Paragraph 29 of CMM 2017–01, which sets forth specific rules and guidelines regarding transferring fishing days from the U.S. EEZ limit to the high seas limit for the United States for 2018, we believe we are required to separately establish and enforce the U.S. high seas limit and the U.S. EEZ limit. Thus, NMFS is not implementing the alternative of combining the two limits into a single limit for the ELAPS for 2018. However, NMFS has analyzed this alternative here and in the revised RIR and, and will continue to consider this alternative in 2019 or 2020 (as described in the proposed rule and the RIR, the analysis for the rule is for a three-year time period), to the extent it is consistent with future Commisison decisions on tropical tuna management.

A combined limit would provide 1,828 fishing days per calendar year in the ELAPS (versus, under the rule, an annual limit of 1,370 fishing days on the high seas and a separate annual limit of 458 fishing days in the U.S. EEZ, with the possibility of an increase in the latter to 558 fishing days if the 458 fishing days are used by October 1, 2018). It is difficult to predict the behavior and performance of vessels under these two alternatives, but they could have different economic impacts on fishing businesses. The rule, with separate limits, offers the potential of more fishing days per year (1,928) than under the alternative of a combined limit (1,828). However, it does not appear likely that 458 fishing days will be used in the U.S. EEZ by October 1, 2018, so it is likely that both alternatives offer a total of 1,828 fishing days. A single combined limit offers more operational flexibility for the fleet as a whole than separate limits, and that greater flexibility would be expected to result in fewer losses to some or most of the affected fishing businesses. For example, under separate limits, the U.S. EEZ limit appears less constraining than the high seas limit, so it would likely be more costly to the fleet as a whole to make full use of both limits than it would to make full use of the single combined limit. However, the expected impacts of the two alternatives on fishing businesses would be dependent on whether a given vessel has a fishery endorsement on its U.S. Coast Guard Certificate of Documentation, which is required to fish in the U.S. EEZ. With separate limits for the U.S. EEZ and high seas, those vessels without fishery endorsements, which comprise the majority of the fleet, would not have access to the 458 (or possibly 558) fishing days per year for the U.S. EEZ, but under a combined limit for the ELAPS, those fishing days could be used on the high seas, so they would be

effectively available to all affected fishing businesses. Thus, a single combined limit would appear to be more favorable to vessels without fishery endorsements. Having separate limits could be advantageous to vessels with fishery endorsements if the high seas limit is reached before the U.S. EEZ limit is reached, which appears likely for 2018. In that case, the remainder of the limit for the U.S. EEZ would be available only to vessels with fishery endorsements. If the U.S. EEZ limit were more constraining than the high seas limit under separate limits (which it appears not to be), then separate limits would appear to be less advantageous to vessels with fishery endorsements than a combined limit, since under a combined limit they would have more time to fish in both the U.S. EEZ and on the high seas.

4. Eastern High Seas Special Management Area

NMFS has not identified any significant alternatives for this element of the final rule, other than the no-action alternative.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. NMFS has prepared small entity compliance guides for this rule, and will send the appropriate guides to holders of permits in the relevant fisheries. The guides and this final rule also will be available at *www.fpir.noaa.gov* and by request from NMFS PIRO (see **ADDRESSES**).

Paperwork Reduction Act

This final rule contains a revised collection-of-information requirement subject to review and approval by OMB under the PRA. This requirement has been submitted to OMB for approval under Control Number 0648–0649. Public reporting burden for the daily report of purse seine effort information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

One comment was received on this collection-of-information requirement in response to the proposed rule (see Comment 10 and NMFS' response, above). Send comments on these or any other aspects of the collection of information to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see **ADDRESSES**), and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: July 13, 2018.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

■ 1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

■ 2. In § 300.211, add a definition in alphabetical order for ''Active FAD'' to read as follows:

§ 300.211 Definitions.

* * * * *

Active FAD is a FAD that is equipped with a buoy with a clearly marked reference number allowing its identification and equipped with a satellite tracking system to monitor its position.

* * * * *

■ 3. In § 300.217, revise paragraph (b)(1) to read as follows:

§ 300.217 Vessel identification.

* * * * *

(b) * * *

(1) Vessels shall be marked in accordance with the identification requirements of § 300.336(b)(2), and if an IRCS has not been assigned to the vessel, then the Federal, State, or other documentation number used in lieu of the IRCS must be preceded by the characters ''USA'' and a hyphen (that is, ''USA-'').

* * * * *

■ 4. In § 300.218, revise paragraphs (a)(2)(v) and (g) to read as follows:

§ 300.218 Reporting and recordkeeping requirements.

(a)* * *

(2)* * *

(v) *High seas fisheries.* Fishing activities subject to the reporting requirements of § 300.341 must be maintained and reported in the manner specified in § 300.341(a).

* * * * *

(g) *Daily purse seine fishing effort reports.* If directed by NMFS, the owner or operator of any fishing vessel of the United States equipped with purse seine gear must report to NMFS, for the period and in the format and manner directed by the Pacific Islands Regional Administrator, within 24 hours of the end of each day that the vessel is at sea in the Convention Area, the activity of the vessel (*e.g.,* setting, transiting, searching), location and type of set, if a set was made during that day.

* * * * *

■ 5. In § 300.222, revise paragraphs (v), (w), (oo), and (pp) to read as follows:

§ 300.222 Prohibitions.

* * * * *

(v) Use a fishing vessel equipped with purse seine gear to fish in an area closed to purse seine fishing under § 300.223(a).

(w) Set a purse seine around, near or in association with a FAD or a vessel, deploy, activate, or service a FAD, or use lights in contravention of § 300.223(b).

* * * * *

(oo) Transship in the Eastern High Seas Special Management Area in contravention of § 300.225.

(pp) Fail to submit, or ensure submission of, a daily purse seine fishing effort report as required in § 300.218(g).

* * * * *

■ 6. In § 300.223, revise paragraphs (a) and (b) to read as follows:

§ 300.223 Purse seine fishing restrictions.

* * * * *

(a) *Fishing effort limits.* This paragraph establishes limits on the number of fishing days that fishing vessels of the United States equipped with purse seine gear may operate in the Convention Area in the area between

20° N latitude and 20° S latitude in a calendar year.

(1) For the high seas there is a limit of 1,370 fishing days in 2018.

(2) For the U.S. EEZ there is a limit of 458 fishing days for 2018. If NMFS expects that this limit will be reached by October 1, 2018, NMFS will publish a document in the **Federal Register** increasing the limit for that calendar year to 558 fishing days no later than seven days prior to October 1, 2018.

(3) NMFS will determine the number of fishing days spent on the high seas and in the U.S. EEZ in each calendar year using data submitted in logbooks and other available information. After NMFS determines that a limit in a calendar year is expected to be reached by a specific future date, and at least seven calendar days in advance of the closure date, NMFS will publish a document in the **Federal Register** announcing that the purse seine fishery in the area where the limit is expected to be reached will be closed starting on that specific future date and will remain closed until the end of the calendar year.

(4) Once a fishery closure is announced pursuant to paragraph (a)(3) of this section, fishing vessels of the United States equipped with purse seine gear may not be used to fish in the closed area during the period specified in the **Federal Register** document, except that such vessels are not prohibited from bunkering during a fishery closure.

(b) *Use of fish aggregating devices.* (1) During the periods and in the areas specified in paragraph (b)(2) of this section, owners, operators, and crew of fishing vessels of the United States equipped with purse seine gear shall not do any of the activities described below in the Convention Area in the area between 20° N latitude and 20° S latitude:

(i) Set a purse seine around a FAD or within one nautical mile of a FAD.

(ii) Set a purse seine in a manner intended to capture fish that have aggregated in association with a FAD or a vessel, such as by setting the purse seine in an area from which a FAD or a vessel has been moved or removed within the previous eight hours, or setting the purse seine in an area in which a FAD has been inspected or handled within the previous eight hours, or setting the purse seine in an area into which fish were drawn by a vessel from the vicinity of a FAD or a vessel.

(iii) Deploy a FAD into the water.

(iv) Repair, clean, maintain, or otherwise service a FAD, including any electronic equipment used in association with a FAD, in the water or on a vessel while at sea, except that:

(A) A FAD may be inspected and handled as needed to identify the FAD, identify and release incidentally captured animals, un-foul fishing gear, or prevent damage to property or risk to human safety; and

(B) A FAD may be removed from the water and if removed may be repaired, cleaned, maintained, or otherwise serviced, provided that it is not returned to the water.

(v) From a purse seine vessel or any associated skiffs, other watercraft or equipment, do any of the following, except in emergencies as needed to prevent human injury or the loss of human life, the loss of the purse seine vessel, skiffs, watercraft or aircraft, or environmental damage:

(A) Submerge lights under water;

(B) Suspend or hang lights over the side of the purse seine vessel, skiff, watercraft or equipment, or;

(C) Direct or use lights in a manner other than as needed to illuminate the deck of the purse seine vessel or associated skiffs, watercraft or equipment, to comply with navigational requirements, and to ensure the health and safety of the crew.

(2) The requirements of paragraph (b)(1) of this section shall apply:

(i) From July 1 through September 30, in each calendar year;

(ii) In any area of high seas, from November 1 through December 31, in each calendar year.

(3)(i) *Activating FADs for purse seine vessels.* A vessel owner, operator, or crew of a fishing vessel of the United States equipped with purse seine gear shall turn on the tracking equipment of an active FAD while the FAD is onboard the vessel and before it is deployed in the water.

(ii) *Restrictions on Active FADs for purse seine vessels.* U.S. vessel owners and operators of a fishing vessel of the United States equipped with purse seine gear shall not have more than 350 drifting active FADs per vessel in the Convention Area at any one time.

* * * * *

■ 7. In § 300.224, revise paragraph (a)(1) and remove and reserve paragraph (a)(2).

The revision reads as follows:

§ 300.224 Longline fishing restrictions.

(a) * * *

(1) There is a limit of 3,554 metric tons of bigeye tuna per calendar year that may be captured in the Convention Area by longline gear and retained on board by fishing vessels of the United States.

* * * * *

■ 8. Revise § 300.225 to read as follows:

§ 300.225 Eastern High Seas Special Management Area.

The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS is prohibited from engaging in transshipment in the Eastern High Seas Special Management Area.

[FR Doc. 2018–15341 Filed 7–17–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150413357–5999–02]

RIN 0648–XG325

Atlantic Highly Migratory Species; Commercial Aggregated Large Coastal Shark and Hammerhead Shark Management Group Retention Limit Adjustment

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

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS is adjusting the commercial aggregated large coastal shark (LCS) and hammerhead shark management group retention limit for directed shark limited access permit holders in the Atlantic region from 3 LCS other than sandbar sharks per vessel per trip to 36 LCS other than sandbar sharks per vessel per trip. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments. The retention limit will remain at 36 LCS other than sandbar sharks per vessel per trip in the Atlantic region through the rest of the 2018 fishing season or until NMFS announces via a notification in the **Federal Register** another adjustment to the retention limit or a fishery closure. This retention limit adjustment affects anyone with a directed shark limited access permit fishing for LCS in the Atlantic region.

DATES: This retention limit adjustment is effective on July 18, 2018, through December 31, 2018, or until NMFS announces via a notification in the **Federal Register** another adjustment to the retention limit or a fishery closure, if warranted.

FOR FURTHER INFORMATION CONTACT: Lauren Latchford, Guý DuBeck, or Karyl

Brewster-Geisz 301–427–8503; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: Atlantic shark fisheries are managed under the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and implementing regulations (50 CFR part 635) issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Atlantic shark fisheries have separate regional (Gulf of Mexico and Atlantic) quotas for all management groups except those for blue shark, porbeagle shark, pelagic sharks (other than porbeagle or blue sharks), and the shark research fishery for LCS and sandbar sharks. The boundary between the Gulf of Mexico region and the Atlantic region is defined at § 635.27(b)(1) as a line beginning on the East Coast of Florida at the mainland at 25°20.4′ N. lat, proceeding due east. Any water and land to the north and east of that boundary is considered, for the purposes of setting and monitoring quotas, to be within the Atlantic region. This inseason action only affects the aggregated LCS and hammerhead shark management groups in the Atlantic region.

Under § 635.24(a)(8), NMFS may adjust the commercial retention limits in the shark fisheries during the fishing season. Before making any adjustment, NMFS must consider specified regulatory criteria (see § 635.24(a)(8)(i) through (vi)). After considering these criteria as discussed below, NMFS has concluded that increasing the retention limit of the Atlantic aggregated LCS and hammerhead management groups for directed shark limited access permit holders in the Atlantic region will allow use of available aggregated LCS and hammerhead shark management group quotas and will provide fishermen throughout the region equitable fishing opportunities for the rest of the year. Therefore, NMFS is increasing the commercial Atlantic aggregated LCS and hammerhead shark retention limit in the Atlantic region from 3 to 36 LCS other than sandbar shark per vessel per trip.

NMFS considered the inseason retention limit adjustment criteria listed at § 635.24(a)(8)(i) through (vi), which includes:

- The amount of remaining shark quota in the relevant area, region, or sub-region to date, based on dealer reports.

Based on dealer reports through June 18, 2018, 52.6 metric tons (mt) dressed weight (dw) (116,048 lb dw), or 25 percent, of the 168.9 mt dw shark quota for aggregated LCS and 4.9 mt dw (10,836 lb dw), or 18 percent, of the 27.1 mt dw shark quota for the hammerhead management groups have been harvested in the Atlantic region. This means that approximately 75 percent of the aggregated LCS quota remains available and approximately 82 percent of the hammerhead shark quota remains available. NMFS took action previously this year to reduce retention rates after considering the relevant inseason adjustment criteria, particularly the need for all regions to have an equitable opportunity to utilize the quota. Given the geographic distribution of the sharks at this time of year (*i.e.,* they are heading north before moving south again later in the year), the retention limit needs to be adjusted upwards to ensure that fishermen in the Atlantic region have an opportunity to fully utilize the quotas in the region throughout the remainder of the year.

- The catch rates of the relevant shark species/complexes in the region or sub-region, to date, based on dealer reports.

Based on the current commercial retention limit and average catch rate of landings data from dealer reports, the amount of aggregated LCS and hammerhead shark quota available is high, while harvest in the Atlantic region on a daily basis is low. Using current catch rates, projections indicate that landings would not reach 80 percent of the quota before the end of the 2018 fishing season (December 31, 2018). A higher retention limit will better promote fishing opportunities and utilization of available quota in the Atlantic region.

- Estimated date of fishery closure based on when the landings are projected to reach 80 percent of the quota given the realized catch rates.

Once the landings reach 80 percent of either the aggregated LCS or hammerhead shark quotas, NMFS would, as required by the regulations at § 635.28(b)(3), close the aggregated LCS and hammerhead shark management groups since they are ''linked quotas.'' Current catch rates would likely result in the fisheries remaining open for the remainder of the year, but with the quotas being underutilized in the Atlantic region. The higher retention limit should help make it possible to more fully utilize the quota in the Atlantic region.

- Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments.

Increasing the retention limit on the aggregated LCS and hammerhead management groups in the Atlantic region from 3 to 36 LCS other than sandbar sharks per vessel per trip would allow for fishing opportunities later in the year, consistent with the FMP's objective to ensure equitable fishing opportunities throughout the region.

- Variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge.

The directed shark fisheries in the Atlantic region are composed of a mix of species, with a high abundance of aggregated LCS caught in conjunction with hammerhead sharks. Migratory patterns of many LCS in the Atlantic region indicate the sharks move farther north in the summer and then return south in the fall. Increasing the retention limit in the Atlantic region at this time provides for fishing opportunities by fishermen farther north (*i.e.* Mid-Atlantic and New England) as the sharks are likely going to be in the northern areas of the region for only a short period of time before migrating south again. As a result, by increasing the harvest and landings on a per-trip basis, fishermen throughout the Atlantic region will likely experience equitable fishing opportunities.

- Effects of catch rates in one part of a region or sub-region precluding vessels in another part of that region or sub-region from having a reasonable opportunity to harvest a portion of the relevant quota.

NMFS has previously provided notice to the regulated community (82 FR 55512; November 22, 2017, and 83 FR 21744; May 10, 2018) that a goal of this year's fishery is to ensure fishing opportunities throughout the fishing season and the Atlantic region. While dealer reports indicate that, under current catch rates, the aggregated LCS and hammerhead shark management groups in the Atlantic region would remain open for the remainder of the year, the catch rates also indicate that the quotas would likely not be fully harvested under the current retention limit. If the harvest of these species is increased through an increased retention limit, NMFS estimates that the fishery would still remain open for the remainder of the year and fishermen throughout the Atlantic region would have a reasonable opportunity to harvest a portion of the quota.

On November 22, 2017 (82 FR 55512), NMFS announced in a final rule that the aggregated LCS and hammerhead shark fisheries management groups for the Atlantic region would open on January 1 with a quota of 168.9 mt dw (372,552 lb dw) and 27.1 mt dw (59,736 lb dw), respectively. We had published a proposed rule on August 22, 2017 (82 FR 39735) and invited and considered

public comment. In the final rule, NMFS explained that if it appeared that the quota is being harvested too quickly, thus precluding fishing opportunities throughout the entire region (*e.g.,* if approximately 20 percent of the quota is caught at the beginning of the year), NMFS would consider reducing the commercial retention limit to 3 or fewer LCS other than sandbar sharks and then later consider increasing the retention limit, perhaps to 36 LCS other than sandbar sharks per vessel per trip around July 15, 2018, consistent with the applicable regulatory requirements. In May 2018, dealer reports indicated that landings had reached 19 percent of the quota, and NMFS therefore reduced the commercial Atlantic aggregated LCS and hammerhead shark retention limit from 25 to 3 LCS other than sandbar sharks per vessel per trip on May 12, 2018 (83 FR 21744; May 10, 2018) after considering the inseason retention limit adjustment criteria listed in § 635.24(a)(8). Based on dealer reports through June 18, 2018, approximately 75 percent and 82 percent of the aggregated LCS and hammerhead shark quotas remain, respectively. At this point in the season, fishermen in the Atlantic region may not have an opportunity to fully utilize the quotas in the region for the remainder of the year if the retention limits are not increased, and available quota will be underutilized.

Accordingly, as of July 18, 2018, NMFS is increasing the retention limit for the commercial aggregated LCS and hammerhead shark management groups in the Atlantic region for directed shark limited access permit holders from 3 LCS other than sandbar sharks per vessel per trip to 36 LCS other than sandbar sharks per vessel per trip. This retention limit adjustment does not apply to directed shark limited access permit holders if the vessel is properly permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip, in which case the recreational retention limits for sharks and ''no sale'' provisions apply (§ 635.22(a) and (c)); or if the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is onboard, in which case the restrictions noted on the shark research permit apply.

All other retention limits and shark fisheries in the Atlantic region remain unchanged. This retention limit will remain at 36 LCS other than sandbar sharks per vessel per trip for the rest of the 2018 fishing season, or until NMFS announces via a notification in the **Federal Register** another adjustment to the retention limit or a fishery closure, if warranted.

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:

Prior notice is impracticable because the regulatory criteria for inseason retention limit adjustments are intended to allow the agency to respond quickly to existing management considerations, including remaining available shark quotas, estimated dates for the fishery closures, the regional variations in the shark fisheries, and equitable fishing opportunities. Additionally, regulations implementing Amendment 6 of the 2006 Atlantic Consolidated HMS FMP (80 FR 50074, August 18, 2015) intended that the LCS retention limit could be adjusted quickly throughout the fishing season to provide management flexibility for the shark fisheries and provide equitable fishing opportunities to fishermen throughout a region. Based on available shark quotas and informed by shark landings in previous seasons, responsive adjustment to the LCS commercial retention limit from the incidental level is warranted as quickly as possible to allow fishermen to take advantage of available quotas while sharks are present in their region. For such adjustment to be practicable, it must occur in a timeframe that allows fishermen to take advantage of it.

Adjustment of the LCS fisheries retention limit in the Atlantic region will begin on July 18, 2018. Prior notice would result in delays in increasing the retention limit and would adversely affect those shark fishermen that would otherwise have an opportunity to harvest more than the current retention limit of 3 LCS other than sandbar sharks per vessel per trip and could result in low catch rates and underutilized quotas. Analysis of available data shows that adjustment of the LCS commercial retention limit upward to 36 would result in minimal risks of exceeding the aggregated LCS and hammerhead shark quotas in the Atlantic region based on our consideration of previous years' data, in which the fisheries have opened in July. With quota available and with no measurable impacts to the stocks expected, it would be contrary to the public interest to require vessels to wait to harvest the sharks otherwise allowable through this action. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. Adjustment of the LCS commercial retention limit in the Atlantic region is effective July 18, 2018, to minimize any unnecessary disruption in fishing patterns, to allow the impacted fishermen to benefit from the adjustment, and to not preclude fishing opportunities by fishermen farther north as the sharks are likely going to be in the northern areas of the region for only a short period of time before migrating south again. Foregoing opportunities to harvest the respective quotas could have negative social and economic impacts for U.S. fishermen that depend upon catching the available quotas. Therefore, the AA finds there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.24(a)(2) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 12, 2018.

Margo B. Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–15283 Filed 7–13–18; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 138
Wednesday, July 18, 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–2018–0584; Product Identifier 2017–NM–173–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A330–200, A330–200 Freighter, and A330–300 series airplanes. This proposed AD was prompted by reports of dual flight management system (FMS) resets with the loss of flight plan (F–PLN) data. This proposed AD would require revising the airplane flight manual (AFM) to prohibit Required Navigation Performance—Authorization Required (RNP–AR) operations using Flight Management Guidance Envelope Computer (FMGEC) standard P5H3. This proposed AD would also require modifying the FMS software of airplanes equipped with FMGEC standard P5H3. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by September 4, 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 Airbus SAS, Airworthiness Office—EAL, 2 Rond-Point Emile Dewoitine, 31700 Blagnac, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* internet *http://www.airbus.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.

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–2018–0584; 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 Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

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–2018–0584; Product Identifier 2017–NM–173–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 based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0233, dated November 23, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A330–200, Model A330–200 Freighter, and Model A330–300 series airplanes. The MCAI states:

> Operators of [Airbus] A330 aeroplanes fitted with a Flight Management Guidance Envelope Computer (FMGEC) standard P5H3 have reported some occurrences of dual Flight Management System (FMS) reset with the loss of Flight Plan (F–PLN) data. These events have been identified in all flight phases, including Take-Off transition.
>
> This condition, if not corrected, particularly in the context of Required Navigation Performance—Authorization Required (RNP–AR) operations of the aeroplane, could lead to a large reduction in safety margins due to terrain and/or surrounded traffic proximity [below acceptable safety margins], and out of the context of RNP–AR operations could lead to an increased pilot workload.
>
> To address this potential unsafe condition, Airbus issued Aircraft Flight Manual (AFM) Temporary Revision (TR) 774 issue 1 [approved October 13, 2017, to the Airbus A330/A340 Airplane Flight Manual] to provide instructions to prohibit RNP–AR operations. In addition, Airbus developed modification (mod) 207362 to allow FMS software downgrading from P5 to P4A standard, and issued [Airbus] Alert Operator Transmission (AOT) A22L002–17 [dated October 20, 2017] providing instructions to implement that mod on in-service aeroplanes. As a long term action, Airbus intends to publish [Airbus] Service Bulletin (SB) A330–22–3264 [dated March 14, 2018], which will supersede [Alert Operators Transmission] AOT A22L002–17 [dated October 20, 2017], to provide the same instructions for FMS software downgrade.
>
> For the reasons described above, this [EASA] AD requires amendment of the applicable AFM and operating the aeroplane accordingly, and requires FMS software downgrading of aeroplanes with FMGEC standard P5H3.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0584.

Related Service Information Under 1 CFR Part 51

Airbus has issued Temporary Revision TR774, RNP–AR Operations

Forbidden with FMGEC Standard P5H3, Issue 1, approved October 13, 2017, to the Airbus A330/A340 Airplane Flight Manual. The service information describes the operational restrictions for Required Navigation Performance—Authorization Required (RNP–AR) on Airbus A330 airplanes equipped with FMGEC standard P5H3.

Airbus has issued Airbus Service Bulletin A330–22–3264, dated March 14, 2018. The service information describes procedures to downgrade the FMS from P5 to P4A operational software on P5H3 FMGEC standard, by embodying Modification 207362S34542 on the affected airplanes.

The 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.

Other Related Service Information

The Airbus A330/A340 Airplane Flight Manual (AFM) for the aircraft affected by this AD is required to be furnished with the aircraft, per 14 CFR 25.1581. Further, operators of the aircraft affected by this AD must operate in accordance with the limitations specified in the AFM, per 14 CFR 91.9.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

We estimate that this proposed AD affects 3 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
3 work-hours × $85 per hour = $255	$0	$255	$765

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

Authority for This Rulemaking

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

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

This 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 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 this 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 adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2018–0584; Product Identifier 2017–NM–173–AD.

(a) Comments Due Date

We must receive comments by September 4, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A330–201, A330–202, A330–203, A330–223, A330–223F, A330–243, A330–243F, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, and A330–343 airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 22, Auto flight.

(e) Reason

This AD was prompted by reports of dual flight management system (FMS) resets with the loss of flight plan (F–PLN) data. We are issuing this AD to address dual FMS reset and loss of F–PLN data, which in the context of Required Navigation Performance—Authorization Required (RNP–AR) operations of the airplane could result in significantly reduced situational awareness of proximity to terrain and/or other aircraft to below

acceptable safety margins, and out of the context of RNP–AR operations could lead to an unusually high pilot workload.

(f) Compliance

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

(g) Definitions

For the purposes of this AD, the definitions in paragraphs (g)(1) through (g)(3) of this AD apply.

(1) Group 1 airplanes are those that have Flight Management Guidance Envelope Computer (FMGEC) standard P5H3 (Airbus Modification 204758 Part Number (P/N) FMGEC C13226HA07 with P/N FMS operational SW PS4087700–906) embodied in production, or embodied in service as specified in Airbus Service Bulletin A330–22–3209; or Airbus Service Bulletin A330–22–3225; or Airbus Service Bulletin A330–22–3244; or Airbus Service Bulletin A330–22–3247; or Airbus Service Bulletin A330–22–3262, except those that have RNP–AR.

(2) Group 2 airplanes have the same configuration as those in Group 1, but in addition have RNP–AR (Airbus Modification 203441, or Airbus Modification 203442, or Airbus Modification 200624) embodied in production or Airbus Service Bulletin A330–34–3262; or Airbus Service Bulletin A330–34–3308; or Airbus Service Bulletin A330–34–3345, embodied in service.

(3) Group 3 airplanes are those in any configuration other than that identified in paragraph (g)(1) or (g)(2) of this AD.

(h) Airplane Flight Manual (AFM) Revision

For Group 2 airplanes: Within 30 days after the effective date of this AD, revise the Limitations section of the Airbus A330/A340 Airplane Flight Manual (AFM) to include the information in Temporary Revision TR774, RNP–AR Operations Forbidden with FMGEC Standard P5H3, Issue 1, approved October 13, 2017 (''TR774''), and inform all flight crews, and, thereafter, operate the airplane accordingly, as specified in the TR. TR774 prohibits the RNP–AR operation on Airbus A330 airplanes equipped with FMGEC standard P5H3. Revising the AFM to include TR774 may be done by inserting a copy of TR774 in the AFM. When this TR has been included in general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in TR774, and the TR may be removed.

(i) FMS Software Modification

(1) For Group 1 and Group 2 airplanes: Within 60 days after the effective date of this AD, modify the airplane by installing FMS software P4A (P/N FMS operational SW PS4087700–905) on FMGEC standard P5H3 (P/N FMGEC C13226HA07 with P/N FMS operational SW PS4087700–906) in accordance with the instructions of Airbus Service Bulletin A330–22–3264, dated March 14, 2018.

(2) For Group 2 airplanes: After modification of an airplane as required by paragraph (i)(1) of this AD, the AFM revision required by paragraph (h) of this AD may be removed from the AFM of that airplane.

(j) Optional Modification

For Group 3 airplanes: From the effective date of this AD, it is allowed to modify any airplane into a Group 1 or Group 2 configuration, provided that, concurrently, that airplane is modified in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–22–3264, dated March 14, 2018.

(k) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (i) of this AD and optional actions specified in paragraph (j) of this AD, if those actions were performed before the effective date of this AD using Airbus Alert Operators Transmission—AOT A22L002–17, dated October 20, 2017.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (m)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified 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 procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017–0233, dated November 23, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0584.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 2 Rond-Point Emile Dewoitine, 31700 Blagnac, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* internet *http://www.airbus.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.

Issued in Des Moines, Washington, on June 22, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–14408 Filed 7–17–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103474–18]

RIN 1545–BO63

Tax Return Preparer Due Diligence Penalty Under Section 6695(g)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking, partial withdrawal of notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that amend portions of previously proposed regulations related to the tax return preparer penalty under section 6695(g) of the Internal Revenue Code (Code). These amendments to the previously proposed regulations are necessary to implement a recent law change that expands the scope of the tax return preparer due diligence penalty under section 6695(g) so that it applies with respect to eligibility to file a return or claim for refund as head of household. The proposed regulations affect tax return preparers.

DATES: Written or electronic comments and requests for a public hearing must be received by August 17, 2018.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–103474–18), Room 5207, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through

Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–103474–18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–103474–18).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Marshall French, 202–317–6845; concerning submissions of comments and requests for a public hearing, Regina Johnson, 202–317–6901 (not toll-free numbers).

Paperwork Reduction Act

The collection of information in current § 1.6695–2 was previously reviewed and approved under control number 1545–1570. Control number 1545–1570 was discontinued in 2014, as the burden for the collection of information contained in § 1.6695–2 is reflected in the burden for Form 8867, ''Paid Preparer's Due Diligence Checklist,'' under control number 1545–1629.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 6695(g) of the Code regarding the tax return preparer due diligence requirements.

Prior to 2016, section 6695(g) imposed a penalty on tax return preparers who fail to comply with due diligence requirements set forth in regulations prescribed by the Secretary with respect to determining eligibility for, or the amount of, the earned income credit (EIC). For tax years beginning after December 31, 2015, the scope of section 6695(g) was expanded to apply the penalty to tax return preparers who fail to comply with due diligence requirements with respect to determining eligibility for, or the amount of, the child tax credit (CTC)/additional child tax credit (ACTC) and the American opportunity tax credit (AOTC). See section 207 of the Protecting Americans from Tax Hikes Act of 2015, Div. Q of Public Law 114–113 (129 Stat. 2242, 3082 (2015)) (PATH Act). On December 5, 2016, final and temporary regulations (TD 9799, 81 FR 87444) with cross-referencing proposed regulations (REG–102952–16, 81 FR 87502) (2016 proposed regulations) were published in the **Federal Register** to reflect these changes.

Effective for tax years beginning after December 31, 2017, section 6695(g) was amended to further expand the scope of the penalty to tax return preparers who fail to comply with due diligence requirements with respect to determining eligibility to file as head of household (as defined in section 2(b)). See section 11001(b) of ''An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,'' Public Law 115–97 (131 Stat. 2054, 2058 (2017)) (Act). This document contains proposed regulations to reflect this change.

Explanation of Provisions

The proposed regulations contained in this document withdraw paragraphs (a), (b)(3), and (e) of § 1.6695–2 of the 2016 proposed regulations and propose in their place new paragraphs (a), (b)(3), and (e) of § 1.6695–2 (amended paragraphs). The amended paragraphs update the 2016 proposed regulations to reflect the recent change in the law that expands the tax return preparer due diligence requirements under section 6695(g) to apply to determining eligibility to file as head of household. Accordingly, the proposed regulations contained in this document amend paragraphs (a) and (b)(3) of § 1.6695–2 of the 2016 proposed regulations by adding a reference to determining eligibility to file as head of household where reference is made to determining eligibility for, or the amount of, the EIC, the CTC/ACTC and/or the AOTC. In addition, Example 5 in paragraph (b)(3)(ii) of § 1.6695–2 of the 2016 proposed regulations is revised to demonstrate how head of household due diligence requirements are intertwined with the rules for determining a taxpayer's eligibility for the CTC.

A new example is also added to § 1.6695–2(a)(2) to illustrate how the penalty applies if there is a failure to satisfy the due diligence requirements with respect to determining eligibility to file as head of household in addition to a failure to satisfy the due diligence requirements with respect to one of the applicable credits. As explained in the preamble of the 2016 temporary regulations, the preparation of one return or claim for refund may result in the imposition of more than one penalty under section 6695(g). That is because under section 6695(g), each failure to comply with the due diligence requirements set forth in regulations prescribed by the Secretary results in a separate penalty. To illustrate this point, a new example, Example 3, is added to proposed § 1.6695–2(a)(2) contained in this document.

The applicability date in § 1.6695–2(e) is also updated to reflect the effective date of the addition of determining eligibility to file as head of household to the due diligence requirements. Accordingly, proposed § 1.6695–2(e) contained in this document provides that § 1.6695–2 applies to tax returns and claims for refund for taxable years beginning after December 31, 2015, that are prepared on or after the date of publication of the Treasury decision adopting the proposed rules as final regulations in the **Federal Register**. However, the rules relating to the determination of a taxpayer's eligibility to file as head of household under section 2(b) apply to tax returns and claims for refund for taxable years beginning after December 31, 2017, that are prepared on or after the date of publication of the Treasury decision adopting the proposed rules as final regulations in the **Federal Register**.

As part of satisfying the due diligence requirements, the regulations under § 1.6695–2 require tax return preparers to complete the Form 8867, ''Paid Preparer's Due Diligence Checklist,'' and, in most cases, attach it to the relevant return or claim for refund as part of satisfying the section 6695(g) due diligence requirements. The Form 8867 underwent significant revisions for the 2016 tax year and is currently a single checklist to be used for all applicable credits (namely, the EIC, the CTC/ACTC, and the AOTC) on the return or claim for refund subject to the section 6695(g) due diligence requirements. It is anticipated that the IRS will revise the Form 8867 to include the head of household filing status in time for the 2019 filing season.

Proposed Applicability Dates

Proposed § 1.6695–2(e) provides that the rules in this notice of proposed rulemaking with respect to determining eligibility to file as head of household under section 2(b) will apply to tax returns and claims for refund for taxable years beginning after December 31, 2017, that are prepared on or after the date the final regulations are published in the **Federal Register**.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations. Under the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), it is hereby certified that these proposed rules, if adopted, would not

have a significant economic impact on a substantial number of small entities. When an agency issues a notice of proposed rulemaking, the RFA requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' that will ''describe the impact of the proposed rule on small entities.'' (5 U.S.C. 603(a)). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities.

The proposed rules affect paid tax return preparers who determine a taxpayer is eligible to file as head of household, in addition to those tax return preparers who determine eligibility for, or the amount of, the EIC, the CTC/ACTC, and/or the AOTC. The North American Industry Classification System (NAICS) code that relates to tax return preparation services (NAICS code 541213) is the appropriate code for tax return preparers subject to this notice of proposed rulemaking. Entities identified as tax return preparation services are considered small under the Small Business Administration size standards (13 CFR 121.201) if their annual revenue is less than $20.5 million. The IRS estimates that approximately 75 to 85 percent of the 505,000 persons who work at firms or are self-employed tax return preparers are operating as or employed by small entities. The IRS has therefore determined that these proposed rules will have an impact on a substantial number of small entities.

The IRS has further determined, however, that the economic impact on entities affected by the proposed rules will not be significant. The current final and temporary regulations under section 6695(g) already require tax return preparers to complete the Form 8867 when a return or claim for refund includes a claim of the EIC, the CTC/ACTC, and/or the AOTC. Tax return preparers also must currently maintain records of the checklists and computations, as well as a record of how and when the information used to compute the credits was obtained by the tax return preparer. The information needed to document a taxpayer's eligibility to file as head of household is information the preparer must gather to file the return. Even if certain preparers are required to maintain the checklists and complete Form 8867 for the first time, the IRS estimates that the total time required should be minimal for these tax return preparers. Further, the IRS does not expect that the requirements in these proposed regulations would necessitate the purchase of additional software or equipment in order to meet the additional information retention requirements.

Based on these facts, the IRS hereby certifies that the collection of information contained in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written and electronic comments that are timely submitted to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Rachel Gregory of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Partial Withdrawal of a Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, § 1.6695–2(a), (b)(3), and (e) of the notice of proposed rulemaking (REG–102952–16) published in the **Federal Register** on December 5, 2016 (81 FR 87502) are withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.6695–2 is amended by revising the section heading and paragraphs (a), (b)(3), and (e) to read as follows:

§ 1.6695–2 Tax return preparer due diligence requirements for certain returns and claims.

(a) *Penalty for failure to meet due diligence requirements*—(1) *In general.* A person who is a tax return preparer (as defined in section 7701(a)(36)) of a tax return or claim for refund under the Internal Revenue Code who determines the taxpayer's eligibility to file as head of household under section 2(b), or who determines the taxpayer's eligibility for, or the amount of, the child tax credit (CTC)/additional child tax credit (ACTC) under section 24, the American opportunity tax credit (AOTC) under section 25A(i), or the earned income credit (EIC) under section 32, and who fails to satisfy the due diligence requirements of paragraph (b) of this section will be subject to a penalty as prescribed in section 6695(g) (indexed for inflation under section 6695(h)) for each failure. A separate penalty applies to a tax return preparer with respect to the head of household filing status determination and to each applicable credit claimed on a return or claim for refund for which the due diligence requirements of this section are not satisfied and for which the exception to penalty provided by paragraph (d) of this section does not apply.

(2) *Examples.* The provisions of paragraph (a)(1) of this section are illustrated by the following examples:

Example 1. Preparer A prepares a federal income tax return for a taxpayer claiming the CTC and the AOTC. Preparer A did not meet the due diligence requirements under this section with respect to the CTC or the AOTC claimed on the taxpayer's return. Unless the exception to penalty provided by paragraph (d) of this section applies, Preparer A is subject to two penalties under section 6695(g): One for failure to meet the due diligence requirements for the CTC and a second penalty for failure to meet the due diligence requirements for the AOTC.

Example 2. Preparer B prepares a federal income tax return for a taxpayer claiming the CTC and the AOTC. Preparer B did not meet the due diligence requirements under this section with respect to the CTC claimed on the taxpayer's return, but Preparer B did meet the due diligence requirements under this section with respect to the AOTC claimed on the taxpayer's return. Unless the exception to penalty provided by paragraph (d) of this section applies, Preparer B is subject to one penalty under section 6695(g) for the failure to meet the due diligence requirements for the CTC. Preparer B is not

subject to a penalty under section 6695(g) for failure to meet the due diligence requirements for the AOTC.

Example 3. Preparer C prepares a federal income tax return for a taxpayer using the head of household filing status and claiming the CTC and the AOTC. Preparer C did not meet the due diligence requirements under this section with respect to the head of household filing status and the CTC claimed on the taxpayer's return. Preparer C did meet the due diligence requirements under this section with respect to the AOTC claimed on the taxpayer's return. Unless the exception to penalty provided by paragraph (d) of this section applies, Preparer C is subject to two penalties under section 6695(g) for the failure to meet the due diligence requirements: One for the head of household filing status and one for the CTC. Preparer C is not subject to a penalty under section 6695(g) for failure to meet the due diligence requirements for the AOTC.

(b) * * *

(3) *Knowledge*—(i) *In general.* The tax return preparer must not know, or have reason to know, that any information used by the tax return preparer in determining the taxpayer's eligibility to file as head of household or in determining the taxpayer's eligibility for, or the amount of, any credit described in paragraph (a) of this section and claimed on the return or claim for refund is incorrect. The tax return preparer may not ignore the implications of information furnished to, or known by, the tax return preparer, and must make reasonable inquiries if a reasonable and well-informed tax return preparer knowledgeable in the law would conclude that the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. The tax return preparer must also contemporaneously document in the preparer's paper or electronic files any inquiries made and the responses to those inquiries.

(ii) *Examples.* The provisions of paragraph (b)(3)(i) of this section are illustrated by the following examples:

Example 1. In 2018, Q, a 22 year-old taxpayer, engages Preparer C to prepare Q's 2017 federal income tax return. Q completes Preparer C's standard intake questionnaire and states that she has never been married and has two sons, ages 10 and 11. Based on the intake sheet and other information that Q provides, including information that shows that the boys lived with Q throughout 2017, Preparer C believes that Q may be eligible to claim each boy as a qualifying child for purposes of the EIC and the CTC. However, Q provides no information to Preparer C, and Preparer C does not have any information from other sources, to verify the relationship between Q and the boys. To meet the knowledge requirement in paragraph (b)(3) of this section, Preparer C must make reasonable inquiries to determine whether each boy is a qualifying child of Q for purposes of the EIC and the CTC, including reasonable inquiries to verify Q's relationship to the boys, and Preparer C must contemporaneously document these inquiries and the responses.

Example 2. Assume the same facts as in Example 1 of this paragraph (b)(3)(ii). In addition, as part of preparing Q's 2017 federal income tax return, Preparer C made sufficient reasonable inquiries to verify that the boys were Q's legally adopted children. In 2019, Q engages Preparer C to prepare her 2018 federal income tax return. When preparing Q's 2018 federal income tax return, Preparer C is not required to make additional inquiries to determine the boys relationship to Q for purposes of the knowledge requirement in paragraph (b)(3) of this section.

Example 3. In 2018, R, an 18 year-old taxpayer, engages Preparer D to prepare R's 2017 federal income tax return. R completes Preparer D's standard intake questionnaire and states that she has never been married, has one child, an infant, and that she and her infant lived with R's parents during part of the 2017 tax year. R also provides Preparer D with a Form W–2 showing that she earned $10,000 during 2017. R provides no other documents or information showing that R earned any other income during the tax year. Based on the intake sheet and other information that R provides, Preparer D believes that R may be eligible to claim the infant as a qualifying child for the EIC and the CTC. To meet the knowledge requirement in paragraph (b)(3) of this section, Preparer D must make reasonable inquiries to determine whether R is eligible to claim these credits, including reasonable inquiries to verify that R is not a qualifying child of her parents (which would make R ineligible to claim the EIC) or a dependent of her parents (which would make R ineligible to claim the CTC), and Preparer D must contemporaneously document these inquiries and the responses.

Example 4. The facts are the same as the facts in Example 3 of this paragraph (b)(3)(ii). In addition, Preparer D previously prepared the 2017 joint federal income tax return for R's parents. Based on information provided by R's parents, Preparer D has determined that R is not eligible to be claimed as a dependent or as a qualifying child for purposes of the EIC or CTC on R's parents' return. Therefore, for purposes of the knowledge requirement in paragraph (b)(3) of this section, Preparer D is not required to make additional inquiries to determine that R is not her parents' qualifying child or dependent.

Example 5. In 2019, S engages Preparer E to prepare his 2018 federal income tax return. During Preparer E's standard intake interview, S states that he has never been married and that his niece and nephew lived with him for part of the 2018 taxable year. Preparer E believes S may be eligible to file as head of household and claim each of these children as a qualifying child for purposes of the EIC and the CTC. To meet the knowledge requirement in paragraph (b)(3) of this section, Preparer E must make reasonable inquiries to determine whether S is eligible to file as head of household and whether each child is a qualifying child for purposes of the EIC and the CTC, including reasonable inquiries about the children's residency, S's relationship to the children, the children's income, the sources of support for the children, and S's contribution to the payment of costs related to operating the household, and preparer E must contemporaneously document these inquiries and the responses.

Example 6. W engages Preparer F to prepare her federal income tax return. During Preparer F's standard intake interview, W states that she is 50 years old, has never been married, and has no children. W further states to Preparer F that during the tax year she was self-employed, earned $10,000 from her business, and had no business expenses or other income. Preparer F believes W may be eligible for the EIC. To meet the knowledge requirement in paragraph (b)(3) of this section, Preparer F must make reasonable inquiries to determine whether W is eligible for the EIC, including reasonable inquiries to determine whether W's business income and expenses are correct, and Preparer F must contemporaneously document these inquiries and the responses.

Example 7. Y, who is 32 years old, engages Preparer G to prepare his federal income tax return. Y completes Preparer G's standard intake questionnaire and states that he has never been married. As part of Preparer G's client intake process, Y provides Preparer G with a copy of the Form 1098–T Y received showing that University M billed $4,000 of qualified tuition and related expenses for Y's enrollment or attendance at the university and that Y was at least a half-time undergraduate student. Preparer G believes that Y may be eligible for the AOTC. To meet the knowledge requirements in paragraph (b)(3) of this section, Preparer G must make reasonable inquiries to determine whether Y is eligible for the AOTC, as Form 1098–T does not contain all the information needed to determine eligibility for the AOTC or to calculate the amount of the credit if Y is eligible, and contemporaneously document these inquiries and the responses.

* * * * *

(e) *Applicability date.* The rules of this section apply to tax returns and claims for refund for taxable years beginning after December 31, 2015, that are prepared on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. However, the rules relating to the determination of a taxpayer's eligibility to file as head of household under section 2(b) apply to tax returns and claims for refund for taxable years beginning after December 31, 2017, that are prepared on or after the date of publication of the Treasury

decision adopting these rules as final regulations in the **Federal Register**.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2018–15351 Filed 7–13–18; 4:15 pm]

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POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2018–2; Order No. 4706]

Periodic Reporting Requirements

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing revisions to the periodic reporting requirements codified in our regulations. This document informs the public of the proposed rules, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 17, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

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I. Introduction

On December 27, 2017, the Postal Service filed a request for the Commission to consider revisions to the periodic reporting requirements codified in 39 CFR part 3050.[1] On January 5, 2018, the Commission established this docket and invited comments regarding the Postal Service's proposed revisions.[2] Based on comments received in response to the Commission's advance notice of proposed rulemaking, the Commission proposes the following revisions to the periodic reporting requirements found in 39 CFR part 3050.

II. Background

The Postal Accountability and Enhancement Act (PAEA) granted the Commission enhanced information gathering and reporting responsibilities. *See* 39 U.S.C. 3652(e)(1). The PAEA provides that the Commission shall prescribe the content and form of the public reports the Postal Service files with the Commission under section 3652. In Docket No. RM2008–4, the Commission approved its current periodic reporting requirements.[3]

On December 27, 2017, the Postal Service filed a request for the Commission to consider revisions to the periodic reporting requirements. First, the Postal Service requests that the Commission adjust the deadlines for the quarterly Revenue, Pieces, and Weight (RPW) report; the Quarterly Statistics Report (QSR); the quarterly Billing Determinants report; and the monthly National Consolidated Trial Balance and Revenue and Expense Summary (Trial Balance) report to align the deadlines with other financial reporting deadlines. Petition at 1. The Postal Service states that aligning these deadlines with other financial reporting deadlines will avoid potential restatements of the earlier filed reports once the data for the later filed reports are finalized. *Id.* at 3.

Specifically, the Postal Service seeks to move the quarterly and year-end deadlines for the RPW and QSR reports so that they are the same as the Form 10–Q and Form 10–K due dates. *Id.* at 2–3. In addition, the Postal Service requests that the Commission extend deadlines for quarterly Billing Determinants reports to 60 days after the end of Quarters 1, 2, and 3, and 90 days after the end of Quarter 4.[4] The Postal Service also requests that the Commission revise the periodic reporting rules so that the Trial Balance reports and the Monthly Summary Financial reports have the same deadline. *Id.* at 5–6.

Second, the Postal Service requests that the Commission modify the format of the Monthly Summary Financial Report to make the report more consistent with the Postal Service's quarterly and annual financial reports. *Id.* at 1. The Postal Service states that the term ''Operating Revenue'' as used in Tables 1 and 2 of the Monthly Summary Financial Report does not correspond with its usage in its Form 10–K reports. *Id.* at 7. The Postal Service requests revisions to Tables 1 and 2 of the Monthly Summary Financial Report so that the items and amounts reported for total operating revenue reconcile on both tables and the breakdown for revenue more closely aligns with the format in its other financial reports.[5]

Third, the Postal Service requests that the Commission consider eliminating or modifying any reporting requirements that have become unnecessary or irrelevant since implementation of the current periodic reporting rules in 2009. *Id.* at 1. The Postal Service requests that the Commission consider eliminating or modifying these requirements to avoid imposing ''unnecessary or unwarranted administrative effort and expense'' on the Postal Service. *Id.* at 9 (citing 39 U.S.C. 3652(e)(1)).

III. Comments

On March 7, 2018, the Public Representative and United Parcel Service, Inc. (UPS) filed comments.[6] On April 6, 2018, the Postal Service and the Parcel Shippers Association (PSA) filed reply comments.[7]

Public Representative. The Public Representative divides her discussion into two sections. First, she discusses the guiding principles the Commission should consider when revising its periodic reporting requirements. PR Comments at 2–4. Specifically, she observes that the PAEA outlines three guiding principles for the Commission to consider when determining the content and form of the Postal Service's public reports submitted under 39 U.S.C. 3652. *Id.* at 2. The three guiding principles are whether the requirement ''(A) provid[es] the public with timely, adequate information to assess the lawfulness of rates charged; (B) avoid[s] unnecessary or unwarranted administrative effort and expense on the

[1] United States Postal Service Petition for Rulemaking on Periodic Reporting, December 27, 2017 (Petition).

[2] Advance Notice of Proposed Rulemaking to Revise Periodic Reporting Requirements, January 5, 2018 (Order No. 4347).

[3] Docket No. RM2008–4, Notice of Final Rule Prescribing Form and Content of Periodic Reports, April 16, 2009 (Order No. 203).

[4] *Id.* at 4. The Postal Service also requests that the Quarter 4 Billing Determinants report be incorporated into the annual Billing Determinants report rather than submitted as a standalone filing. *Id.* The Postal Service states that eliminating the standalone filing would help the Postal Service more effectively allocate scarce time and resources. *Id.*

[5] *Id.* The Postal Service also requests updating Table 2 to reflect the name change of Standard Mail to USPS Marketing Mail. *Id.* at 8.

[6] Public Representative Comments on Advance Notice of Proposed Rulemaking to Revise Periodic Reporting Requirements, March 7, 2018 (PR Comments); Comments of United Parcel Service, Inc. on Advance Notice of Proposed Rulemaking to Revise Periodic Reporting Requirements, March 7, 2018 (UPS Comments).

[7] Reply Comments of the United States Postal Service, April 6, 2018 (Postal Service Reply Comments); Reply Comments of the Parcel Shippers Association (PSA), April 6, 2018 (PSA Reply Comments).

part of the Postal Service; and (C) protect[s] the confidentiality of commercially sensitive information.'' *Id.* (citing 39 U.S.C. 3652(e)(1)). The Public Representative concludes that, generally, the periodic reporting requirements in 39 CFR part 3050 ''enable the Commission to carry out its duties and serve the public interest'' and that any revisions should be consistent with the guiding principles in section 3652(e)(1). *Id.* at 4.

Second, the Public Representative discusses each of the Postal Service's specific requests. In response to the Postal Service's request to revise the filing deadlines for the Trial Balance, RPW, QSR, and Billing Determinants reports, the Public Representative states that she supports ''any proposed extensions that would reduce administrative expense or effort expended by the Postal Service, so long as the proposed extensions do not disrupt the Commission's or the public's need for this information on a timely basis.'' *Id.* at 4–5. The Public Representative suggests an additional revision to the filing deadline for the Monthly Summary Financial Report for the last month of each quarter. *Id.* at 5. She notes that there is no Form 10–Q report filed for the fourth fiscal quarter and suggests that § 3050.28(b)(1) be revised so that Monthly Summary Financial Reports for the last month of each fiscal quarter be due when the Postal Service files the Form 10–Q or the Form 10–K report (whichever is applicable). *Id.* at 5–6.

The Public Representative does not object to the Postal Service's proposed revisions to Tables 1 and 2 of the Monthly Summary Financial Reports. *Id.* at 6–7. Specifically, she notes that the proposed revision to replace ''Standard Mail'' with ''USPS Marketing Mail'' simply reflects the Postal Service's request, and the Commission's approval, to change the name of the class. *Id.* at 6. Additionally, she states that the other proposed changes to Tables 1 and 2 ''should better align the preliminary financial information'' provided in the Postal Service's monthly financial reports with its Form10–Q and Form 10–K reports. *Id.* She notes that adequate transparency remains because information that would no longer be included in the revised Tables 1 and 2 remains publicly available in other periodic reports. *Id.* at 6–7.

The Public Representative notes that it is difficult to evaluate the Postal Service's request that the Commission eliminate or modify the scope of the required reports because the Postal Service did not identify any ''unnecessary'' or ''unwarranted'' periodic reporting requirements. *Id.* at 7. She states that such an evaluation requires more specific information related to the administrative effort and expense on the Postal Service to meets its periodic reporting requirements. *Id.* Specifically, she notes that it would be helpful if the Postal Service discussed: ''the data that must be collected to comply with the rule; the effort and expense incurred to collect the data required by the rule; whether the data would be collected if the rule did not require reporting; the accessibility and availability of the data to the public, other than through the filing of the periodic report required by the rule; the applicable Postal Service data retention policy; whether the report would be generated if the rule did not require reporting; and the effort and expense incurred to generate the report.'' *Id.* at 7–8.

The Public Representative observes that the current periodic reporting requirements are ''designed to minimize administrative effort and expense expended by the Postal Service.'' *Id.* at 8. For example, she notes that few periodic reporting requirements ''impose specific detailed form requirements'' and the rules that do impose certain form requirements seek to ensure that the Postal Service provides the data in a consistent and useful manner. *Id.* However, the Public Representative does note that the Commission could streamline the rules that require duplicative submissions. *Id.*

UPS. In its comments, UPS discusses the specific revisions requested by the Postal Service; [8] expresses concern that the Commission provide notice and an opportunity for comment on any proposal to eliminate or modify the Postal Service's periodic reporting requirements; [9] and requests that the Commission require the Postal Service to provide segment-level reporting for its competitive products.[10] In regards to the requested revisions to certain reporting deadlines, UPS acknowledges the ''merit in aligning the release of periodic reports,'' and ''supports modifying the reporting deadlines insofar as it relieves the reporting burden on the Postal Service and helps provide more accurate data.'' *Id.* at 4. However, UPS does not support the requested revisions to the format of the Monthly Summary Financial Report. *Id.* at 5. UPS expresses concern that the requested modification—specifically, the revisions to the definition of operating revenue—''could hamper the ability of the Commission and other interested parties to look at trends or do any longitudinal analysis.'' *Id.* UPS states that the Postal Service, a government agency, should not be able to ''self-define'' the terms it uses in its Form 10–Q and Form 10–K reports and seeks to minimize the Postal Service's use of self-defined terms. *Id.* at 5–6.

PSA Reply Comments. In its reply comments, PSA addresses two issues raised in the UPS Comments. PSA Reply Comments at 1. First, PSA agrees that if the Commission decides to adopt the proposed additional changes to the reporting requirements, that the Commission should ''continue its practice of providing notice of the proposed changes and an opportunity for interested parties to comment.'' *Id.* Second, PSA disagrees with UPS's request that '' '[t]he Commission ensure that all changes requested by the Postal Service increase, rather than decrease, the quality and quantity of the information that is available to the public' and 'hold the Postal Service to higher accounting and reporting standards than those imposed on their private sector counterparts.' '' *Id.* at 1–2 (quoting UPS Comments at 2). PSA states that the approach proposed by UPS would only increase the Postal Service's reporting requirements and administrative burden and is inappropriate given that the Postal Service currently provides substantial data on its competitive products in its periodic reports. *Id.* at 2. PSA states such data reporting is ''likely much greater than that of its private competitors'' and allows the Commission to determine statutory compliance. *Id.* Instead, PSA asserts that the Commission should consider whether new reporting requirements are necessary to allow the Commission to review compliance and whether the requirements adequately protect proprietary information. *Id.*

Postal Service Reply Comments. The Postal Service first addresses the Public Representative's comments that more information is needed about the administrative effort and expense of reporting requirements to determine whether the Commission should

[8] UPS Comments at 4–6.

[9] *Id.* at 6–7.

[10] *Id.* at 7–10. UPS notes that the ''Postal Service may claim that the entire organization is one segment because of the close integration of their market[]dominant and competitive products[.]'' *Id.* at 8. UPS states that this ''close integration'' between the market dominant and the competitive products is justification for requiring the Postal Service to report on market dominant and competitive products separately. *Id.* UPS suggests that the requirement that the Postal Service maintain separate accounts for market dominant and competitive products indicates that the PAEA envisioned that the Postal Service would provide financial reports that distinguish between those accounts. *Id.* at 8–9.

eliminate or modify any unnecessary reporting requirements. Postal Service Reply Comments at 1. The Postal Service responds that any amount of resources dedicated to producing unnecessary reports contravenes 39 U.S.C. 3652(e)(1)(B) because such reports may no longer aid the Commission. *Id.* at 1–2. The Postal Service states that the Commission's experience since the implementation of the reporting requirements renders the Commission able to assess whether each report remains useful for its intended purpose. *Id.* at 2.

The Postal Service agrees with the Public Representative's proposal that the Commission clarify that its September Monthly Summary Financial Report is due with the submission of the Form 10–K. *Id.* at 3.

The Postal Service addresses UPS's concerns with the Postal Service's use of self-defined terms. *Id.* at 4–5. The Postal Service states that UPS does not identify any problems resulting from prior use of the requested definitions and does not explain why the new format would be any more or any less consistent with U.S. Securities and Exchange Commission (SEC) reporting by private companies. *Id.* at 5. The Postal Service also responds to UPS's suggestion that the Commission require separate segment-level reporting for market dominant and competitive products. *Id.* at 6. The Postal Service considers such a requirement a ''major substantive expansion of the periodic reporting obligations.'' *Id.* The Postal Service further states that application of Financial Accounting Standards Board standards ''points inexorably toward the conclusion that the Postal Service operates as one segment.'' *Id.*

IV. Analysis of Proposed Rule Changes

A. Legal Authority

The PAEA requires the Commission to determine the content and form of the Postal Service's periodic reporting. 39 U.S.C. 3652(e)(1). The Commission may, either on its own motion or on the request of an interested party, initiate proceedings to improve the quality, accuracy, or completeness of the Postal Service data used in assessing statutory compliance. *Id.* 3652(e)(2).

The Postal Service petitioned the Commission to: (1) Change the deadlines for certain periodic reports; (2) modify the format of the Monthly Summary Financial Report, and (3) eliminate or modify any existing reporting requirements that are unnecessary. Pursuant to its authority under 39 U.S.C. 3652(e)(1), the Commission makes the following modifications to periodic reporting requirements.

B. Deadlines for Certain Periodic Reports

The Postal Service proposes to move the deadlines for several periodic reports. These reports include quarterly RPW and QSR reports, quarterly Billing Determinants reports, and monthly Trial Balance reports. Petition at 2–6.

No commenter objected to the proposed deadline modifications. The Public Representative ''supports any proposed extensions that would reduce administrative expense or effort expended by the Postal Service,'' provided that the Commission and public receive necessary information on a timely basis. PR Comments at 5. Similarly, UPS ''supports modifying the deadlines insofar as it relieves the reporting burden on the Postal Service and helps provide more accurate data.'' UPS Comments at 4.

The Commission agrees with the Postal Service, the Public Representative, and UPS that the proposed deadlines appear to align with other financial reporting deadlines. Moving the deadlines for these reports should create more streamlined reporting and help ensure that the Postal Service is able to provide timely and accurate financial reports to the Commission. Accordingly, the Commission proposes to modify the following reporting requirements.

1. Section 3050.25 Volume and revenue data.

Proposed § 3050.25(c) is revised to state that quarterly RPW reporting is due within 40 days of the close of Quarters 1, 2, and 3, and 60 days of Quarter 4, but no later than the filing of the Form 10–Q or Form 10–K reports. This modification aligns the RPW reporting deadlines for Quarters 1, 2, and 3 with the deadlines for filing the Form 10–Q report,[11] and the RPW reporting deadline for Quarter 4 with the deadline for filing the Form 10–K report.[12]

Proposed § 3050.25(d) is revised to extend the QSR reporting deadline to 40 days from the close of Quarters 1, 2, and 3, and 60 days for Quarter 4, but no later than the filing of the Form 10–Q or Form 10–K reports. This modification aligns the QSR deadlines with the deadlines for Form 10–Q report and Form 10–K report filings, respectively.

Proposed § 3050.25(e) is revised to extend the deadline for submitting quarterly Billing Determinants reports to 60 days after the close of Quarters 1, 2, and 3 and 90 days after the close of Quarter 4. This revision allows the Postal Service ample time to produce billing determinants using key inputs, such as the quarterly RPW report. The extension for filing of the Quarter 4 quarterly Billing Determinants report to 90 days aligns it with the deadline for the annual billing determinants report as stated in § 3050.25(b).

2. Section 3050.28 Monthly and pay period reports.

Proposed § 3050.28(b) is revised to reflect that the Monthly Summary Financial Report for the last months of Quarters 1, 2, and 3 is due at the time of filing the Form 10–Q report. As the Public Representative notes, the Postal Services files the Form 10–K report, not the Form 10–Q report, after Quarter 4. Accordingly, the Commission proposes to change the deadline for the Monthly Summary Financial Report for the final month of Quarter 4 to align with the filing of the Form 10–K report. The deadlines for the first two months of each quarter is the 24th day of the following month.

Proposed § 3050.28(c) is revised to align the deadline for filing National Consolidated Trial Balance and Revenue and Expense Summary for the last months of each quarter with the deadlines for the Monthly Summary Financial Report. For the last months of Quarters 1, 2, and 3, the National Consolidated Trial Balance and Revenue and Expense Summary is due with the Form 10–Q report, and for the last month of Quarter 4 it is due with the Form 10–K report. For the first two months of each quarter, the National Consolidated Trial Balance and Revenue and Expense Summary are due on the 24th day of the following month, aligned with the deadline for the Monthly Summary Financial Report.

C. Format of Monthly Summary Financial Report

The Postal Service seeks modification of the format of the Monthly Summary Financial Report, as illustrated at § 3050.28(b)(1). Petition at 6–8. The Postal Service proposes to modify Table 1, USPS Monthly Financial Statement, renaming ''Total Operating Revenue'' as ''Operating Revenue'' while removing subcomponents ''Mail and Services Revenue'' and ''Government Appropriations.'' *Id.* at 7. The Postal Service proposes one line item for ''Operating Revenue,'' one for ''Other Revenue,'' and a third line for ''Total Revenue.'' *Id.* The Postal Service states that this modification is consistent with the reporting requirements and definitions for Form 10–Q and Form 10–K reporting. *Id.* The Postal Service states

[11] 39 CFR 3050.40(a)(1).

[12] *Id.* 3050.40(a)(2).

that while ''Government Appropriations'' will no longer be its own line item on the Monthly Summary Financial Report, it will still be a component of ''Operating Revenue,'' consistent with how it is reported for U.S. Generally Accepted Accounting Principles purposes. *Id.*

The Postal Service also proposes to modify the format of Table 2, Mail Volume and Mail Revenue. *Id.* at 7–8. It seeks to replace the ''Total All Mail'' input with ''Total Operating Revenue,'' which would match the ''Operating Revenue'' input from Table 1. *Id.* at 8. Finally, the Postal Service seeks to change the input for ''Standard Mail'' to ''USPS Marketing Mail,'' accurately reflecting the new name of the mail class. *Id.*

UPS requests that the Commission consider parallel SEC reporting definitions for publicly traded delivery companies. UPS Comments at 6. UPS also suggests requiring the Postal Service to reproduce past monthly reports using the proposed new format, or require the Postal Service to produce two reports—one using the new format and one using the old format—for the first 12 months after adoption of the new format. *Id.*

The Postal Service's proposal to modify the format of the Monthly Summary Financial Report is consistent with the definition of ''operating revenue'' for purposes of Form 10–K reporting.[13] The Commission does not identify any of the changes as diminishing the amount of adequacy of the information provided. While line inputs for ''Mail and Service Revenue'' and ''Government Appropriations'' will collapse into the new ''Operating Revenue'' input, the information specific to those categories will remain available. For example, the amount reported for ''Government Appropriations'' in Table 1 is located in the monthly filed Postal Service ''National Trial Balance'' in account number 41431.000 ''Free and Reduced Rate Mail.'' [14] Given that the proposal does not appear to disrupt the ability of the Commission or the public to access timely and adequate information, the Commission proposes the following rule modifications.

1. Section 3050.28(b)(1), Table 1—USPS Monthly Financial Statement.

Proposed § 3050.28(b)(1) changes the input ''Total Operating Revenue'' to ''Total Revenue'' in Table 1. The existing input for ''Operating Revenue'' will remain, but the component inputs ''Mail and Services Revenue'' and ''Government Appropriations'' are removed. A new heading, ''Revenue,'' holds the inputs for ''Operating Revenue,'' a new input for ''Other Revenue,'' and their combined sum in the new ''Total Revenue'' input.

2. Section 3050.28(b)(1), Table 2—Mail Volume and Mail Revenue.

Proposed § 3050.28(b)(1) changes the current input of ''Standard Mail'' to ''USPS Marketing Mail'' in Table 2. This change is consistent with the change to the name of the class, approved in Order No. 3670.[15]

The Commission considers the Postal Service's proposal to rename ''Total All Mail'' with ''Total Operating Revenue'' to be potentially confusing. The components within the input are ''Volume'' and ''Revenue.'' To avoid having an input for the ''Volume'' of ''Total Operating Revenue,'' the Commission proposes to remove the ''Total All Mail'' input and its components. Instead, the Commission proposes to add distinct inputs for ''Total Volume'' and ''Total Operating Revenue.'' The ''Total Operating Revenue'' input will match the ''Operating Revenue'' input from Table 1.

D. Modifications Deemed Necessitated by the Public Interest

Though the Postal Service requests that the Commission eliminate or modify any unnecessary reporting requirements, it does not offer any specific suggestions. Petition at 9–10.

UPS urges the Commission to require segment-level reporting for competitive products. UPS Comments at 7. Because the PAEA requires a level of structural separation of market dominant and competitive products for accounting purposes, UPS states the Commission should require separate segment-level reporting for competitive products. *Id.* at 8, 10.

In prescribing the content and form of annual reports, the Commission must consider the adequacy of the information to assess the lawfulness of rates charged. 39 U.S.C. 3652(e)(1)(A). The Commission finds that the current approach of reporting as a single segment is adequate for the purposes of determining compliance. Furthermore, in consideration of 39 U.S.C. 3652(e)(2)(A), the Commission does not find that the practice of reporting as a single segment is inaccurate or in need of substantial improvement. Accordingly, the Commission does not adopt the UPS proposal to require segment-level reporting for competitive products.

The Commission has considered all comments and reply comments and has evaluated the necessity of modifications to the financial reporting requirements. The Commission proposes the following changes.

1. Section 3050.21 Content of the Postal Service's section 3652 report.

The Commission has identified several areas where, in the course of preparing the Annual Compliance Determination (ACD), more detailed annual financial reporting would better enable the Commission to assess PAEA compliance. For the required information, the Commission has, to date, been able to request the information from the Postal Service during the compressed timeline of the proceeding, which results in the submission of the necessary information but creates a burden on the Commission and the Postal Service to identify where information gaps exist and produce the information required to fill them in a compressed timeframe. In order to streamline the ACD process and eliminate the administrative effort of both the Postal Service and Commission during Annual Compliance Review dockets, the Commission proposes to add certain information to the required content of the Postal Service's section 3652 report.

Section 3050.21(f)(6). In the FY 2016 ACD, the Commission directed the Postal Service to provide information demonstrating that noncompensatory bilateral agreements improve the net financial position of the Postal Service over Universal Postal Union (UPU) default terminal dues rates.[16] The Commission finds such information necessary to determine whether market dominant negotiated service agreements (NSAs) are compliant with 39 U.S.C. 3622(c)(10)(A). Accordingly, the Commission proposes to add § 3050.21(f)(6). The proposed section requires the Postal Service to file with its Annual Compliance Report, documentation demonstrating that noncompensatory market dominant NSAs improve the Postal Service's net financial position or enhance the performance of mail preparation,

[13] United States Postal Service, 2017 Report on Form 10–K, November 14, 2017, at 19.

[14] *See, e.g.,* United States Postal Service, National Trial Balance and Statement of Revenue and Expenses, March 2018, May 10, 2018, Excel file ''National Trial Balance—Redacted March 2018 (FY 2018).xls,'' row 907.

[15] Docket No. R2017–1, Order on Price Adjustments for Special Services Products and Related Mail Classification Changes, December 15, 2016, at 18 (Order No. 3670).

[16] Docket No. ACR2016, Annual Compliance Determination, March 28, 2017, at 69 (FY 2016 ACD).

processing, transportation, or other functions.

Section 3050.21(j). In Docket No. ACR2017, Chairman's Information Request No. 7 requested that the Postal Service provide a distribution of market dominant and competitive fees found in the RPW report.[17] The Postal Service responded to CHIR No. 7, providing the mail fee distributions for both market dominant [18] and competitive mail.[19] The Commission used this information to prepare the FY 2017 ACD and considers the information necessary for future determinations of compliance. To this end, the Commission proposes revising § 3050.21(j). As currently constructed, the section requires the Postal Service to provide any information it believes will help the Commission evaluate compliance with title 39. The Commission proposes to move that requirement to § 3050.21(n), placing it at the end of the list of annual reporting requirements. The Commission's proposal replaces the current § 3050.21(j) with a requirement that the Postal Service provide a distribution breakdown of mail fees for market dominant and competitive products. The purpose of the proposed change is to provide the Commission each year with the same information that the Postal Service provided in response to Docket No. ACR2017, CHIR No. 7, question 3.

Section 3050.21(k). In Docket No. ACR2017, Chairman's Information Request No. 1 requested data related to several international mail products.[20] The questions relating to these products included requests for information on quarterly and annual data on third-party service performance measurements.[21] Also requested was the amount of forfeited revenue for failing to meet the applicable service performance requirements. *Id.* questions 4, 10, and 16.a. The Postal Service provided all of the requested information.[22] The Postal Service's Library Reference USPS–FY17–NP31 provided the Commission with more complete and accurate financial information regarding certain products.[23] The Commission finds that having such information included as part of the Postal Service's annual filing, rather than in response to an information request, will better assist the Commission in its task of evaluating compliance with title 39. Including the information would reduce the burden on the Commission and Postal Service of identifying and providing the necessary information during the compressed timeline of the annual review. The Commission accordingly proposes to add § 3050.21(k). The new section requires that the Postal Service provide any third-party service performance results where a financial penalty or bonus is applied, and to provide the amount of any forfeited revenue. This requirement will apply to all market dominant and competitive products, including NSAs. The information will provide more accurate revenue analysis for the products subject to third-party service performance measurements.

Section 3050.21(l). The Commission further proposes to reduce the necessity of information requests by adding a requirement that the Postal Service provide all total workhour data and data sources, showing workhour measurements by Labor Distribution Code. In Docket No. ACR2017, Chairman's Information Request No. 2 requested that the Postal Service provide this data to supplement total workhour information listed in the annual report on Form 10–K.[24] The Postal Service provided the workhour data and data sources in an Excel file.[25] The Commission uses this information in its ACD and seeks this information in future years in substantially the same format. Accordingly, the Commission proposes to add § 3050.21(l). The proposed requirement directs the Postal Service to provide all total workhour data and data sources showing workhour measurements by Labor Distribution Code. The Commission finds that this requirement will reduce the need for future information requests for workhour data.

Section 3050.21(m). In recent ACD reports, the Commission has continually expressed concerns about the Inbound Letter Post product. For example, in the FY 2017 ACD report, the Commission ''reiterate[d] its concern that the UPU pricing regime for the Inbound Letter Post product continues to result in noncompensatory terminal dues.'' [26] After a brief period of improvement, the contribution for the Inbound Letter Post product has decreased from negative $33 million in FY 2011 to negative $170 million in FY 2017.[27] In fact, the trend of negative contribution existed well before the PAEA. The Commission's precursor, the Postal Rate Commission, also identified a trend of net loss in contribution for Inbound Letter Post in its annual reports to Congress on international mail for FY 1998 to FY 2006.[28] The Postal Service has provided a myriad of explanations for the increasingly poor financial performance of the Inbound Letter Post product, including increasing costs,[29] increasing volume,[30] increasing weight,[31] and failing to meet UPU quality-of-service targets.[32]

In recent ACD reports, the Commission has conducted trend analysis for products for which the Commission has identified ongoing issues. For example, for each fiscal year since the passage of the PAEA, the Commission has found that the Periodicals class failed to generate

[17] Docket No. ACR2017, Chairman's Information Request No. 7 and Notice of Filing Under Seal, January 23, 2018, question 3 (CHIR No. 7).

[18] Docket No. ACR2017, Responses of the United States Postal Service to Questions 1–3 of Chairman's Information Request No. 7, January 30, 2018, question 3, Excel file ''Resp.Q.3.Attach A_MD Fee Distrbtn.xlsx.''

[19] Docket No. ACR2017, Library Reference USP–FY17–NP36, January 30, 2018.

[20] Docket No. ACR2017, Chairman's Information Request No. 1, January 5, 2018 (CHIR No. 1).

[21] *See* Docket No. ACR2017, CHIR No. 1, questions 2, 3, 4, 7, 8, 10, 15, and 16.

[22] Docket No. ACR2017, Responses of the United States Postal Service to Questions 1–16 of Chairman's Information Request No. 1, January 12, 2018 (Docket No. ACR2017, Responses to CHIR No. 1); Library Reference USPS–FY17–NP31, January 12, 2018.

[23] In its Docket No. ACR2017, Responses to CHIR No. 1, question 15, the Postal Service indicated that service performance measurements for Inbound Parcel Post are only available for the periods January through June and July through August. The Postal Service provided this data in Library Reference USPS–FY17–NP31.

[24] Docket No. ACR2017, Chairman's Information Request No. 2, January 10, 2018, question 3 (CHIR No. 2).

[25] Docket No. ACR2017, Responses of the United States Postal Service to Questions 1–19 of Chairman's Information Request No. 2, January 17, 2018, question 3, Excel file ''ChIR.2.Q.3.LDC.Workhours—FY17.xlsx.''

[26] Docket No. ACR2017, Annual Compliance Determination, March 29, 2018, at 68 (FY 2017 ACD). *See* FY 2016 ACD at 66; Docket No. ACR2015, Annual Compliance Determination, March 28, 2016, at 70 (FY 2015 ACD); Docket No. ACR2014, Annual Compliance Determination, March 27, 2015, at 53 (FY 2014 ACD); Docket No. ACR2013, Annual Compliance Determination, March 27, 2014, at 59 (FY 2013 ACD); Docket No. ACR2012, Annual Compliance Determination, March 28, 2013, at 143 (FY 2012 ACD); Docket No. ACR2011, Annual Compliance Determination, March 28, 2012, at 143–144 (FY 2011 ACD); Docket No. ACR2010, Annual Compliance Determination, March 29, 2011, at 130–131 (FY 2010 ACD); Docket No. ACR2009, Annual Compliance Determination, March 29, 2010, at 108–109 (FY 2009 ACD); Docket No. ACR2008, Annual Compliance Determination, March 30, 2009, at 81 (FY 2008 ACD); Docket No. ACR2007, Annual Compliance Determination, March 27, 2008, at 115, 118 (FY 2007 ACD).

[27] FY 2017 ACD at 65; FY 2011 ACD at 144.

[28] FY 2008 ACD at 82; FY 2007 ACD at 116. Pursuant to section 3663 of the Postal Reorganization Act, the Commission issued eight annual reports, apart from IM99–1, to Congress covering Fiscal Years 1998 through 2005. *See* Docket Nos. IM99–1, IM2000–1, IM2001–1, IM2002–2, IM2003–1, IM2004–1, IM2005–1, and IM2006–1.

[29] FY 2017 ACD at 66; FY 2015 ACD at 69; FY 2012 ACD at 145.

[30] FY 2017 ACD at 66.

[31] FY 2013 ACD at 60; FY 2012 ACD at 145.

[32] FY 2009 ACD at 109; FY 2008 ACD at 82.

revenue sufficient to cover attributable costs.[33] In the FY 2017 ACD report, the Commission analyzed the volume, revenue, attributable cost, and contribution for the Periodicals class for FY 2007 to FY 2017. FY 2017 ACD at 45. The Commission also analyzed the unit revenue, unit attributable cost, and unit contribution for Periodicals for the same time period. *Id.* at 46. The Commission also provided analysis of the volume, revenue, attributable cost, and contribution for the Outside County Periodicals and Within County Periodicals products specifically.[34]

In analyzing the continuing issues with the Periodical class, the Commission also evaluated how increasing unit cost and decreasing unit revenue for Periodicals resulted in a decrease in contribution. FY 2017 ACD at 46. The Commission discussed factors that related to unit revenue and attributable costs for Outside County Periodicals, such as the change of mail mix and the unit costs for various presort levels within the product (*e.g.,* Carrier Route, 5-Digit, and 3-Digit). *Id.* at 49.

As the result of the ongoing concerns expressed by the Commission (and echoed by participants) regarding the financial performance of the Inbound Letter Post product,[35] the Commission plans to use the aggregated Inbound Letter Post revenue, volume, attributable cost, and contribution data that would be submitted under the proposed rule to analyze trends that may result in lower contribution from certain UPU country groups. Such analysis could help the Commission more accurately identify issues within the Inbound Letter Post product and identify appropriate remedial actions.

Accordingly, the Commission proposes to add § 3050.21(m). The new section requires that the Postal Service provide Inbound Letter Post revenue, volume, attributable cost, and contribution data aggregated by UPU country group and by shape for the preceding five fiscal years when it files its Annual Compliance Report. The Commission finds that this requirement will reduce the need for future information requests for aggregated Inbound Letter Post data.

Section 3050.21(n). The Commission proposes to move the requirement that the Postal Service provide any other information that it anticipates will help the Commission evaluate compliance. The Commission finds it appropriate to place this general requirement at the end of the list of items included in the Annual Compliance Report. The substance of former § 3050.21(j) will be unchanged. The requirement will only be renumbered as § 3050.21(n).[36]

2. Section 3050.60 Miscellaneous Reports and Documents.

The Commission, having considered whether any current reporting requirements are unnecessary, proposes to modify § 3050.60(c). The Postal Service provides a master list of publications and handbooks whenever changed, in accordance with § 3050.60(b). The Commission welcomes those publications and handbooks in electronic form, as it would reduce the administrative effort of both the Postal Service and the Commission without degrading the utility of the publication or handbook. Accordingly, the Commission proposes to revise § 3050.60(c) to require only an electronic copy of all changed publications and handbooks.

V. Solicitation of Comments

The Commission invites interested persons to comment on the changes proposed in this rulemaking. Comments are due no later than 30 days after publication of this Notice in the **Federal Register**.

VI. Conclusion

It is ordered:

1. The Commission proposes to amend existing periodic reporting rules located at 39 CFR part 3050.

2. Lauren A. D'Agostino will continue to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this rulemaking proceeding.

3. Interested persons may submit comments no later than 30 days from the date of publication of this Notice in the **Federal Register**.

4. The Secretary shall arrange for publication of this notice in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary. Vice Chairman Hammond dissenting.

List of Subjects in 39 CFR Part 3050

Administrative practice and procedure, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commission proposes to amend Chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3050—PERIODIC REPORTING

■ 1. The authority citation for part 3050 continues to read as follows:

Authority: 39 U.S.C. 503, 3651, 3652, 3653.s.

■ 2. Amend § 3050.21 by:
■ a. Revising paragraph (a),
■ b. Adding paragraph (f)(6),
■ c. Revising paragraph (j), and
■ d. Adding paragraphs (k), (l), (m), and (n).

The additions and revisions read as follows:

§ 3050.21 Content of the Postal Service's section 3652 report.

(a) No later than 90 days after the close of each fiscal year, the Postal Service shall submit a report to the Commission analyzing its costs, volume, revenue, rate, and service information in sufficient detail to demonstrate that all products during such year comply with all applicable provisions of title 39 of the United States Code. The report shall provide the items in paragraphs (b) through (n) of this section.

* * * * *

(f) * * *

(6) Provide financial or other supporting documentation that

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[33] FY 2017 ACD at 45–46; FY 2016 ACD at 42–43; FY 2015 ACD at 42–43; FY 2014 ACD at 33–34; FY 2013 ACD at 42–43; FY 2012 ACD at 25; FY 2011 ACD at 16; FY 2010 ACD at 90–91; FY 2009 ACD at 74; FY 2008 ACD at 54, 56; FY 2007 ACD at 68.

[34] *See* Docket No. ACR2017, Library Reference PRC–LR–ACR2017–5, March 29, 2018, Excel file ''FY 2017 Periodicals Cost Coverage.xlsx,'' tab ''Cost Coverage.''

[35] *See* Docket No. IM2016–1, Congressional Letter to Secretary of State Rex Tillerson and Postmaster General Megan Brennan, November 8, 2017; Docket No. ACR2017, Comments of James Smaldone, Founder & CEO, Mighty Mug, Inc., January 25, 2018, at 1–2; Docket No. ACR2017, Comments of National Association of Manufacturers on Order No. 4377, January 24, 2018, at 2; Docket No. ACR2017, Comments of United Parcel Service, Inc. in Response to Notice of Preliminary Determination to Unseal the Material Filed in Response to Chairman's Information Request No. 1, Question 1, January 24, 2018, at 2–3; Docket No. ACR2017, Comments of the Honorable Kenny Marchant on Determination to Unseal the Material Filed in Response to Chairman's Information Request No. 1, Question 1, January 25, 2018, at 1–2; Docket No. ACR2017, Comments of US Chamber of Commerce, January 25, 2018, at 1–2; Docket No. ACR2017, Comments of SBE Council Related to Inbound Letter Post, February 20, 2018, at 1–2; Docket No. ACR2017, Comments of United Parcel Service, Inc. in Response to Notice of Preliminary Determination to Unseal the Postal Service's Response to Chairman's Information Request No. 15, February 23, 2018, at 3–4; Docket No. ACR2017, Reply Comments of United Parcel Service, Inc. on United States Postal Service Motion for Reconsideration of Order No. 4551, April 13, 2018, at 4; Docket No. ACR2017, Comments of U.S. Chamber of Commerce, April 13, 2018, at 1; Docket No. IM2018–1, Comments Received from U.S. Representatives Kenny Marchant and Ralph Abraham, July 3, 2018, at 1; Docket No. IM2018–1, Comment Received from U.S. Senator Bill Cassidy, M.D., July 3, 2018, at 1.

[36] Current § 3050.21(a) requires the annual report to provide the items listed in paragraphs (b) through (j) of § 3050.21. Proposed paragraphs (k) through (n) necessitate that the Commission revise § 3050.21(a) to require the report to include the items listed in paragraphs (b) through (n).

demonstrates that noncompensatory market dominant negotiated service agreements improve the net financial position of the Postal Service over default rates or enhance the performance of mail preparation, processing, transportation, or other functions.

* * * * *

(j) For market dominant and competitive products, provide a distribution breakdown of mail fees, including all underlying calculations and source workpapers;

(k) For market dominant and competitive products, including negotiated service agreements, provide any third-party service performance results upon which any financial penalty or bonus is determined, and the amount of any forfeited revenue;

(l) Provide all total workhour data and data sources showing workhour measurements by Labor Distribution Code;

(m) For the Inbound Letter Post product, provide revenue, volume, attributable cost, and contribution data by Universal Postal Union country group and by shape for the preceding five fiscal years; and

(n) Provide any other information that the Postal Service believes will help the Commission evaluate the Postal Service's compliance with the applicable provisions of title 39 of the United States Code.

■ 3. Amend § 3050.25 by revising paragraphs (c), (d), and (e) to read as follows:

§ 3050.25 Volume and revenue data.

* * * * *

(c) Revenue, pieces, and weight by rate category and special service by quarter, within 40 days of the close of Quarters 1, 2, and 3 of the fiscal year and 60 days after Quarter 4, but no later than the filing of reports filed pursuant to section 3050.40(a) or 3050.40(b);

(d) Quarterly Statistics Report, including estimates by shape, weight, and indicia, within 40 days of the close of Quarters 1, 2, and 3 of the fiscal year and 60 days after Quarter 4 but no later than the filing of reports filed pursuant to section 3050.40(a) or 3050.40(b); and

(e) Billing determinants within 60 days of the close of Quarters 1, 2, and 3 of the fiscal year and 90 days after Quarter 4.

■ 4. Amend § 3050.28 by revising paragraph (b), tables 1 and 2 in paragraph (b)(1), and paragraph (c) to read as follows:

§ 3050.28 Monthly and pay period reports.

* * * * *

(b) Monthly Summary Financial Report on the 24th day of the following month, except that the reports for the last months of Quarters 1, 2, and 3 of the fiscal year shall be provided at the time that the Form 10–Q report is provided and the report for the last month of Quarter 4 of the fiscal year shall be provided at the time that the Form 10–K report is provided;

(1) * * *

TABLE 1—USPS MONTHLY FINANCIAL STATEMENT—MONTH, FISCAL YEAR

[$ millions]

	Current period					Year-to-date				
	Actual	Plan	SPLY	% Plan Var	% SPLY Var	Actual	Plan	SPLY	% Plan Var	% SPLY Var
Revenue:										
Operating Revenue										
Other Revenue										
Operating Expenses										
Personnel Compensation and Benefits										
Transportation										
Supplies and Services										
Other Services										
Total Operating Expenses										
New Operating Income										
Interest Income										
Interest Expense										
Total Net Income										
Other Operating Statistics										
Mail Volume (Millions)										
Total Market Dominant Volumes										
Total Competitive Product Volumes										
Total Mail Volumes										
Total Workhours (Millions)										
Total Career Employees										
Total Non-Career Employees										

TABLE 2—MAIL VOLUME AND MAIL REVENUE—MONTH, FISCAL YEAR

[Thousands]

	Current period			Year-to-date		
	Actual	SPLY	% SPLY var.	Actual	SPLY	% SPLY var.
Market Dominant Products:						
First Class:						
Volume						
Revenue						
Periodicals:						
Volume						

TABLE 2—MAIL VOLUME AND MAIL REVENUE—MONTH, FISCAL YEAR—Continued

[Thousands]

	Current period			Year-to-date		
	Actual	SPLY	% SPLY var.	Actual	SPLY	% SPLY var.
Revenue						
USPS Marketing Mail:						
Volume						
Revenue						
Package Services:						
Volume						
Revenue						
All Other Market Dominant Mail:						
Volume						
Revenue						
Total Market Dominant Products:						
Volume						
Revenue						
Total Competitive Products						
Volume						
Revenue						
Total Operating Revenue:						
Total Volume						

* * * * *

(c) National Consolidated Trial Balances and the Revenue and Expense Summary on the 24th day of the following month, except that the reports for the last month of Quarters 1, 2, and 3 of the fiscal year shall be provided at the time that the Form 10–Q report is provided and the report for the last month of Quarter 4 of the fiscal year shall be provided at the time that the Form 10–K report is provided;

* * * * *

■ 5. Amend § 3050.60 by revising paragraph (c) to read as follows:

§ 3050.60 Miscellaneous reports and documents.

* * * * *

(c) The items listed in paragraph (b) of this section in electronic form;

* * * * *

[FR Doc. 2018–15326 Filed 7–17–18; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2018–0309 and EPA–R10–OAR–2018–0316: FRL–9980–88—Region 8]

Determination of Attainment by the Attainment Date and Clean Data Determination for the Logan, UT-ID 2006 24-Hour $PM_{2.5}$ Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a determination of attainment by the attainment date and a clean data determination (CDD) for the 2006 24-hour fine particulate matter ($PM_{2.5}$) Logan, Utah (UT)-Idaho (ID) nonattainment area. The determination is based upon quality-assured, quality-controlled and certified ambient air monitoring data showing that the area has attained the 2006 24-hour $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS) based on 2015–2017 data available in the EPA's Air Quality System (AQS) database. Based on the proposed determination that the Logan, UT-ID nonattainment area is currently attaining the 24-hour $PM_{2.5}$ NAAQS, the EPA is also proposing to determine that the obligation for Utah and Idaho to make submissions to meet certain Clean Air Act (CAA or the Act) requirements related to attainment of the NAAQS for this area is not applicable for as long as the area continues to attain the NAAQS.

DATES: Comments must be received on or before August 17, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2018–0309 and/or Docket ID No. EPA–R10–OAR–2018–0316 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* 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 the disclosure of which 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://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Crystal Ostigaard, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6602, *ostigaard.crystal@epa.gov,* or Matthew Jentgen, Air Planning Unit, Office of Air and Waste (OAW–150), EPA, Region 10, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101; (206) 553–0340; *jentgen.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we'', ''us'' or ''our'' is used, it is intended to refer to the EPA.

I. Background

A. Designation and Classification of $PM_{2.5}$ Nonattainment Areas

On October 17, 2006 (71 FR 61144), the EPA revised the level of the 24-hour $PM_{2.5}$ NAAQS, lowering the primary and secondary standards from the 1997 standard of 65 micrograms per cubic meter ($\mu g/m^3$) to 35 $\mu g/m^3$. The EPA

retained the form of the 1997 24-hour standard, that is, the 98th percentile of the annual 24-hour concentrations at each population-oriented monitor within an area, averaged over 3 years. 71 FR 61164–5 (October 17, 2006).

On November 13, 2009 (74 FR 58688), the EPA designated a number of areas as nonattainment for the 24-hour $PM_{2.5}$ NAAQS of 35 μg/m^3, including the Logan, UT-ID nonattainment area. The EPA originally designated these areas under the general provisions of CAA title I, part D, subpart 1 (''subpart 1''), under which attainment plans must provide for the attainment of a specific NAAQS (in this case, the 2006 $PM_{2.5}$ standards) as expeditiously as practicable, but no later than 5 years from the date the areas were designated nonattainment.

Subsequently, on January 4, 2013, the U.S. Court of Appeals for the District of Columbia Circuit held in *NRDC* v. *EPA* [1] that the EPA should have implemented the 2006 24-hour $PM_{2.5}$ standard based on both the general nonattainment area requirements in subpart 1 and the PM-specific requirements of CAA title I, part D, subpart 4 (''subpart 4''). In response to the Court's decision in *NRDC* v. *EPA,* on June 2, 2014 (79 FR 31566), the EPA finalized the ''Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particulate ($PM_{2.5}$) NAAQS and 2006 $PM_{2.5}$ NAAQS.'' This rule classified the areas that were designated in 2009 as nonattainment to Moderate, and set the attainment SIP submittal due date for those areas at December 31, 2014.

After the court's decision, on December 16, 2014, the Utah Department of Air Quality (UDAQ) withdrew all prior Logan, UT-ID $PM_{2.5}$ SIP submissions and submitted a new SIP to address both the general requirements of subpart 1 and the PM-specific requirements of subpart 4 for Moderate areas. Additionally, on December 24, 2014, the Idaho Department of Environmental Quality (IDEQ) submitted a supplement to the 2012 SIP submission (''2014 amendment'') that included additional analyses intended to meet CAA subpart 4 requirements.

On August 24, 2016, the EPA finalized the Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements (''$PM_{2.5}$ SIP Requirements Rule''), 81 FR 58010, which addressed the January 4, 2013 court ruling. The final $PM_{2.5}$ SIP Requirements Rule provides the EPA's interpretation of the requirements applicable to $PM_{2.5}$ nonattainment areas and explains how air agencies can meet the statutory SIP requirements that apply under subparts 1 and 4 to areas designated nonattainment for any $PM_{2.5}$ NAAQS.

[1] 706 F.3d 428 (D.C. Cir. 2013).

B. Two, 1-Year Extensions for the Logan, UT-ID Nonattainment Area

Under CAA section 188(d) and 40 CFR 51.1005, the EPA may grant a state's request to extend the attainment date for a Moderate area for a 24-hour $PM_{2.5}$ standard if: ''(1) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan; and (2) the 98th percentile 24-hour concentration at each monitor in the area for the calendar year that includes the applicable attainment date is less than or equal to the level of the applicable 24-hour standard.'' The EPA cannot issue more than two, 1-year extensions for a single Moderate area.

Both the State of Utah and the State of Idaho submitted requests to extend the attainment date to December 31, 2016, and then to December 31, 2017.[2] The EPA granted those requests on September 8, 2017 (82 FR 42447). As a result, the EPA must examine monitor data values from 2015–2017 to determine whether the Logan, UT-ID area attained the NAAQS by the extended attainment date.

C. Prior Actions on the Utah Portion of the Logan, UT-ID Nonattainment Area

The EPA previously acted on the area source rules and reasonably available control measure (RACM) analyses of the Utah Moderate $PM_{2.5}$ nonattainment area plan on September 9, 2015 (80 FR 54237), February 25, 2016 (81 FR 9343), October 19, 2016 (81 FR 71988) and September 14, 2017 (82 FR 43205). We have not acted on, approved or disapproved, any other portion of the Logan, UT-ID $PM_{2.5}$ attainment plan submitted by UDAQ. Since the EPA has not disapproved any portion of the plan, the clocks for sanctions under 179(a) and for a FIP under 110(c) are not in effect for the Utah portion of the Logan, UT-ID nonattainment area. Additionally, we proposed to approve the attainment demonstration and motor vehicle emission budgets (MVEB) for the Utah portion on December 4, 2017 (82 FR 57183).

[2] Each of the extension requests from Idaho and Utah can be found in the Region 8 and Region 10 dockets for the Logan, UT-ID nonattainment area proposed extension request actions. *See* EPA–R08–OAR–2017–0216 and EPA–R10–OAR–2017–0193.

D. Prior Action on the Idaho Portion of the Logan, UT-ID Nonattainment Area

Initially, the EPA approved Idaho's baseline emissions inventory on July 18, 2014 (79 FR 41904), and also approved certain control measures, including local ordinances and road sanding agreements, submitted in Idaho's attainment plan on March 24, 2014 (79 FR 16201). Subsequently, on January 4, 2017 (82 FR 729), the EPA published a partial approval and partial disapproval of the attainment plan for the Idaho portion of the Logan, UT-ID $PM_{2.5}$ nonattainment area. Specifically, the EPA approved Idaho's determination of which pollutants must be evaluated for control in the Idaho portion of the nonattainment and Idaho's RACM and reasonably available control technology (RACT) provisions. The EPA deferred action on the attainment demonstration, reasonable further progress (RFP), quantitative milestone, and MVEB requirements. Additionally, we disapproved the contingency measure element of Idaho's attainment plan.[3] Since the EPA has disapproved this portion of the plan, the clocks for sanctions under 179(a) and for a FIP under 110(c) are in effect for the Idaho portion of the Logan, UT-ID nonattainment area. As discussed below, if the EPA finalizes this action, the clocks for sanctions and for a FIP will be deferred.

On August 8, 2017 (82 FR 37025), based on newly available air quality monitoring data, the EPA approved Idaho's attainment demonstration and approved Idaho's 2014 MVEB as early progress budgets. Additionally, the EPA conditionally approved the RFP, quantitative milestone and revised MVEB requirements. Idaho committed to submit revisions for the conditionally approved elements by August 1, 2018.

II. Determination of Attainment by the Attainment Date

Under CAA section 188(b)(2), the EPA is required to determine within 6 months of the applicable attainment date whether a nonattainment area attained the standard by that date. As discussed above, on September 8, 2017, the EPA extended the attainment date for the Logan, UT-ID area to December 31, 2017. Under the EPA regulations at 40 CFR 50.13 and part 50, appendix N, section 4.2, the 2006 primary and secondary 24-hour $PM_{2.5}$ NAAQS are met when the 24-hour $PM_{2.5}$ NAAQS design value at each eligible monitoring site is less than or equal to 35 μg/m^3.

[3] The EPA extended the effective date of this partial approval and partial disapproval to April 20, 2017. *See* 82 FR 14463.

For the 24-hour $PM_{2.5}$ standards, appendix N defines eligible monitoring sites as those that meet the technical requirements in 40 CFR 58.11 and 58.30. Three years of valid annual $PM_{2.5}$ 98th percentile mass concentrations are required to produce a valid 24-hour $PM_{2.5}$ NAAQS design value. A year meets data completeness requirements when quarterly data capture rates for all four quarters are at least 75%. Nonetheless, where the 75% data capture requirement is not met, the 24-hour $PM_{2.5}$ NAAQS design value shall still be considered valid if it passes the maximum quarterly value data substitution test.

In accordance with the EPA regulations at 40 CFR part 50, appendix N, a finding of attainment of the 2006 24-hour $PM_{2.5}$ NAAQS must be based upon complete, quality-assured data gathered at established state and local air monitoring stations (SLAMS) and national air monitoring stations (NAMS) in the nonattainment area and entered in the EPA Air Quality System (AQS). Data from air monitors operated by state/local/tribal agencies in compliance with the EPA monitoring requirements must be submitted to AQS. Monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, the EPA relies primarily on data in AQS when determining the attainment status of areas. *See* 40 CFR 50.13; 40 CFR part 50, appendix L; 40 CFR part 53; 40 CFR part 58, and 40 CFR part 58, appendices A, C, D, and E. All data are reviewed to determine the area's air quality status in accordance with 40 CFR 50, appendix N.

Additionally, a determination of attainment is not equivalent to a redesignation, and the state must still meet the statutory requirements for redesignation in order to be redesignated to attainment.

A. Monitoring Network and Data Considerations

Determining whether an area has attained the NAAQS pursuant to CAA section 188(b)(2) is based on monitored air quality data. Thus, the validity of a determination of attainment depends in part on whether the monitoring network adequately measures ambient $PM_{2.5}$ levels in the nonattainment area. The UDAQ and the IDEQ are the governmental agencies with the authority and responsibilities under each state's laws for collecting ambient air quality data for the Logan, UT-ID nonattainment area. Annually, UDAQ and IDEQ submit monitoring network plans to the EPA. These plans document the establishment and maintenance of the air monitoring network, as required under 40 CFR part 58. With respect to $PM_{2.5}$ monitoring in the Logan, UT-ID nonattainment area, the EPA Regional offices for Region 8 and Region 10 have found that UDAQ's and IDEQ's annual network plans, respectively, met the applicable requirements under 40 CFR part 58 for the relevant period, 2015–2017, with the exception (discussed below) of UDAQ's 2015 network plan. Also, UDAQ and IDEQ annually certify that the data they submit to AQS are quality assured.

The UDAQ and IDEQ each operated $PM_{2.5}$ SLAMS monitors during the 2015–2017 period within the Logan, UT-ID $PM_{2.5}$ nonattainment area. In 2015, UDAQ operated two $PM_{2.5}$ monitoring sites, at Logan and Smithfield, and in 2016 and 2017, UDAQ operated only the Smithfield monitoring site. The IDEQ monitoring site for 2015, 2016 and 2017 was located in Franklin, Idaho.

B. Logan/Smithfield, Utah Monitoring

The 2015 Annual Monitoring Network Plan (AMNP) and Five-Year Network Assessment was submitted by UDAQ in June 2015. This plan and assessment was not reviewed and acted on by Region 8 due to Region 8's Technical Support Audit (TSA), which was completed in August 2015, and found major and minor/observation issues with the network. The objective of a TSA is to review a quality assurance (QA) system in order to evaluate the system's ability to ensure quality, in this case, the reporting of valid data to the EPA's AQS database. The QA requirements of 40 CFR part 58, appendices A through E pertain to regulatory air monitoring at SLAMS. A major finding may indicate that invalid data have been loaded in AQS or, if not corrected, future operations may result in collection of invalid data, and a minor/observation finding will not necessarily lead to data loss or invalidation, but warrant investigation, appropriate follow-up and audit response. Additional details pertaining to the major and minor findings can be found in the 2015 TSA in the Region 8 docket (EPA–R08–OAR–2018–0309).

Due to these monitoring issues, the EPA was not able to approve UDAQ's 2015 AMNP and a large number of samples from the filter-based Federal Reference Method (FRM) monitor in Logan and Smithfield were invalidated.[4] The EPA worked with UDAQ to correct these deficiencies found in the August 2015 TSA and after their review of the $PM_{2.5}$ data for 2015, UDAQ removed the invalid samples for the Logan FRM monitor and left the valid samples in the AQS database. Additionally, some continuous sampler data from the Logan co-located Federal Equivalent Method (FEM) monitor were determined to have sufficient QA to meet NAAQS comparison requirements. Data from this co-located monitor were used to fill in some of the missing days in 2015, adding to the total number of samples that can be used to determine a 98th percentile value for that year and providing for a complete 2015 monitoring year. Utah used the methodology found in 40 CFR part 50, appendix N sections 3.0(d)(2) and 3.0(e) to substitute FEM data for the days without FRM data.

The EPA has reviewed the Logan site and, using the criteria found in 40 CFR part 58, appendix A, has determined that the QA for the continuous FEM monitor is acceptable. We therefore agree that the data from the FEM monitor can be substituted for the days for which the FRM monitor data was invalid, which would provide for a complete year in 2015 to be used in showing attainment. Pursuant to 40 CFR 50, appendix N, the standard must be met at each ''eligible monitoring site,'' where an ''eligible [monitoring] site'' is defined in appendix N as a site that meets the requirements of 40 CFR 58.11 and 58.30. Thus, appendix N does not require AMNP approval, only that the monitoring site meets the substantive requirements. Upon reviewing the Logan and Smithfield sites, despite the EPA not formally approving the 2015 AMNP, the EPA finds that the Logan and Smithfield sites met the requirements of 40 CFR 58.11 during 2015. On November 29, 2016, UDAQ submitted a letter that contained the AMP 430, AMP 450, AMP 256 and AMP 450NC reports required to certify the 2015 air quality data in Utah. UDAQ completed the data certification process in AQS and with the November 29, 2016 letter, certified that the 2015 air quality data is accurate. Additional information related to these monitors can be found in the November 23, 2016 memoranda found in the Region 8 docket (EPA–R08–OAR–2018–0309).

On March 14, 2017, the EPA approved Utah's 2016 AMNP. As part of the approval, we approved the closing of the Logan monitoring station on December 31, 2015 (AQS ID #49–005–0004) and the establishment of the Smithfield monitoring station (AQS ID #49–005–0007) as a maximum concentration site. Additionally, on April 20, 2017, UDAQ submitted a letter that contained the AMP 600 and AMP

[4] May 8, 2017 EPA Region 8 Memorandum; Logan, Utah $PM_{2.5}$ 2015 Design Value.

450NC reports required to certify the 2016 air quality data in Utah. UDAQ completed the data certification process in AQS and with the April 20, 2017 letter, certified that the 2016 air quality data is accurate.

On October 27, 2017, the EPA approved Utah's 2017 AMNP, and on April 10, 2018, the UDAQ submitted a letter that contained the AMP 600 and AMP 450NC reports required to certify the 2017 air quality data in Utah. With the April 10, 2018 letter, UDAQ completed the data certification process in AQS and certified that the 2017 air quality data is accurate.

The Smithfield monitoring site data was incomplete for 2015 because the station, including the co-located continuous monitor, was not operating in January of that year. Thus, in order to establish 3 years of valid data at the Smithfield monitoring site, the EPA proposes to combine the January 2015 Logan data with Smithfield's February through December 2015 data. In doing so, we are considering not only our approval of the replacement of the Logan monitor with the Smithfield monitor in the monitoring network, but also the consistency of the data from the two monitors. During 2015, data from the two monitors on days above 10 μg/m^3 was well correlated. For details, please see the June 13, 2018 memorandum to the docket entitled ''Logan, Utah $PM_{2.5}$ Monitoring Data Set Determination Memo.''

C. Franklin, ID Monitoring

Idaho submitted its 2015 AMNP on August 12, 2015. Until June 30, 2015, Idaho had two regulatory air quality monitors running at the Franklin, ID site. As part of the network plan, Idaho proposed to replace the very sharp cut cyclone (VSCC) on its FEM continuous monitor with a sharp cut cyclone (SCC), making it a special purpose monitor for Air Quality Index (AQI) reporting. This change resulted in the FEM continuous monitor becoming non-regulatory, as of June 30, 2015. The EPA approved Idaho's 2015 AMNP on October 28, 2015.[5]

Idaho submitted its 2016 AMNP on July 28, 2016. The EPA approved Idaho's network plan on December 13, 2016. The regulatory FRM monitor at the Franklin, ID site did not meet the completeness requirements in Quarter 2 of 2016. Per 40 CFR part 50, appendix N, 4.2(c), when a monitor has less than 75% capture in a quarter (but greater than 50%), a substitution test can be performed to determine the validity of the data. The Franklin monitor had 70% completeness in Quarter 2 of 2016. Per the substitution test, the highest Quarter 2 value for the 3-year period under consideration is substituted for all missing data in the deficient quarter. The 2015–2017 design value is the 3-year period under consideration in this case. The highest value is 10.3 μg/m^3 within the 3-year period during that quarter of the year. Applying the maximum 10.3 μg/m^3 $PM_{2.5}$ value to the missing data for the deficient quarter (Quarter 2, 2016) does not affect the 2015–2017 design value at the Franklin monitor.

Idaho submitted its initial 2017 AMNP on June 29, 2017, and submitted an addendum on October 31, 2017. The addendum requested changing the run schedule of the regulatory FRM monitor at the Franklin, ID site from every third day to daily. The EPA approved the 2017 AMNP, including the run schedule change, on November 8, 2017.[6]

D. Evaluation of Current Attainment

As discussed above, the EPA's evaluation of whether the Logan, UT-ID $PM_{2.5}$ nonattainment area has attained the 2006 24-hour $PM_{2.5}$ NAAQS is based on our review of the monitoring data, and takes into account the adequacy of the $PM_{2.5}$ monitoring network in the nonattainment area and the reliability of the data collected by the network as discussed in the previous section of this document.

Based on our review, the $PM_{2.5}$ monitoring network for the Logan, UT-ID nonattainment area meets the requirements stated above and is therefore adequate for use in determining whether the area attained the 2006 24-hour $PM_{2.5}$ NAAQS. Additionally, the EPA has reviewed the data for the most recent 3-year period (2015–2017) for completeness and has determined that the data collected by UDAQ and IDEQ meets the completeness criterion for all 12 quarters at the Smithfield, Utah and Franklin, Idaho monitors.

The EPA reviewed the $PM_{2.5}$ ambient air monitoring data from the Smithfield, Utah (AQS site 49–005–0007) and Franklin, Idaho (AQS site 16–041–0001) monitoring sites consistent with the requirements contained in 40 CFR part 50, as recorded in the EPA AQS database for the Logan, UT-ID nonattainment area. For purposes of determining attainment by the December 31, 2017 extended attainment date, the EPA determined that the data recorded in the AQS database was certified and complete.

Additionally, UDAQ submitted exceptional events demonstrations for the year 2017. The $PM_{2.5}$ SIP Requirements Rule (81 FR 58010, August 24, 2016) states:

Air quality monitoring data that the EPA determines to have been influenced by an exceptional event under the procedural steps, substantive criteria, and schedule specified in the Exceptional Events Rule may be excluded from regulatory decisions such as initial area designations decisions and decisions associated with implementing the $PM_{2.5}$ NAAQS such as clean data determinations (CDD), evaluation of attainment demonstrations, and discretionary or mandatory reclassifications of nonattainment areas from Moderate to Serious. While the EPA may agree with the state's request to exclude event-influenced air quality monitoring data from regulatory decisions, these regulatory actions require the EPA to provide an opportunity for public comment on the claimed exceptional event and all supporting data prior to the EPA taking final agency action.

The EPA concurred on these exceptional events on June 15, 2018, and the concurrence is included in the Region 8 docket for this action (EPA–R08–OAR–2018–0309). This proposed determination of attainment and CDD provides the public with an opportunity to comment on the claimed exceptional events, all supporting documents and the EPA's concurrence with the State of Utah's requests.

The design value for the 2006 24-hour $PM_{2.5}$ NAAQS for the years 2015–2017 at the Smithfield, Utah site was 33 μg/m^3 and 30 μg/m^3 at the Franklin, Idaho site, which is less than the standard of 35 μg/m^3. See Table 1 below for the annual 98th percentiles and 3-year design value for the 2015–2017 monitoring period. On the basis of this review, we are proposing to determine that the Logan, UT-ID nonattainment area attained the 2006 24-hour $PM_{2.5}$ NAAQS by the attainment date.

[5] In the approval letter, the EPA noted that since the alteration of the FEM continuous monitor did not change the SLAMS network, the EPA approval is not needed.

[6] The November 8, 2017 AMNP approval letter noted monitoring network deficiencies related to ozone monitoring and deficiencies in Idaho's network monitoring plan, but these were not deficiencies specific to $PM_{2.5}$ air quality monitoring in the Logan, UT-ID Metropolitan Statistical Area.

TABLE 1—2015–2017 LOGAN UT-ID NONATTAINMENT AREA $PM_{2.5}$ MONITORING DATA

Monitor name	AQS site ID	98th percentile (μg/m³)			2015–2017 24-hour design value (μg/m³)
		2015	2016	2017	
Smithfield, UT	49–005–0007	[a] 28.9	34.4	36.0	[a] 33
Franklin, ID	16–041–0001	18.8	33.3	[b] 38.3	[b] 30

[a] This value combines monitor data from the Logan, UT and Smithfield, UT monitors. The EPA concurred exceptional events are excluded.
[b] This value includes 1 in 3 monitoring frequency from January 1–August 9, 2017, and daily monitoring frequency from August 10–December 31, 2017.

III. Clean Data Determination

Over the past 2 decades, the EPA has consistently applied its ''Clean Data Policy'' interpretation to attainment related provisions of subparts 1, 2, and 4 of the CAA. The EPA codified the approach in the Clean Data Policy in the $PM_{2.5}$ SIP Requirements Rule (40 CFR 51.1015(a)) for the implementation of current and future $PM_{2.5}$ NAAQS. *See* 81 FR 58010, 58161 (August 24, 2016). For a complete discussion of the Clean Data Policy's history and the EPA's longstanding interpretation under the CAA, please refer to the August 24, 2016 $PM_{2.5}$ SIP Requirements Rule (81 FR 58010).

The general requirements of subpart 1 apply in conjunction with the more specific requirements of subpart 4, to the extent they are not superseded or subsumed by the subpart 4 requirements. Subpart 1 contains general air quality planning requirements for areas designated nonattainment. *See* section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for particulate matter nonattainment areas, *See* section188. The final $PM_{2.5}$ SIP Requirements Rule interprets the CAA specific to $PM_{2.5}$ and provides information on the statutory requirements for SIPs for $PM_{2.5}$ nonattainment areas. *See* 81 FR 58010 (August 24, 2016).

As provided in 40 CFR 51.1015, so long as an area continues to meet the standard, finalization of a CDD suspends the requirements for a nonattainment area to submit an attainment demonstration, associated RACM, RFP plan, contingency measures and any other planning SIP requirements related to the attainment of the 2006 $PM_{2.5}$ NAAQS. For purposes of this NAAQS, the requirement to submit a projected attainment inventory as part of an attainment demonstration or RFP is also suspended by this determination. As discussed in the 2016 $PM_{2.5}$ SIP Requirements Rule, the nonattainment base emissions inventory required by section 172(c)(3) is not suspended by this determination because the base inventory is a requirement independent of planning for an area's attainment. *See* 81 FR 58009 at 58028 and 58127–8 and 80 FR 15340 at 15441–2. Additionally, nonattainment New Source Review (NNSR) requirements are discussed in the $PM_{2.5}$ SIP Requirements Rule, and required by CAA sections 110(a)(2)(C); 172(c)(5); 173; 189(a); and 189(e), as not being suspended by a CDD because this requirement is independent of the area's attainment planning. *See* 81 FR 58010 at 58107 and 58127.

By extension, the requirement to submit a MVEB for the attainment year for the purposes of transportation conformity is also suspended. A MVEB is that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting RFP milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.[7] For the purposes of the transportation conformity regulations, the control strategy implementation plan revision is the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of RFP and attainment.[8] Given that MVEBs are required to support the RFP and attainment demonstration requirements in the attainment plan, suspension of the RFP and attainment demonstration requirements through a CDD, also suspends the requirement to submit MVEBs for the attainment and RFP years. The suspension of planning requirements pursuant to 40 CFR 51.1015, does not preclude the state from submitting suspended elements of its moderate area attainment plan for EPA approval for the purposes of strengthening the state's SIP.

[7] 40 CFR 93.101.
[8] 40 CFR 93.101.

The suspension of the obligation to submit such requirements applies regardless of when the plan submissions are due. The CDD does not suspend CAA requirements that are independent of helping the area achieve attainment, such as the requirements to submit an emissions inventory and NNSR requirements. A clean data determination is not equivalent to a redesignation, and the state must still meet the statutory requirements for redesignation in order to be redesignated to attainment.

In accordance with 40 CFR 51.1015(a)(1) and (2), the CDD suspends the aforementioned SIP obligations until such time as the area is redesignated to attainment, after which such requirements are permanently discharged; or the EPA determines that the area has re-violated the $PM_{2.5}$ NAAQS, at which time the state shall submit such attainment plan elements for the Moderate nonattainment area by a future date to be determined by the EPA and announced through publication in the **Federal Register** at the time the EPA determines the area is violating the $PM_{2.5}$ NAAQS.

A. Clean Data Determination for the Logan, UT-ID Nonattainment Area

Based on the same monitoring data for the period 2015–2017, the EPA is also proposing to determine that the area has clean data for demonstrating attainment of the 2006 24-hour $PM_{2.5}$ NAAQS. In accordance with 40 CFR 51.1015, a CDD can be made upon a determination by the EPA that a Moderate $PM_{2.5}$ NAA is attaining the $PM_{2.5}$ NAAQS. As provided in 40 CFR 51.1015, so long as the EPA does not determine that the area has re-violated the standard, finalization of this determination suspends the requirements for this area to submit an attainment demonstration, associated RACM, RFP plan, contingency measures, and any other SIP planning requirements related to the attainment of the 2006 $PM_{2.5}$ NAAQS. For purposes of this NAAQS, the requirement to submit an attainment year projected inventory for the nonattainment area as part of an

attainment demonstration or RFP as well as MVEB are also suspended by this determination. As discussed in the $PM_{2.5}$ SIP Requirements Rule, the base year inventory for the nonattainment area required by section 172(c)(3) is not suspended by this determination because the base year inventory is a requirement independent of planning for an area's attainment. *See* 81 FR 58009 at 58028 and 58127–8 and 80 FR 15340 at 15441–2. Additionally, NNSR requirements are discussed in the $PM_{2.5}$ SIP Requirements Rule, and required by CAA sections 110(a)(2)(C); 172(c)(5); 173; 189(a); and 189(e), as not being suspended by this determination because this requirement is independent of the area's attainment planning. *See* 81 FR 58010 at 58107 and 58127.

Under a CDD, the planning requirements noted above shall be suspended until such time as the area is redesignated to attainment, after which such requirements are permanently discharged. Specific to Idaho, we are proposing to suspend the requirements to submit RFP, quantitative milestones, attainment year MVEB [9] and contingency measures.[10] If we finalize today's proposed CDD, any sanctions clocks under CAA section 179(a) or requirements that we promulgate a Federal Implementation Plan (FIP) under CAA section 110(c) for these SIP requirements will be suspended for the pendency of the CDD. If the EPA subsequently determines that the area is in violation of the 2006 24-hour $PM_{2.5}$ NAAQS, the EPA would rescind the CDD, the states would again be required to submit the suspended attainment plan elements to the EPA, and the FIP and sanctions clocks would resume. *See* 40 CFR 51.1015(a)(2).

Neither the proposed finding of attainment by the attainment date nor the proposed CDD is equivalent to the redesignation of the area to attainment. This proposed action, if finalized, will not constitute a redesignation to attainment under CAA section 107(d)(3)(E), because the states must have an approved maintenance plan for the area as required under section 175A of the CAA, and the EPA must determine that the area has met the other requirements for redesignation in order to be redesignated to attainment. The designation status of the area will remain nonattainment for the 2006 $PM_{2.5}$ NAAQS until such time as the EPA determines that the area meets the CAA requirements for redesignation to attainment in CAA section 107(d)(3)(E).

It is possible, although not expected, that the Logan, UT-ID area could violate the 24-hour $PM_{2.5}$ NAAQS before a maintenance plan is adopted, submitted and approved, and the area is redesignated to attainment. Pursuant to 40 CFR 51.1015(a)(2), if the EPA determines that the area has re-violated the 24-hour $PM_{2.5}$ NAAQS, the states shall be required to submit the suspended attainment plan elements. Even so, submission of the suspended elements may be insufficient to eliminate future violations.[11] Therefore, the issuance of a SIP call under section 110(k)(5) could be an appropriate response. This SIP call could require the states to submit, by a reasonable deadline not to exceed 18 months, a revised plan demonstrating expeditious attainment and complying with other requirements applicable to the area at the time of such finding. Under CAA section 172(d), the EPA may reasonably adjust the dates applicable to these requirements.

IV. Proposed Action

Pursuant to CAA section 188(b)(2), the EPA is proposing to determine, based on the most recent 3 years (2015–2017) of valid data,[12] that the Logan, UT-ID nonattainment area has attained the 2006 primary and secondary 24-hour $PM_{2.5}$ NAAQS by the December 31, 2017, attainment date.

In addition, pursuant to the Clean Data Policy codified at 40 CFR 51.1015(a), and based upon our proposed determination that the Logan, UT-ID nonattainment area has attained the standard, the EPA proposes to determine that the obligation to submit any remaining attainment-related SIP revisions arising from classification of the Logan, UT-ID area as a Moderate nonattainment area under subpart 4 of part D (of title I of the Act) for the 2006 24-hour $PM_{2.5}$ NAAQS is not applicable for so long as the area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. If today's action is finalized as proposed, the sanctions and FIP clocks triggered by the partial disapproval of the contingency measure element of the Idaho portion of the Logan, UT-ID $PM_{2.5}$ SIP will be suspended. This proposed action, if finalized, would not constitute a redesignation to attainment under CAA section 107(d)(3).

IV. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment based on air quality and to suspend certain federal requirements, and thus would not impose additional requirements beyond those imposed by state law. For this reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not expected to be an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant 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 CAA; 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, this proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP

[9] In accordance with 40 CFR 93.109(c)(5), Idaho will rely on the 2014 early progress MVEB approved on August 8, 2017, for the purposes of transportation conformity. 82 FR 37025.

[10] Pursuant to CAA section 110(k)(4), the EPA conditionally approved the RFP, quantitative milestones, and attainment year MVEB elements based on an April 25, 2017, commitment from the IDEQ to submit the elements by August 1, 2018. 82 FR 37028. If finalized, the CDD would suspend the state's obligation to meet this commitment. However, the CDD does not preclude the state from submitting the suspended elements.

[11] As discussed in sections I.C. and I.D. of this **Federal Register** action, both Utah and Idaho have implemented RACM. In addition, Idaho has not adopted contingency measures as part of its Moderate area SIP.

[12] Meeting the requirements of 40 CFR part 50, appendix N, and part 58.

obligations discussed herein do not apply to Indian tribes and thus this proposed action will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 25, 2018.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

Dated: June 26, 2018.

Chris Hladick,

Regional Administrator, Region 10.

[FR Doc. 2018–15343 Filed 7–17–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2018–0509; FRL–9980–89—Region 10]

Air Plan Approval; Idaho; Interstate Transport Requirements for the 2012 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Clean Air Act (CAA) requires each State Implementation Plan (SIP) to contain adequate provisions prohibiting emissions that will have certain adverse air quality effects in other states. On December 23, 2015, the State of Idaho made a submission to the Environmental Protection Agency (EPA) to address these requirements. The EPA is proposing to approve the submission as meeting the requirement that each SIP contain adequate provisions to prohibit emissions that will contribute significantly to nonattainment or interfere with maintenance of the 2012 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS) in any other state.

DATES: Comments must be received on or before August 17, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2018–0509 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* 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 the disclosure of which 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://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, Air Planning Unit, Office of Air and Waste (OAW–150), Environmental Protection Agency, Region 10, 1200 Sixth Ave, Suite 155, Seattle, WA 98101; telephone number: (206) 553–0256; email address: *hunt.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. This supplementary information section is arranged as follows:

Table of Contents

I. What is the background of this SIP submission?

This rulemaking addresses a submission from the Idaho Department of Environmental Quality (IDEQ) assessing interstate transport requirements for the 2012 annual $PM_{2.5}$ NAAQS. The requirement for states to make a SIP submission of this type arises from section 110(a)(1) of the CAA. Pursuant to section 110(a)(1), states must submit within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof), a plan that provides for the implementation, maintenance, and enforcement of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon the EPA taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address. The EPA commonly refers to such state plans as ''infrastructure SIPs.'' Specifically, this rulemaking addresses the requirements under CAA section 110(a)(2)(D)(i)(I), otherwise known as the ''good neighbor'' provision, which requires SIPs to contain adequate provisions to prohibit emissions that will contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any other state.

II. What guidance or information is the EPA using to evaluate this SIP submission?

The most recent relevant document was a memorandum published on March 17, 2016, titled ''Information on the Interstate Transport ''Good Neighbor'' Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)'' (memorandum). The memorandum describes the EPA's past approach to addressing interstate transport, and provides the EPA's general review of relevant modeling data and air quality projections as they relate to the 2012 annual $PM_{2.5}$ NAAQS. The memorandum provides information relevant to the EPA regional office review of the CAA section 110(a)(2)(D)(i)(I) ''good neighbor'' provision in infrastructure SIPs with respect to the 2012 annual $PM_{2.5}$ NAAQS. This rulemaking considers information provided in that memorandum.

The memorandum also provides states and the EPA regional offices with future year annual $PM_{2.5}$ design values for monitors in the United States based on quality assured and certified ambient monitoring data and air quality modeling. The memorandum describes how these projected potential design values can be used to help determine which monitors should be further evaluated to potentially address whether emissions from other states significantly contribute to nonattainment or interfere with maintenance of the 2012 annual $PM_{2.5}$ NAAQS at those sites. The memorandum explains that the pertinent year for evaluating air quality for purposes of addressing interstate transport for the 2012 $PM_{2.5}$ NAAQS is 2021, the attainment deadline for 2012 $PM_{2.5}$ NAAQS nonattainment areas classified as Moderate.

Based on this approach, the potential receptors are outlined in the memorandum. Most of the potential receptors are in California, located in the San Joaquin Valley or South Coast nonattainment areas. However, there is also one potential receptor in Shoshone County, Idaho, and one potential receptor in Allegheny County, Pennsylvania. The memorandum also indicates that for certain states with incomplete ambient monitoring data, additional information including the latest available data should be analyzed to determine whether there are potential downwind air quality problems that may be impacted by transported emissions.

This rulemaking considers analysis in Idaho's submission, as well as additional analysis conducted by the EPA during review of its submission. For more information on how we conducted our analysis, please see the technical support document (TSD) included in the docket for this action.

III. The EPA's Review

This rulemaking proposes action on Idaho's December 23, 2015, SIP submission addressing the good neighbor provision requirements of CAA section 110(a)(2)(D)(i)(I). State plans must address specific requirements of the good neighbor provisions (commonly referred to as ''prongs''), including:

—Prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong one); and

—Prohibiting any source or other type of emissions activity in one state from interfering with maintenance of the NAAQS in another state (prong two).

The EPA has developed a consistent framework for addressing the prong one and two interstate transport requirements with respect to the $PM_{2.5}$ NAAQS in several previous federal rulemakings. The four basic steps of that framework include: (1) Identifying downwind receptors that are expected to have problems attaining or maintaining the relevant NAAQS; (2) identifying which upwind states contribute to these identified problems in amounts sufficient to warrant further review and analysis; (3) for states identified as contributing to downwind air quality problems, identifying upwind emissions reductions necessary to prevent an upwind state from significantly contributing to nonattainment or interfering with maintenance of the relevant NAAQS downwind; and (4) for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the relevant NAAQS downwind, reducing the identified upwind emissions through adoption of permanent and enforceable measures. This framework was applied with respect to $PM_{2.5}$ in the Cross-State Air Pollution Rule (CSAPR), designed to address both the 1997 and 2006 $PM_{2.5}$ standards, as well as the 1997 ozone standard.[1]

In its submission, IDEQ reviewed 2010 to 2014 air quality monitoring data to identify potential downwind receptors that may have problems attaining or maintaining the 2012 $PM_{2.5}$ NAAQS. IDEQ then reviewed geographical distance, topography, meteorology (local air stagnation and prevailing wind patterns), Interagency Monitoring of Protected Visual Environment (IMPROVE) monitoring data and regional modeling conducted by the Western Regional Air Partnership (WRAP), 2011 national emission inventory (NEI) data, and the EPA's technical support document for California areas designated as nonattainment for the 2012 annual $PM_{2.5}$ NAAQS.[2] From this analysis IDEQ concluded that Idaho does not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.

As discussed in the TSD for this action, we came to the same conclusion as the state. In our evaluation, potential downwind nonattainment and maintenance receptors were identified in other states. The EPA evaluated these potential receptors to determine first if, based on review of relevant data and other information, there would be downwind nonattainment or maintenance problems, and if so, whether Idaho contributes to such problems in these areas. After reviewing air quality reports, modeling results, designation letters, designation technical support documents, attainment plans and other information for these areas, we find there is no contribution sufficient to warrant additional SIP measures. Therefore, we are proposing to approve the Idaho SIP as meeting CAA section 110(a)(2)(i)(I) interstate transport requirements for the 2012 $PM_{2.5}$ NAAQS.

IV. What action is the EPA taking?

The EPA is proposing to approve IDEQ's December 23, 2015, submission certifying that the Idaho SIP is sufficient to meet the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I), specifically prongs one and two, as set forth above. The EPA is requesting comments on the proposed approval.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. 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

[1] Idaho was not part of the CSAPR rulemaking. The EPA approved the Idaho SIP as meeting the CAA section 110(a)(2)(D)(i)(I) requirements for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS on November 26, 2010 (75 FR 72705) and the 2006 $PM_{2.5}$ NAAQS on April 17, 2015 (80 FR 21181).

[2] See California: Imperial County, Los Angeles-South Coast Air Basin, Plumas County, San Joaquin Valley Area Designations for the 2012 Primary Annual $PM_{2.5}$ National Ambient Air Quality Standard Technical Support Document.

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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 3, 2018.

Chris Hladick,

Regional Administrator, Region 10.

[FR Doc. 2018–15251 Filed 7–17–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0276; FRL–9980–93—Region 5]

Air Plan Approval; Illinois; Permit-by-Rule Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Illinois State Implementation Plan (SIP) to establish a general framework for permits-by-rule (PBR) and specifically provide a PBR for small boilers. In addition, EPA is proposing to approve other state provisions that are affected by the addition of the PBR regulations, as well as minor changes in nomenclature.

DATES: Comments must be received on or before August 17, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2017–0276 at *http://www.regulations.gov,* or via email to *damico.genevieve@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, 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. 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://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Danny Marcus, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8781, *marcus.danny@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background

A. Minor New Source Review

Section 110(a)(2)(C) of the Clean Air Act (CAA) requires that every SIP include a program to regulate the construction and modification of stationary sources to ensure attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). Parts C and D of the CAA (sections 160 through 190) require the establishment of a New Source Review (NSR) program for sources whose Potential to Emit (PTE) is above certain air pollution thresholds. For such ''major sources,'' Prevention of Significant Deterioration (PSD) provisions will generally apply in areas that have attained the NAAQS, while Nonattainment New Source Review (NNSR) provisions will apply in areas that have not attained the NAAQS.

The permitting program for minor sources is addressed by section 110(a)(2)(C) of the CAA. A minor source is one whose PTE is lower than the major NSR applicability threshold for a particular pollutant. States must develop minor NSR programs to comply with the Federal requirements for state minor NSR programs contained in 40 CFR 51.160 through 51.164. The provisions of a minor NSR program must include legally enforceable procedures that enable the permitting authority to determine whether the construction or modification of a source will result in a violation of applicable portions of the control strategy or interfere with attainment or maintenance of a NAAQS. 40 CFR 51.160(a).

The minor NSR requirements are considerably less prescriptive than those for major sources. EPA has long recognized that such rules are an effective means to ensure that sources whose emissions are less than the major source thresholds are nonetheless reviewed to ensure protection of the NAAQS. *See, e.g.,* 76 FR 38748, 38752 (July 1, 2011). The Illinois Environmental Protection Agency (IEPA) implements the minor source NSR program under 35 Illinois Administrative Code (IAC) 201. EPA approved Illinois' minor NSR program on December 17, 1992 (57 FR 59928).

B. Title V Operating Permit Program

Title V of the CAA (sections 501 through 507) requires that all major stationary sources have permits that contain all requirements that are applicable under the CAA, as well as adequate monitoring. Title V and its implementing regulations at 40 CFR part 70 provide for the establishment of comprehensive State air quality operating permitting programs consistent with the requirements of title V. The title V operating permit program in Illinois, which EPA fully approved on November 30, 2001, is referred to as the Clean Air Act Permit Program or ''CAAPP'' (66 FR 62946, December 4,

2001). Pursuant to section 502(a) of the CAA, it is unlawful for any person to, among other things, operate a major source subject to title V except in compliance with a title V permit. All ''major sources'' of air pollutants, and certain other sources, must obtain and operate in compliance with a title V operating permit. 40 CFR 70.3.

C. Permits-By-Rule

A PBR is a mechanism for streamlining the issuance of preconstruction permits. PBRs use a regulatory-type structure (*i.e.,* the permit requirements are codified in the IAC) to pre-authorize construction and modification activities carried out in accordance with the codified requirements. PBR programs establish a streamlined process that allows an individual applicant to notify the reviewing authority that it meets the eligibility criteria for the permit and the permit conditions rather than going through a reviewing authority review and approval process. This ''notification'' process streamlines permitting for eligible sources and makes it easier for the reviewing authority to implement the PBR program compared to traditional site-specific permits. *See, e.g.,* General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories (80 FR 25068, May 1, 2015). A PBR contains qualifying criteria, emission limitations, conditions for operation, requirements for recordkeeping and reporting, and standard permitting conditions that are similar to those found in individual construction permits for a particular emission source.

On May 2, 2017, IEPA submitted to EPA the following SIP revision requests, which are largely related to a PBR program: (1) IEPA revision to 35 IAC Part 201 to add a new Subpart M (35 IAC 201.500 through 201.540), which establishes general provisions for a PBR program; (2) IEPA revision to Part 201 to add a new Subpart N to 35 IAC Part 201 (35 IAC 201.600 through 201.635), which establishes PBR requirements for boilers burning certain types of fuel and with heat input capacities of less than or equal to 100 Million British Thermal Units per Hour (MMBtu/hr); (3) IEPA changes to certain abbreviations, definitions, and incorporation by reference (35 IAC 201.103, 35 IAC 201.104, and 35 IAC 211.4720), which are all mostly related to the new PBR rules; and (4) IEPA minor changes in nomenclature at 35 IAC 201.146.

II. Discussion of the State's Submittal

A. Rule Revisions That EPA Is Proposing To Approve

35 IAC Part 201, Subpart M: Permit By Rule—General Provisions

Subpart M establishes general provisions for all PBRs. The owner or operator of a source seeking a PBR for an emission unit covered by an applicable PBR Subpart must comply with all applicable requirements of 35 IAC Part 201, Subpart M, and the applicable PBR Subpart for the type of emission unit for which a construction permit is required. Compliance with the PBR provisions satisfies the requirement to apply for and obtain a construction permit prior to construction or modification of the emission unit. 35 IAC 201.500.

For an owner or operator of a source to be eligible to obtain a PBR for a proposed or modified emission unit: (1) The emission unit must be located at a title V source that has a title V permit; (2) there must be a PBR that has become effective within 35 IAC Part 201 that is applicable to the emission unit; (3) the emission unit, either alone or as part of a larger project, must not be subject to any pre-construction permitting requirements for a major new source or major modification pursuant to 40 CFR 52.21 or section 9.1(c) of the Illinois Environmental Protection Act (Illinois Act), including 35 IAC Part 203 or any other regulations adopted pursuant to section 9.1(c) of the Illinois Act; and (4) the emission unit must not be an element in a larger project that otherwise requires a construction permit pursuant to this Part or the Illinois Act. 35 IAC 201.505(a)(1–4).

Furthermore, the general provisions specify that a PBR does not: (1) Exempt any owner or operator from the requirements of the CAA or the Illinois Act, including determining whether construction or modification of an emission unit, by itself or part of a project, constitutes a major modification or major source; (2) exempt any owner or operator from any requirement to notify IEPA or list insignificant activities and emission levels for title V permit purposes; (3) relieve the owner or operator of a source from the requirement of including emissions associated with the emission unit in any preconstruction permitting application for a major new source or major modification pursuant to 40 CFR 52.21 or Section 9(c) of the Illinois Act, including 35 IAC 203 and any other regulations adopted pursuant to Section 9(c) of the Illinois Act; (4) relieve the owner or operator of the emission unit from any applicable requirements of Section 39.5 of the Illinois Act for the emission unit, including any requirement to submit a timely application for a new or modified title V permit that addresses the emission unit; or (5) relieve the owner or operator of the source from compliance with other applicable statutes and regulations of the United States or the State of Illinois, or with applicable local laws, ordinances, and regulations. 35 IAC 201.505(b).

If the owner or operator seeking to construct or modify an emission unit under Illinois' PBR program meets the applicability criteria under the general provisions and the applicable PBR Subpart, then the owner or operator must submit a complete ''Notification,'' including fees, prior to commencing construction or modification of the emission unit. Section 35 IAC 201.510 provides the information that the owner or operator must submit in the Notification. This includes: (1) General background information about the emission unit; (2) a statement as to whether the unit will be an element in a larger project, and if it is, a statement describing why a construction permit will not be required for any element of that project, and a demonstration that the potential emissions of each regulated NSR pollutant from the project will be less than 80 percent of the relevant ''significant emission rates'' under 40 CFR 52.21 and 35 IAC Part 203; (3) identification of construction permits and PBRs received in the last two years and a demonstration that the requested PBR should not be aggregated with, and considered an element of, any of these projects that were addressed by the construction projects and PBRs identified; (4) specific information required by the applicable PBR Subpart Notification requirement; and (5) a statement noting whether the source is major or non-major for emissions of Hazardous Air Pollutants (HAPs), and if the source is non-major, documentation for the determination. IEPA is required to acknowledge receipt of the Notification within 30 days.

The owner or operator may commence construction or modification of the emission unit after submittal of the complete Notification. If the submitted Notification is incomplete, the emission unit is not covered by a PBR and the owner or operator has not met the requirement to apply for and to obtain a construction permit. 35 IAC 201.515. If the owner or operator proposes to modify the emission unit covered by a PBR, the owner or operator must submit a new Notification for a PBR or obtain a construction permit for

the modification. If the proposed modification causes the source at which an emission unit covered by a PBR is located to become a major source of HAPs, the owner or operator must submit a new Notification for a PBR for the emission unit. 35 IAC 201.520.

A PBR expires one year from the date of submittal of the complete Notification unless a continuous program of construction on the project has commenced by that time. The owner or operator of the emission unit must submit an updated Fee Determination prior to commencing operation of the proposed emission unit if there is an increase in allowable emissions over the existing permitted allowable emissions as a result of the construction or modification of the emission unit. 35 IAC 201.525.

IAC Section 201.530 contains the recordkeeping and reporting requirements for the PBR program. This section requires the owner or operator to maintain all records used to demonstrate compliance with the applicable requirements of Subpart M and the applicable PBR Subpart for at least five years. The owner or operator must notify IEPA of the emission's unit's actual start-up date and submit written reports of deviations and any performance tests the owner or operator conducts.

Before the proposed emission unit begins operation, the owner or operator must submit a complete application for a minor modification to the applicable title V permit to address the emission unit for incorporation into the title V permit. 35 IAC 201.535. Illinois' minor modification procedures for title V permits are found in Section 39.5 of the Illinois Act, and parallel the Federal procedures in 40 CFR 70.7(e)(2).

The enforcement authorities for the Illinois PBR program are set forth in 35 IAC 201.540, which specifies that nothing in 35 IAC Subpart M limits IEPA's authority to seek penalties and injunctive relief for any violation of any applicable law or regulation, or the right of the Federal government or any person to directly enforce against owners and operators due to actions or omissions that constitute violations of permits required by the CAA or applicable laws and regulations. Additionally, this section identifies specific violations for which enforcement action may be taken, such as the failure to submit a complete Notification and/or minor modification to the applicable title V permit, and/or comply with the PBR general provisions and/or applicable PBR subpart.

35 IAC Part 201, Subpart N: Permit By Rule—Boilers Less Than or Equal to 100 MMBtu/hr

Under Subpart N, an owner or operator may construct or modify certain types of boilers without obtaining a construction permit if the owner or operator meets and demonstrates compliance with the requirements of both Subparts N and M (PBR General Provisions).

A PBR may be obtained under this subpart for the construction or modification of a boiler if, among other things: the boiler has a maximum design heat input capacity of less than or equal 50 MMBtu/hr; the boiler has a maximum design heat input capacity greater than 50 MMBtu/hr but less than or equal to 100 MMBtu/hr and is equipped with low-nitrogen oxide (NO_X) burners designed by the manufacturer to meet a NO_X limit of not greater than 0.05 lb/MMBtu; the boiler primarily burns pipeline natural gas, butane, propane, or refinery fuel gas; and the emissions from the boiler are comprised entirely of the products of fuel combustion. 35 IAC 201.600.

In addition to the Notification requirements under Subpart M, owners or operators that plan to construct or modify an eligible boiler must include in the Notification, among other things: (1) Identification of the primary fuel that will be burned by the boiler, along with the maximum rated heat input capacity of the boiler (MMBtu/hr); (2) whether the boiler would be a temporary boiler as defined by 40 CFR 60.41c, and 63.7575 or 63.11237, a demonstration that the criteria for a temporary boiler are met and the expected period or periods in which the boiler would be at a location or locations at the source; (3) the potential emissions of individual pollutants from the boiler, including emissions of particulate matter (PM), PM less than or equal to 10 microns in diameter (PM_{10}), PM less than or equal to 2.5 microns in diameter ($PM_{2.5}$), NO_X, sulfur dioxide (SO_2), carbon monoxide (CO), and volatile organic material[1] (VOM), based on continuous operation of the boiler at its rated heat input capacity, with supporting documentation and calculations; if the boiler will have the capability to burn diesel fuel, butane, propane, or refinery fuel gas, the potential SO_2 emissions of the boiler from the use of such fuel; and 4) if the boiler or the source at which the boiler would be located does not meet the applicability criteria in 35 IAC 217.150(a)(1)(A) or (a)(1)(B), an identification of the criteria that are not met, with explanation.[2] 35 IAC 201.605.

Subpart N further requires owners and operators to comply with all applicable regulations for this type and size of boiler, including: New Source Performance Standards (NSPS); National Emission Standards for Hazardous Air Pollutants (NESHAP); and SIP requirements for opacity, CO, and NO_X. The NSPS and NESHAP standards currently applicable to the types of boilers addressed by the PBR are the following: 40 CFR part 60 subpart A, Standards of Performance for New Stationary Sources; 40 CFR part 60 subpart Dc, Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units; 40 CFR part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories: Subpart A, General Provisions; 40 CFR part 63 subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Source Categories for Major Sources: Industrial, Commercial and Institutional Boilers and Process Heaters; and 40 CFR part 63 subpart JJJJJJ, National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers Area Sources. 35 IAC 201.610.

The opacity and CO SIP requirements currently applicable to the types of boilers addressed by the proposed PBR include: Opacity limits and requirements at 35 IAC Part 212, Subpart B, and CO limits and requirements at 35 IAC 216.121.

For NO_X requirements, the owner or operator must comply with: (1) 35 IAC Part 217 Subparts D and E, if applicable; (2) 40 CFR subpart DDDDD, including the combustion tuning work practice requirements of 40 CFR 63.7540(a)(10), if applicable; and (3) for a boiler with a maximum design heat input capacity greater than 50 MMBtu/hr, and that is not subject to either of the above provisions, the owner or operator must conduct annual combustion tuning consistent with 40 CFR 63.7540(a)(10). 35 IAC 201.615, 201.620, 201.625, and 201.630.

Additional requirements apply to a PBR boiler that burns diesel fuel or refinery fuel gas as a backup fuel. These include, among other things: compliance with all applicable provisions of 35 IAC Part 214, Subparts

[1] IEPA uses the term volatile organic material interchangeably with volatile organic compounds. See 35 IAC 211.7150 for the definition of ''Volatile Organic Material (VOM) or Volatile Organic Compound (VOC).''

[2] 35 IAC 217.150 include NO_X General Requirements that apply to sources in Illinois located in the geographical locations listed in 35 IAC 217.150(a)(1)(A) and meet the source category and NO_X emissions criteria described in 35 IAC 217.150(a)(1)(B).

B or D and 35 IAC 212.206; maintenance of records showing the date, time and duration of any period when diesel fuel was fired in the boiler, the amount of diesel fuel fired, the reason diesel fuel was fired, and the total duration of periodic operational testing or other activity while firing diesel fuel; and the actual SO_2 emissions of the boiler from use of diesel fuel. 35 IAC 201.620.

The owner or operator of each PBR boiler must also maintain records containing the following information, in addition to the records required by Subpart M: (1) The maximum design heat input capacity of the boiler, inspection, maintenance, and repair logs; (2) quantity of each fuel used; (3) hours of operation; and (4) emissions of criteria pollutants (PM, PM_{10}, $PM_{2.5,}$ NO_X, CO, VOM, and SO_2). 35 IAC 201.635.

Changes to Other Rules

IEPA made changes to other SIP provisions that are affected by the addition of the PBR regulations. These include changes to abbreviations, definitions, and incorporation by reference, as described above, and include amendments to 35 IAC 201.103, 201.104, 211.4720, and 201.146.

IAC Section 201.103, which contains the definitions applicable to Part 201, has been revised to add terms and associated definitions used in the PBR regulations. The amendments include adding definitions and abbreviations (*e.g.,* PBR, CAAPP, NSR, PSD, NSPS). IAC Section 211.4720, which also contains definitions that apply to Part 201, has been revised to add a definition for ''pipeline natural gas'' that is consistent with the Federal Acid Rain Program under the CAA and is used in the proposed Subpart N PBR regulations.

Additionally, IEPA revised incorporations by reference at 35 IAC 201.104 to reference the Federal NSR program at 40 CFR 52.21 (2015) and certain subparts of the NSPS and NESHAPs for source categories that are included in the PBR regulations.

Finally, IEPA changed the abbreviation of ''mmbtu/hr'' to ''MMBtu/hr'' in 35 IAC 201.146.

B. Rule Revision for Which EPA Is Taking No Action

Illinois' final rule added subsection (mmm) to 35 IAC 201.146, which would exempt sources subject to the Registration of Smaller Sources (ROSS) program from the requirement to obtain construction or operating permits pursuant to 35 IAC 201.142, 201.143, and 201.144. By letter dated May 14, 2018, IEPA withdrew the amendments to 35 IAC 201.146(mmm) for approval as SIP revisions because the ROSS program at 35 IAC 201.175 is not part of the federally-approved SIP. Therefore, EPA is not taking any action with respect to 35 IAC 201.146(mmm).

III. What is EPA's analysis?

EPA is proposing to approve Illinois' general PBR program contained in Subpart M, the PBR for boilers less than or equal to 100 MMBtu/hr contained in Subpart N, changes to other SIP rules affected by the PBR regulations, and minor changes in nomenclature because they meet all applicable requirements under the CAA.

A. The Revisions Are Consistent With Section 110(a)(2)(C) of the CAA and the Applicable Regulations

According to IEPA, the purpose of the PBR program is to reduce administrative and economic burdens on both the agency and permit holders without sacrificing environmental protection. The PBR program should enable IEPA to address source categories of low emitting units with similar emission characteristics, so that it does not need to conduct an in depth review to determine the requirements and limits that apply to an individual source that has relatively low emissions. In this way, the PBR program accomplishes similar goals to minor NSR, *i.e.,* authorizing requirements that are less prescriptive than NSR when the permittees are sources with lower emissions. The state's PBR program notification process makes it easier and more efficient for the reviewing authority to implement the PBR program compared to traditional site-specific permits. See, *e.g.,* 80 FR 25068, 25071 (May 1, 2015).

For example, the PBR general provisions require the source to identify all construction permits and PBRs received within the last two years, and to demonstrate why the requested PBR should not be aggregated with and considered an element of these other projects. This approach is consistent with IEPA's federally approved minor NSR program (57 FR 59928, December 17, 1992). In those regulations, the construction of more than one emission unit within a short period of time by the same source will be analyzed cumulatively by IEPA, and must be considered for the applicability of major NSR (which would entail a PSD or NNSR review as appropriate).

Furthermore, Illinois' PBR program should ensure that emissions of any criteria pollutant from a unit covered by a PBR will not exceed the ''significance'' thresholds for PSD or NNSR. See 40 CFR 52.21(b)(23)(i) and 35 IAC 203.209. As part of the notification required to be submitted by a source seeking to construct or modify an eligible emission unit, the source must demonstrate that the potential emissions of each regulated NSR pollutant from the project will be less than 80 percent of the relevant significant emission rates under Federal and state rules. Additionally, the PBR requires pollution controls for those units with a heat input rating greater than 50 MMBtu/hr but less than or equal to 100 MMBtu/hr. These boilers are required to install low-NO_X burners to ensure that they will not emit NO_X emissions in amounts greater than the level that would trigger a major modification subject to PSD or NNSR.

IEPA conducted an analysis to demonstrate that the construction of any boiler under the PBR for small boilers should not yield emissions of criteria pollutants in amounts that would exceed major source significance thresholds triggering major NSR. For example, the maximum emissions of NO_X from a l00 MMBtu/hr boiler with a low-NO_X burner designed to meet a limit of 0.05 lb/MMBtu operating at 8760 hours per year would be approximately 21.9 tons per year. This emission rate is approximately half of the significance threshold for triggering major NSR (*i.e.,* 40 tons per year of NO_X). Further discussion concerning potential emissions from PBR boilers may be found in section 4.1 of the May 2016 IEPA Technical Support Document included in Attachment 1 of the state's submittal.

The general PBR provisions also contain specific criteria that limits the type of sources that may use the PBR and allow for permit authority review when the PBR requirements are incorporated into the source's title V permit. Sources that elect to use the PBR are required to apply for a minor modification to the title V permit prior to operation of the PBR unit to ensure that all applicable PBR requirements to the emission unit have been addressed. This ensures that the public understands the requirements to which the source is subject, and that IEPA receives and has the opportunity to review all relevant information regarding a sources' compliance with the PBR. Under Section 39.5(a)(v)(B) of the Illinois Act, IEPA has the option to deny the permit modification application, which provides an additional safeguard to the PBR program should IEPA identify any issues with the source's application.

Additionally, IEPA has limited the type of unit that may be constructed under the PBR. The type of boilers

eligible to be constructed/modified under the PBR are common and contain well documented and similar emission characteristics, such as those documented in AP–42: Compilation of Air Pollutant Emission Factors, which provides emission factors for this size and type of boilers based on testing that has been performed over many years. *See also, e.g., Potential to Emit (PTE) Guidance for Specific Source Categories,* from John S. Seitz, Office of Air Quality Planning and Standards, dated April 14, 1998. The PBR provisions thereby ensure that these small boilers are subject to all applicable requirements, such as SIP emission limitations and requirements, and NSPS and NESHAP requirements, that would otherwise be included in individual construction permits for these types of boilers.

For the above reasons, the proposed SIP revisions are consistent with the CAA's minor source permit provisions contained in section 110(a)(2)(C) and EPA's minor NSR regulations at 40 CFR 51.160 through 51.164. The PBR provisions enable the permitting authority to determine whether the construction or modification will result in a violation of applicable portions of the control strategy or interfere with attainment or maintenance of a NAAQS, as required by 40 CFR 51.160(a). Further, these provisions satisfy the provisions of 40 CFR 51.160(d), which require that approval of any construction or modification must not affect the responsibility of the owner or operator to comply applicable portions of the control strategy.

EPA is also proposing to approve the changes to other rules affected by the PBR regulations, including revisions to definitions and incorporation by reference. The definitions update Illinois' rules to add terms and associated definitions used in the PBR regulations and are consistent with the SIP. EPA is proposing to approve amendments to IEPA's incorporation by reference regulation based on the understanding memorialized in a letter submitted by IEPA dated May 16, 2018. In that letter, IEPA clarified that its sole intention in using incorporations by reference is to reference, and not adopt, the Federal rules that are identified in the PBR rules at 35 IAC Part 201, Subparts M and N, including the Federal PSD regulations. Furthermore, in that letter, IEPA committed to continue implementing the most recent version of the Federal PSD program (40 CFR 52.21) and current EPA guidance consistent with the most recent PSD delegation agreement between EPA and IEPA.

Finally, EPA is proposing to approve the change in nomenclature at 35 IAC 201.146 from ''mmbtu/hr'' to ''MMBtu/hr'' because it is consistent with the CAA and SIP, and the use of that term merely reflects the use of that abbreviation in the state's regulations to mean pounds per million British thermal units.

B. The Revisions Do Not Interfere With Any Applicable CAA Requirement Under Section 110(l) of the CAA

Under section 110(l) of the CAA, EPA shall not approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and ''reasonable further progress'' (RFP), or any other applicable requirement of the CAA. Therefore, EPA may approve a SIP revision that removes or modifies control measures in the SIP only after the state has demonstrated that such removal or modification will not interfere (''noninterference'') with attainment of the NAAQS, Rate of Progress (ROP), RFP or any other CAA requirement.

IEPA has evaluated the impacts of the proposed revisions, and determined that they do not interfere with attainment of the NAAQS or any other CAA requirement because the use of the PBR provides the same level of, and, in some cases, additional control measures as the control measures that would be included in an individual construction permit for small boilers. IEPA has demonstrated that the PBR program is essentially a change to the process by which smaller sources with similar emission characteristics obtain authorization to construct.

IEPA notes that the PBR for small boilers includes the requirements that would typically be included in an individual construction permit issued on a case-by-case basis under Illinois' minor NSR rules at 35 IAC 201. This includes requirements such as the Federal emission standards (NSPS and NESHAP) and SIP requirements, including emission limitations, conditions for operation, and standard permitting conditions. Furthermore, IEPA points out that the PBR program does not exempt an emission unit from any air pollution emission limits or control requirements. Therefore, as discussed above, emissions of pollutants from sources complying with the PBR for small boilers should not result in an increase beyond what would result from construction or modification of these types of boilers through an individual minor NSR construction permit.

IEPA has also shown that the PBR for small boilers may require more control measures than an individual construction permit in certain instances. For example, Illinois' minor NSR rules do not require an individual construction permit to contain boiler tune-up requirements or installation of low-NO_X burners on every small boiler. The PBR for small boilers, however, does include boiler tune-up requirements and the requirement to install low-NO_X burners designed to meet a NO_X emission limit of not greater than 0.05 lb/MMBtu for boilers with a heat input greater than 50 MMBtu/hr. Therefore, in some cases, the PBR may be more protective of air quality than an individual construction permit.

Finally, the PBR provisions do not interfere with any existing environmental state or Federal enforcement authorities. If a PBR unit is found to be in violation of any applicable state or Federal rules, IEPA or EPA may pursue enforcement regardless of whether the source has a construction permit or constructed under the PBR provisions.

Because the PBR rules should achieve equivalent or greater protection of air quality than individual construction permits for small boilers, noninterference has been demonstrated. Therefore, the adoption of the proposed PBR provisions will not interfere with Illinois' existing obligations concerning attainment of the NAAQS, RFP, or any other applicable requirement of the CAA, as required by section 110(l) of the CAA.

IV. What action is EPA taking?

EPA is proposing to approve Illinois' PBR program and the PBR for boilers less than or equal to 100 MMBtu/hr by adding 35 IAC Part 201, Subpart M and Subpart N. Specifically, EPA is proposing to approve into the Illinois SIP IAC Sections 201.500, 201.505, 201.510, 201.515, 201.520, 201.525, 201.530, 201.535, 201.540, 201.600, 201.605, 201.610, 201.615, 201.620, 201.625, 201.630, and 201.635.

EPA is also proposing to approve the requested revisions to other rules affected by the addition of the PBR program, including additions and changes to definitions and incorporations by reference. Specifically, EPA is proposing to approve into the Illinois SIP the requested revisions to IAC Sections: 201.103(a) and (b); 201.104(a), (c), (d), and (e); and 211.4720. EPA is also proposing to approve into the Illinois SIP the requested changes in nomenclature at IAC Section 201.146(c), (d), (h), (i), and (fff).

EPA is not acting on the requested revisions to IAC Section 201.146(mmm), because the revisions exempt sources

subject to the ROSS program from state construction and operating permit requirements, and the ROSS program is not part of the federally-approved SIP.

V. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference revisions to Title 35 of Illinois Administrative Code Part 201: Permits and General Provisions, sections 201.103, 201.104 (except for 201.104(b)), 201.146 (except for 201.146(mmm)), 201.500, 201.505, 201.510, 201.515, 201.520, 201.525, 201.530, 201.535, 201.540, 201.600, 201.605, 201.610, 201.615, 201.620, 201.625, 201.630, and 201.635; and Part 211: Definitions and General Provisions, section 211.4720; effective March 24, 2017. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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);
- 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 9, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

[FR Doc. 2018–15252 Filed 7–17–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 13–24 and 03–123; FCC 18–79]

IP CTS Modernization and Reform

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) proposes measures to ensure that internet Protocol Captioned Telephone Service (IP CTS) remains sustainable for those individuals who need it by reducing waste and thereby bringing under control the exponential growth of the program. The Commission seeks comment on measures to ensure fair and efficient provider compensation, including compensation for the provision of IP CTS using fully automated speech recognition (ASR); move the compensation rate closer to reasonable cost; expand the IP CTS contribution base; and reduce the risk of providers signing up ineligible customers and encouraging IP CTS usage regardless of a consumer's need for the service. The Commission also seeks comment on IP CTS performance goals and metrics to ensure service quality for users.

DATES: Comments on the Further Notice of Proposed Rulemaking are due September 17, 2018; reply comments on the Further Notice of Proposed Rulemaking are due October 16, 2018. Comments on the Notice of Inquiry are due October 16, 2018; reply comments on the Notice of Inquiry are due November 15, 2018.

ADDRESSES: You may submit comments, identified by CG Docket Nos. 03–123 and 13–24, by either of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the Commission's Electronic Filing System (ECFS): *https://www.fcc.gov/ecfs/filings.* Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and CG Docket Nos. 03–123 and 13–24.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Michael Scott, Consumer and

Governmental Affairs Bureau, at (202) 418–1264, or email *Michael.Scott@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking and Notice of Inquiry (Further Notice and NOI), document FCC 18–79, adopted on June 7, 2018, released on June 8, 2018, in CG Docket Nos. 03–123 and 13–24. The Report and Order and Declaratory Ruling, FCC 18–79, adopted on June 7, 2018 and released on June 8, 2018, was published at 83 FR 30082, June 27, 2018. The full text of this document is available for public inspection and copying via the Commission's Electronic Comment Filing System (ECFS), and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (844) 432–2272 (videophone), or (202) 418–0432 (TTY). Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Initial Paperwork Reduction Act of 1995 Analysis

The Further Notice and NOI in document FCC 18–79 seek comment on proposed rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish another document in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act. Public Law 104–13; 44 U.S.C. 3501–3520. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Public Law 107–198; 44 U.S.C. 3506(c)(4).

Synopsis

Further Notice of Proposed Rulemaking

1. IP CTS is a form of TRS that permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an internet Protocol-enabled device via the internet to simultaneously listen to the other party and read captions of what the other party is saying. Generally, IP CTS employs two network paths: A connection via the public switched telephone network (PSTN) or a Voice over internet Protocol (VoIP) service for the voice conversation between the parties to the call, and a separate internet connection that transmits the other party's voice from the IP CTS user's phone to a communications assistant (CA) and transmits captions from the CA back to the IP CTS user.

2. When an IP CTS user places or receives a call, he or she is automatically connected to a CA at the same time that the parties to the call are connected. In the most widely used version of IP CTS, the CA then revoices everything the hearing party says into a speech recognition program, which automatically transcribes the words into captions. In a second version, the CA uses stenography to produce the captions, typing the speech content directly into captions. Today, five providers have certification from the Commission to provide IP CTS. All IP CTS minutes are compensated from the interstate telecommunications relay services (TRS) fund (TRS Fund), and, like other forms of internet-based TRS, IP CTS is entirely administered by the Commission.

3. IP CTS growth has been exponential in recent years. From 2011 to 2017, annual IP CTS minutes have grown from approximately 29 million to 363 million. According to the TRS Fund administrator, in 2018–19, IP CTS will represent approximately 78 percent of the total minutes of TRS compensated by the TRS Fund and about 66 percent of total TRS Fund payments to TRS providers. At the same time, the end-user telecommunication revenue base from which IP CTS and other forms of TRS are supported is steadily declining, raising the threat that over the long term, ever-increasing levels of contribution may not be sustainable.

4. One reason for greater usage of IP CTS over other forms of TRS may be the ease and convenience of using IP CTS, including the absence of direct interaction between the parties to the call and the CA. For example, during an IP CTS call, the presence of a CA is not announced to the hearing party, and communication with the CA by the

person who has hearing loss takes place in only one direction. While such ease and convenience facilitate use of the service by people with hearing loss who need it for effective communication, these characteristics also create a risk that IP CTS will be used even when it is not needed.

5. Further, a large portion of the recent growth in IP CTS may be attributable to perverse incentives for providers to market this service to individuals who do not need it and the consequent wasteful use of IP CTS by individuals who could derive equal or greater benefit from less costly alternatives, such as high-amplification phones. Providers engage in a number of marketing practices that likely contribute to waste in the IP CTS program. These include (1) touting the usefulness of IP CTS to anyone with hearing loss—regardless of their level of hearing loss or need for captioning (over other types of assistive or auxiliary devices); (2) linking together amplification and captioning features on IP CTS devices, which causes waste (*e.g.,* when the phone is used by others in a household who may not need captions); (3) failing to effectively assess each individual's need for IP CTS through neutral and independent third-party evaluations before permitting use of the service; (4) engaging in preestablished and sometimes exclusive or joint arrangements with third-party professionals that compromise the objectivity of such assessments; and (5) routinely giving out free IP CTS devices with features, such as added amplification and the ability to create a transcript of the call, that make these products attractive to consumers who may not need captions for functionally equivalent telephone communication. It is the Commission's goal to eliminate provider practices and incentives to promote use of IP CTS by individuals who do not need it, and to ensure that this service remains sustainable for those who actually need it.

IP CTS Compensation

6. From 2011 to 2017, under the Multistate Average Rate Structure Plan (MARS Plan), the IP CTS compensation rate increased from $1.763 to $1.9467 per minute, while average allowable IP CTS expenses dropped from $2.0581 to $1.2326 per minute. In part because of this excessive compensation rate, payments to IP CTS providers from the TRS Fund are putting ever-increasing pressure on a declining TRS Fund contribution base—pressure that sooner or later, if unchecked, will threaten the viability of the TRS program itself.

7. To address this widening gap between compensation and reasonable costs, the Commission, in the Report and Order, ends reliance on the MARS Plan methodology and takes interim steps to move the compensation rate closer to average costs, reducing compensation over a two-year period. Here, the Commission seeks comment on how to set IP CTS compensation rates following this interim period, to allow recovery of reasonable provider costs and ensure that IP CTS is provided in the most efficient manner.

8. The Commission proposes to use average provider costs to set per-minute compensation rates for a multi-year rate period for IP CTS. Such an approach can simplify the rate-setting process, facilitate TRS provider planning and budgeting, and provide incentives for providers to increase their efficiency through innovation and cost reduction. The Commission seeks comment on the costs and benefits of this proposal, including comments on: (1) The reasonableness and allowability of certain provider costs; (2) the specifics of setting a cost-based rate, including issues concerning extension of the ''glide path'' towards a cost-based rate, the use of rate tiers, the duration of the rate period, and within-period rate adjustments; (3) alternative approaches; and (4) compensation for IP CTS using full ASR.

Identifying Eligible IP CTS Costs

9. The Commission seeks comment on the reasonableness of the costs currently reported by IP CTS providers. Do these reported costs, in the aggregate, accurately reflect the actual average costs of providing this service? Below, the Commission discusses whether it should consider placing caps on allowable costs for outreach and marketing. Should the Commission consider placing caps on any other cost categories? Further, should the Commission refine these categories in any way, for example, by requiring providers to provide more detail regarding their indirect expenses? Providers currently report average expenses to the TRS Fund administrator, Rolka Loube, for the following categories of IP CTS costs: Facilities; CA Related; Non-CA Relay Center; Indirect; Depreciation; Marketing; Outreach; and Other.

10. *Subcontractor Expenses.* Expenses reported in the ''Other'' category consist mainly of undifferentiated ''subcontractor expenses.'' The Commission seeks comment on whether the Commission has the authority to, and should, require subcontractors to submit directly to the TRS Fund administrator their underlying cost data for the fees charged to certified IP CTS providers, in accordance with the administrator's instructions and TRS cost categories, to ensure that the reported costs can be reviewed for their accuracy, appropriateness, and reasonableness. As an alternative, the Commission seeks comment on whether to amend its rules to provide that, in the event that a subcontractor accounts for more than a certain threshold percentage of a certified IP CTS provider's total costs, the subcontractor itself shall be deemed a TRS provider and be required to submit an application for certification showing its qualifications to provide service meeting the Commission's minimum standards. The Commission also seeks comment on what the appropriate threshold percentage should be for such a requirement. The Commission invites providers and subcontractors to submit information in this proceeding about the specific subcontractor services provided or received and the basis on which fees for specific services provided by subcontractors should or should not be deemed reasonable costs of providing IP CTS.

11. *Licensing Fees.* The Commission believes a significant portion of subcontractor payments represent licensing fees charged to providers for the use of patents and other intellectual property. As background, when PSTN-based captioned telephone service (CTS) was first authorized in 2003, the Commission recognized that the service was offered at that time solely by Ultratec, Inc. (Ultratec), using its proprietary technology. In authorizing IP CTS in 2007, the Commission continued to express concern about the consequences of a single company having control of CTS technology and conditioned its approval of the proposed IP CTS offering on Ultratec's representation that it would continue to license its captioned telephone technologies, including technologies relating to IP CTS, at reasonable rates.

12. The Commission seeks comment on the circumstances under which license fees paid for technology used to provide IP CTS should be included in allowable costs, and on what method the Commission should use to determine whether license fees for such technology are ''reasonable.'' Should the Commission cap ''reasonable'' licensing fees for such technology, and at what level? In deciding on a method or cap for reasonable license fees, should the Commission consider that this technology is used for a service that is paid for through an FCC fund, and for which there is no bargaining by users as

to its price? Should the Commission also consider the extent to which a single company controls intellectual property that is needed for certain forms of IP CTS, effectively compelling providers to use a proprietary technology, as well as the extent to which there are economic barriers that prevent providers from easily switching technologies—such as providers being locked into proprietary user devices and servers, or having long-term supply contracts with the owner of the technology? To aid this inquiry, the Commission invites parties to submit quantitative data (which may be accompanied by a request for a protective order) on the license fees they currently pay for specific types of IP CTS technology.

13. The Commission also seeks comment on a proposal by Sorenson Communications, Inc. (Sorenson) that allowable IP CTS costs should include the imputed value of intellectual property developed by the IP CTS provider itself. Given that the Commission currently allows TRS providers to recover as an allowable expense the research and development costs incurred to ensure that a relay service meets minimum TRS standards, is it ever appropriate to permit a provider to *also* recover the imputed *value* of the resulting intellectual property? Would such a rule be consistent with using a methodology that is based on compensating providers for their actual reasonable costs? Sorenson also contends that license fees, based on imputed value and paid by an IP CTS provider to its own affiliate for intellectual property developed by the IP CTS provider and then transferred to the affiliate, should be deemed reasonable IP CTS expenses. Should the Commission's Part 32 rule on affiliate transactions of common carriers continue to apply in such cases? Is there any valid reason why the carrier affiliate transaction rule should not apply to a TRS provider, given the potential incentives for self-dealing and the difficulties of objective valuation?

14. *Outreach Expenses.* Commission rules require common carriers to conduct TRS outreach to assure that callers in their service areas are aware of the availability and use of all forms of TRS. For many years, however, the Commission has raised concerns about the effectiveness of outreach efforts on the national level. In 2013, the Commission terminated the allowed recovery of outreach expenses by VRS and IP Relay, intending to centralize the outreach function at the national level. The Commission seeks comment on whether it should allow outreach expenses to be compensable from the TRS Fund as part of an IP CTS provider's reasonable expenses. The Commission invites IP CTS providers to describe the specific types of activities for which they report expenses in this category. In light of the tenfold growth of IP CTS minutes in the last six years, the Commission seeks comment on whether TRS-Fund supported outreach to potential new IP CTS users is currently needed to further the goals of section 225 of the Communications Act of 1934, as amended (the Act). Moreover, considering that unlike VRS and IP Relay, IP CTS calls tend to not immediately be identifiable as relay calls to the non-caption-using party, is outreach to the public needed to encourage hearing individuals to place or accept IP CTS calls to the same extent as for other forms of TRS? If the Commission concludes that some outreach should be supported by the Fund, should it limit allowable outreach expenses to a specified percentage or amount, and, if so, what percentage or amount should that be?

15. *Marketing Expenses.* Marketing has been defined as branded advertising and other promotional activity aimed at encouraging the use of a particular provider's service. Marketing expenses are currently allowable costs. The Commission invites IP CTS providers to describe the specific types of activities for which they report expenses in that category. Given the history of inappropriate IP CTS marketing and the susceptibility of this service to being used regardless of need, the Commission is concerned about having the TRS Fund support marketing activities that have the potential to promote widespread use of the service by individuals who may not need it to obtain functionally equivalent telephone service. Therefore, the Commission seeks comment on whether compensation for marketing expenses should be disallowed or, in the alternative, limited. For example, should the Commission cap such expenses at a specific level, and if so, what would be the maximum percentage of expenses or amount (*e.g.,* per minute) that should be recoverable?

16. *Definitions.* In the event that the Commission decides to treat marketing and outreach differently in terms of allowability, the Commission seeks comment on whether and how to provide more precise definitions of these two expense categories. In general, should the TRS Fund administrator's current definitions of ''outreach'' and ''marketing'' as defined in the Provider Data Collection Form & Instructions, be modified, and if so, in what respects?

17. *Operating Margin.* The Commission seeks comment on whether the operating-margin approach and zone of reasonableness established in 2017 for VRS and used in the Report and Order of document FCC 18–79 in establishing interim IP CTS compensation rates is appropriate for the purpose of setting an IP CTS rate for 2020–21. Are there any material differences between VRS and IP CTS that would justify a different zone than the 7.6%–12.35% range? Have there been changes in capital markets that would support moving the end-points of the range up or down? The Commission also seeks comment on where to set a specific allowed operating margin within the zone of reasonableness.

18. *Historical vs. Projected Costs.* The Commission used a weighted average of providers' historical and projected per-minute costs to set compensation rates in setting interim IP CTS rates in the Report and Order in document FCC 18–79. The Commission seeks comment on whether it should continue to use a weighted average of historical and projected costs in setting compensation rates for IP CTS. Should the Commission take into account the extent to which projections line up with the historical cost trend, and whether there is an adequate explanation when projections deviate significantly from the historical trend?

19. *Further Adjustment of Interim Rates.* In the Report and Order in document FCC 18–79, the Commission set interim compensation rates for 2018–19 and 2019–20 based on previously approved categories of allowable TRS costs and on the information currently available regarding actual costs in the IP CTS context, with the goal of striking a reasonable balance between the need to bring rates in line with costs and reduce the TRS Fund contribution burden, on the one hand, and avoiding rate shock and potential service disruption, on the other. If the Commission determines, based on the record compiled in this rulemaking, that some costs have been incorrectly reported or are otherwise not ''reasonable'' for TRS Fund recovery, should the interim rates should be adjusted to take account of such determinations?

Moving to a Cost-Based Rate

20. In the Report and Order in document FCC 18–79, the Commission reduced the per-minute compensation rate for IP CTS by 10 percent annually, to interim levels of $1.75 for 2018–19 and $1.58 for 2019–20, in order to begin a ''glide path'' toward a cost-based level, using as a reference point the TRS Fund

administrator's current estimate of historical and projected IP CTS expenses for calendar years 2017 and 2018, which average $1.28 per minute. According to the historical cost trend, however, IP CTS costs have been consistently declining over time. Further, the Commission may decide that some previously reported costs should not be recoverable from the TRS Fund.

21. *Need for an Extended Glide Path.* To limit the short-term potential for undesirable loss of competitive alternatives and disruption of service to consumers, should the Commission extend the interim-rate ''glide path,'' and if so, what should the extended glide path look like? In setting the interim rates the Commission found that a 10 percent reduction provided a reasonable ''glide path'' toward a cost-based rate. If IP CTS providers' reasonable costs, as determined based on the record to be compiled, are not substantially lower than the cost estimate the Commission used for the purpose of setting interim rates, it would appear that no extension of the glide path would be needed. The Commission seeks comment on this view. On the other hand, if reasonable provider costs prove to be substantially lower than the current estimate, what transition to a cost-based rate level would be appropriate to ensure a reasonable level of certainty and predictability for IP CTS providers while also ensuring the most efficient use of the TRS Fund? Would the fact that costs have been substantially lower than previously thought mitigate in favor of a longer or shorter glide path?

22. *Tiered Rates.* Some parties have previously expressed concern that, even if costs do not change, setting a compensation rate based on average cost may force some above-average cost providers out of the IP CTS market. In order to encourage smaller competitors to remain in the market, while still narrowing the gap between total compensation and total IP CTS costs, would it be appropriate to adopt a tiered rate structure for IP CTS? In the past, the Commission has found that the use of a single rate based on weighted average costs is appropriate for TRS. Although the Commission has deviated from this principle in setting VRS rates, there are a number of underlying reasons specific to VRS that have justified maintaining a tiered rate structure. The Commission seeks comment on the extent to which unique factors are present in the IP CTS market that would make a tiered rate structure more appropriate than averaged compensation rates. For example, are there barriers to a smaller provider's ability to expand its share of the IP CTS market, despite the unusually fast growth in IP CTS demand? How would tiered rates affect provider incentives to operate more efficiently, improve service quality, or invest in new technology, such as ASR? Are there scale economies in IP CTS that would help identify where to set tier boundaries? In the event that the Commission does adopt tiered rates, how should the tiers be structured to reflect any such scale economies in IP CTS and avoid limiting a provider's incentive to increase their minutes above the next tier boundary? How should a tier structure be updated as the market evolves? How are the economies of scale different for IP CTS using ASR? Finally, how should a tiered structure take account of subcontracted operations?

23. *Emergent Provider Rate.* For VRS, the Commission adopted a special ''emergent provider'' rate, applicable on a temporary basis for newly certified providers and certain other very small providers, in order to encourage new entry and provide appropriate growth incentives. Factors contributing to that decision included a desire to maintain VRS competition in an unbalanced market, the incompleteness of VRS reforms intended to support full interoperability, the extremely wide per-minute cost differentials among VRS providers, and the potential role of smaller providers in offering service features designed for niche VRS market segments. Are these or other factors present in the IP CTS context to justify the adoption of an emergent rate to encourage or assist competitive entry? If so, how should such a rate be designed and implemented?

24. *Rate Period.* The Commission also seeks comment on the appropriate duration of the next rate period. Should the duration be governed solely by the time it will take to reach a cost-based compensation rate—*i.e.,* strictly based on the length of the ''glide path'' that the Commission deems appropriate for transitioning to a cost-based level? Or should other factors be given weight, and if so, what rate period duration would appropriately balance the needs for administrative efficiency, rate certainty, and cost-reduction incentives with the need for a timely review of how IP CTS costs may change in the future, *e.g.,* with the use of ASR?

25. *Price Cap Adjustments.* The Commission seeks comment on whether price-cap factors should be used, and on the appropriate indices to use to reflect inflation and productivity, once a cost-based level has been reached. To what extent should the Commission follow the price cap approach used for IP Relay, or approaches proposed to the Commission for IP CTS?

26. *Exogenous Costs.* The Commission seeks comment on whether to allow adjustment of the compensation rate during the rate period based on exogenous costs. Specifically, should IP CTS providers be permitted to seek compensation for well-documented exogenous costs that (1) belong to a category of costs that the Commission has deemed allowable, (2) result from new TRS requirements or other causes beyond the provider's control, (3) are new costs that were not factored into the applicable compensation rates, and (4) if unrecovered, would cause a provider's current allowable-expenses-plus-operating margin to exceed its IP CTS revenues? Would such allowance for exogenous cost adjustments sufficiently address provider concerns regarding compensation for unforeseeable cost increases?

Alternative Approaches

27. *Alternatives to Averaging Costs.* While the Commission generally has viewed an average-cost approach to rate-setting as beneficial because it encourages higher-cost providers to become more efficient, the Commission seeks comment on whether a different approach could better ensure that functionally equivalent IP CTS is provided in the most efficient manner. For example, should the Commission encourage greater efficiency by setting the compensation rate equal to the costs of the lowest-cost provider—or, to ensure that users have a choice of at least two providers, should the Commission set the rate equal to the costs of the second-lowest-cost provider? To the extent that competition is beneficial to ensuring functional equivalence for IP CTS, what is the optimal number of competitors to ensure that this is achieved ''in the most efficient manner''?

28. *Alternatives to Setting Cost-Based Rates.* Finally, the Commission seeks comment on other approaches to IP CTS compensation that can successfully align the rates for this service with actual provider costs and enable the Commission to provide IP CTS in the most efficient manner. To the extent that commenters wish to suggest alternative market-based approaches that could simplify or otherwise improve the IP CTS compensation rate-setting process, the Commission invites the submission of specific proposals, along with an explanation of how each proposal would successfully align the IP CTS compensation rate with actual provider costs and otherwise advance

the objectives of section 225 of the Act. For example, Sorenson has suggested consideration of holding a reverse auction to set a multi-year compensation rate for IP CTS. How should a reverse auction operate in this context? For example, how many providers should be selected in an auction to serve the IP CTS market, and why? If multiple providers are to be selected, how should bidders' market shares be determined? What would be the costs and benefits of using a reverse auction to set rates, compared to cost-of-service ratemaking?

Setting Compensation for ASR

29. The Commission seeks comment on setting a compensation rate for IP CTS calls using full ASR. First, the Commission seeks comment on whether to set separate rates for ASR-only IP CTS and CA-assisted IP CTS, or a single rate applicable to both. Would applying a single compensation rate to both forms of IP CTS appropriately encourage migration to a more efficient technology, or would it create an undesirable incentive for providers to overuse ASR where it is not the best choice for a particular call? How can the Commission ensure that a single rate does not end up significantly over- or under-compensating providers?

30. If separate rates are applied, should compensation for ASR-only IP CTS calls be based on per-minute intervals, as is done now for IP CTS and for CA-assisted TRS generally, or would it be more consistent with cost causation principles to compensate providers on a one-time or monthly per-user basis—or a combination of the two? If the Commission maintains separate rates, when should an ASR-only IP CTS rate become effective? Should the same rate methodology and rate period for ASR-only IP CTS and CA-assisted IP CTS be used? Should the Commission establish cost-based rates that use an operating margin? Would tiered or emergent-provider rates be appropriate for ASR-only IP CTS? Should the Commission apply price cap adjustments? Would any of the alternative approaches discussed be an appropriate rate methodology for ASR? What additional information, beyond that already required in annual provider cost reports, would be useful in determining an appropriate ASR-only IP CTS rate? How should the Commission compensate IP CTS calls that use both ASR and human intervention? For example, should the Commission limit application of the CA-assisted IP CTS rate to the portion of the call when a CA is actively involved in generating captions? The Commission also seeks comment on how to amend the data requirements for call detail records submitted with requests for compensation, to ensure that the TRS Fund administrator has all of the information necessary to apply the appropriate rate for calls involving ASR.

31. If separate rates are applied, which categories of provider costs are relevant to setting a rate for ASR? In its annual rate report for 2018, Rolka Loube recommends that the Commission establish a separate ASR compensation rate for IP CTS of $0.49 per minute. Rolka Loube arrives at this rate by first disaggregating fixed IP CTS costs, projected for 2018–19 to average $0.3659 per minute, from variable costs, which, for the same period, are projected to average $0.9564 per minute. Rolka Loube then multiplies $1.75 (Rolka Loube's recommended interim rate for CA-assisted IP CTS) by the ratio of fixed IP CTS costs to total IP CTS costs, and rounds up the result to $0.49 per minute. The Commission seeks comment on this rate recommendation and methodology, and invites commenters to suggest alternative rate-setting methods and compensation rates for ASR-based IP CTS.

32. How should overhead and other common costs be allocated between CA-assisted and IP CTS provided using ASR? To what extent would it be appropriate to set the ASR-only IP CTS compensation rate higher than a cost-based level, to create incentives for providers to integrate ASR into their IP CTS platforms where functional equivalence can be achieved? For example, should the Commission allow a higher operating margin in relation to underlying costs for ASR than for human-assisted IP CTS, and what would be an appropriate amount for such additional margin? Conversely, to prevent use of ASR where it might compromise service quality, should the Commission limit the allowance of a higher margin? Or should such an extra margin be diminished over time, based on an expectation of a reduced future need for special incentives to adopt this technology? If the Commission provides a higher margin for ASR as an incentive, should it also make a corresponding downward adjustment in the operating margin for CA-assisted IP CTS, to avoid overcompensation for average costs?

33. Finally, to what extent would it serve the purposes of section 225 of the Act to modify the definition of allowable research and development expenses in order to ensure that ASR development costs are subject to compensation even if such research is not strictly necessary to ensure that a provider complies with the Commission's minimum TRS standards? Alternatively, to the extent that ASR development costs and other ASR start-up costs are not captured in the applicable compensation rate, should the Commission treat such costs as exogenous costs, which may be reimbursed in the same manner and under the same criteria as other exogenous costs? What other factors should the Commission consider in determining compensation for ASR-only IP CTS?

Restructuring the Funding of IP CTS

34. To ensure effective cost recovery for TRS, Congress directed the Commission to prescribe TRS regulations governing the jurisdictional separation of the associated costs, which shall ''generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction.'' 47 U.S.C. 225(d)(3)(B). In 2007, however, to encourage nationwide IP CTS competition that could enhance consumer choice, service quality, and available features, the Commission determined that, on an interim basis, all IP CTS minutes, both interstate and intrastate, would be supported by TRS Fund contributions from carriers' interstate (and international) end-user revenues.

35. *Expanding the TRS Fund Base.* In light of the changes to the IP CTS landscape described above, and to conform the funding of IP CTS to the requirements of section 225 of the Act, the Commission proposes to expand the contribution base for IP CTS to include a percentage of annual intrastate revenues from telecommunications carriers and VoIP service providers, for several reasons.

36. First, the goal of nationwide availability has been fully achieved. IP CTS is offered by five competing providers (as compared to only two providers under a single vendor in 2007) and the service is used extensively nationwide. The burgeoning growth of this service offers evidence that the special arrangement of treating all IP CTS costs as interstate costs is no longer necessary as an ''interim'' measure to spur the development of this service.

37. Second, expanding the TRS Fund contribution base for support of IP CTS to include intrastate revenues would reduce the inequitable TRS support burden borne by those voice service providers whose traffic is primarily

interstate and ensure that a reasonable share of support for IP CTS is obtained from those voice service providers with mostly intrastate traffic. The Commission seeks comment on these beliefs, and on any other benefits or costs that would result from expanding the contribution base for IP CTS to include intrastate voice service revenues.

38. *Implementation.* As the initial step in implementing this proposal—which assumes that, at least for the near term, the total IP CTS revenue requirement (RR) continues to be paid out of the TRS Fund—the TRS Fund administrator would aggregate the total end-user revenue data reported by TRS Fund contributors on Forms 499–A and 499–Q. With approximately 40% of total TRS Fund contributors' end-user revenues classified as interstate and approximately 60% classified as intrastate, the TRS Fund revenue base available to support IP CTS would increase by approximately 150% (60%/40%). Next, the TRS Fund administrator would calculate an IP CTS revenue requirement sufficient to compensate IP CTS providers for their reasonable costs of providing IP CTS. A separate contribution factor or factors would then be developed for the purpose of determining the contributions needed from each TRS Fund contributor for support of IP CTS.

39. Under one possible approach, the TRS Fund administrator could compute a single contribution factor for IP CTS, which would be applied in the same manner to all end-user revenues, both interstate and intrastate, in effect treating the IP CTS revenue requirement as a single pool to which all TRS Fund contributors would pay the same percentage of their total end-user revenues. The Commission seeks comment on whether this approach is reasonable, equitable to all providers, and consistent with the requirements of section 225 of the Act.

40. Under an alternative plan, the IP CTS revenue requirement would be divided into interstate and intrastate portions, based on an estimate of the proportion of IP CTS costs and minutes that are interstate and intrastate, respectively. Separate contribution factors would then be determined for (1) interstate IP CTS, by dividing the interstate IP CTS revenue requirement by total interstate end-user revenues of all TRS contributors, and (2) intrastate IP CTS, by dividing the intrastate IP CTS revenue requirement by total intrastate end-user revenues of all TRS contributors (minus intrastate revenues attributable to states that do not self-administer IP CTS). Under this alternative approach, the contribution factors for interstate and intrastate IP CTS, respectively, would not be the same because the IP CTS revenue requirement would be allocated between the separate jurisdictions based on the percentage of *IP CTS minutes and provider costs* attributed to each jurisdiction, while the contribution base would be allocated based on the percentage of *end-user revenues* allocated to each jurisdiction.

41. Implementation of this second alternative approach would be more complicated, and might involve some additional delay, because it would require the TRS Fund administrator (or the Commission) to estimate the proportions of IP CTS minutes and provider costs that are interstate and intrastate. The Commission seeks comment on whether such a calculation is necessary to ensure that the burden of TRS Fund contributions is distributed equitably among voice service providers and consistently with section 225 of the Act. If so, how should such separation of IP CTS costs and minutes be determined? Are the current separations rules adequate to separate intrastate and interstate IP CTS costs, or would it be necessary to refer this issue to the Federal-State Joint Board on Separations? To the extent that some IP CTS calls cannot currently be identified as either intra- or interstate, should the Commission permit a percentage classification based on traffic studies? Alternatively, should the Commission establish a default proxy allocation, and if so, what should the proxy allocation be? The Commission also seeks comment on any other implementation alternatives that the Commission should consider.

Statutory Authority To Require Intrastate Support of IP CTS

42. *Statutory authority.* The Commission believes it has ample authority to collect contributions from telecommunications carriers' and VoIP service providers' intrastate end-user revenues to support the provision of intrastate IP CTS calls, including in situations where the state does not assume funding responsibility. First, section 225(d)(3) of the Act requires the Commission to prescribe regulations that ''generally'' provide that TRS costs caused by interstate and intrastate jurisdictions are each recoverable from the subscribers of their respective jurisdictions. The Commission consistently has ruled that by use of the term ''generally,'' Congress intended for the Commission to have broad authority to determine how TRS costs will be recovered. It was this authority on which the Commission relied to permit recovery of the costs of intrastate IP CTS, as well as intrastate VRS and intrastate IP Relay calls, from the TRS Fund. Further, section 225(b)(2) of the Act states that ''the Commission [has] the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this subchapter with respect to any common carrier engaged in interstate communication.'' Finally, under section 225 of the Act, where a state does not establish a Commission-certified TRS program, the provision of intrastate TRS must be directly supervised by the Commission. The Commission asks commenters whether they agree that these legislative sources provide ample statutory authority for the Commission to address the support for intrastate IP CTS calls.

43. The Commission also believes section 225 of the Act authorizes the classification of some IP CTS calls as jurisdictionally intrastate. Unlike other forms of internet-based TRS, where one ''leg'' of the end-to-end communication between the parties to the call necessarily takes place via IP facilities, the end-to-end voice communication between the calling party and the called party on an IP CTS call uses the same ten-digit telephone numbers as ordinary voice traffic and is routed via traditional PSTN telephone lines or interconnected VoIP, like any other voice call. Further, the Commission has previously found that the definition of TRS includes transmission using any technology, including internet Protocol, and is ''constrained only by the requirement that such service provide a specific functionality.'' Accordingly, as with a number of other forms of TRS, the Commission believes that when both parties to an IP CTS call are located within the same state, the call should be classified as an intrastate call under section 225 of the Act. The Commission seeks comment on these views.

State Role in the Administration of IP CTS

44. The Commission seeks further comment on whether certified state TRS programs should be allowed or required to take a more active role in the administration of IP CTS. Under section 225(c) of the Act, common carriers may fulfill their obligation to offer TRS throughout the areas in which they offer telephone service ''individually, through designees, through a competitively selected vendor, or in concert with other carriers,'' or by complying with the requirements of

state TRS programs certified by the Commission. Currently, all 50 states plus six U.S. territories have TRS programs certified by the Commission that offer the two forms of TRS currently required for state program certification: TTY-voice and speech-to-speech TRS. Additionally, all TRS state programs offer, oversee, and support a non-IP version of CTS on a voluntary basis.

45. Given their responsibility for administering other forms of TRS (including CTS) and their greater proximity to residents using IP CTS within their jurisdiction, the Commission believes that state TRS programs have the expertise, demonstrated skills, and on-the-ground experience to assume administrative functions with respect to IP CTS. In an earlier phase of this proceeding, however, at least some commenters questioned whether it would be desirable for states to take on IP CTS funding and administration before issues related to user eligibility, uncontrolled growth of IP CTS demand, and standards of service have been addressed at the federal level. Additionally, for some states, it appears that state legislative authority may be needed to allow such a transition. The Commission seeks to update the record on the extent to which states continue to have these various concerns, or whether they would have an interest in voluntarily assuming an administrative role for IP CTS operations. The Commission also seeks comment on how much discretion states that are willing to take on such a role should have in designing their IP CTS programs. In general, a state IP CTS program would remain subject to certification by the Commission, and would be expected to comply with any mandatory minimum TRS standards established by the Commission.

46. To the extent that state TRS programs remain reluctant to assume all obligations associated with operating a TRS program, a more modest approach would be to allow or require state entities to take on particular roles in the administration of IP CTS.

47. *Intrastate Funding.* If the Commission adopts its proposal for IP CTS to be supported in part by intrastate end-user revenues, as proposed above, should state TRS programs be required or permitted to administer intrastate funding for the costs of IP CTS to their residents (*i.e.,* to ''opt out'' of having revenues from their intrastate carriers contributed to the TRS Fund, so that they can handle such funding on their own)? In addition to the jurisdictional separations issues discussed above, if any state chooses to assume responsibility for funding intrastate IP CTS, the TRS Fund's IP CTS revenue requirement would need to be adjusted to reflect that intrastate IP CTS need no longer be supported for that state, by excluding from the intrastate end-user revenues subject to TRS Fund contribution all intrastate revenues attributable to voice service provided in that state. The Commission seeks comment on how this adjustment should be calculated. For example, should the Commission require each TRS Fund contributor to calculate and report their own state-by-state allocation of end-user revenues? Alternatively, should the TRS Fund administrator attribute a portion of some or all contributors' end-user revenues to states based on the most recent state-by-state USF contribution percentages for various categories of telecommunications service, as calculated by the Federal-State Joint Board on Universal Service?

48. *Provider Certification.* Next, the Commission seeks comment on whether state TRS programs should be required or permitted to certify IP CTS providers that are allowed to deliver IP CTS services to the residents of their states. Presently, such provider certifications are handled exclusively by the Commission. If states handle such certifications, to what extent should states be required to offer consumers a choice of providers, given that most state TRS programs presently have a single TRS vendor? Further, the Commission seeks comment on the criteria that states should use for approving certification, and whether this should be consistent across all state programs.

49. If either the funding or certification functions—or the broader function of administering IP CTS—is transferred to state TRS programs, the Commission seeks comment on the amount of time state TRS programs will need to secure the necessary resources and regulatory changes at the local level for their implementation. The Commission also seeks comment on whether and how to define a time ''window'' within which each state that intends to participate in these functions must notify the Commission of such intention.

Ensuring Independent Assessments

50. Information in the record suggests that only a portion of the millions of Americans who have some level of hearing loss require IP CTS to achieve functionally equivalent telephone communication. Because of IP CTS's ease of use and the absence of any direct interaction between the calling parties and the CA, compared with other forms of TRS, it appears more likely that individuals who do not have a disability or who do not require this form of TRS may use it as a convenience, rather than a necessary means to achieve functionally equivalent communications. The Commission is concerned that this trend and the exponential growth in IP CTS have been exacerbated by the failure of user assessments to be sufficiently complete and objective.

51. First, the record indicates that, as currently conducted, user assessments are unlikely to accurately determine whether an individual's hearing loss warrants their use of IP CTS. Specifically, the extent to which an individual's hearing loss affects that person's ability to understand telephonic speech—and, therefore, necessitates the use of IP CTS to communicate by phone—can depend on a number of factors, including the individual's specific decibel levels of hearing loss as affected by different sound frequencies, environmental and background noises, and device distortion. This suggests that an effective assessment of an individual's need for IP CTS should be based on a more specific evaluation than a generalized hearing test or a previously recorded audiogram, and should consider whether an individual's communications needs can be met by other assistive technologies.

52. In order to prevent the waste of TRS Fund resources, the Commission therefore proposes that assessments of IP CTS user need must be specifically focused on the consumer's ability to hear and understand speech over the telephone and on whether the consumer's communications needs can be met by other assistive technologies. The Commission seeks comment on this proposal and invites parties to submit documentation or other evidence confirming whether the assessments currently conducted by health professionals for potential IP CTS users actually include these specific elements.

53. Second, there is evidence that current assessments of users' need for IP CTS are unlikely to be objective. Evidence indicates that third-party professional assessments of need have become an integral part of some providers' marketing plans, such that some third-party professionals—through pre-established and sometimes exclusive arrangements with certain IP CTS providers—have been helping to promote these providers' IP CTS offerings at the same time as they purportedly provide an objective certification of their clients' need for IP

CTS. In light of the benefits derived from such arrangements (*i.e.,* opportunities to sell professional services and hearing aids to new or existing customers), the Commission is concerned that professionals have an incentive to acquiesce to their customers' requests for IP CTS eligibility certification, rather than thoroughly and objectively evaluate their need for IP CTS—even when alternatives to IP CTS often may provide a more cost-efficient and effective means of enabling telephone communication for these individuals.

54. To ensure that eligibility screening of IP CTS users is both neutral and complete, the Commission proposes to amend its rules to require that each prospective IP CTS user undergo an objective assessment by a qualified and independent entity that will determine whether the individual has a hearing loss that necessitates use of captioned telephone service. To ensure that screenings specifically assess the need for IP CTS, the Commission further proposes that each assessment include a functional assessment of each applicant's communication needs, including the extent to which the individual would be able to achieve functionally equivalent telephone service by using an amplified telephone or other assistive technology. The Commission seeks comment on these proposals and rationale. In addition, the Commission seeks comment on two alternative approaches.

55. *Assessments by State Programs.* Having state TRS programs handle IP CTS user eligibility assessments could be an effective means of ensuring that such evaluations are sufficiently thorough and not biased toward the use of IP CTS. These programs often work in conjunction with state EDPs and other state agency programs that have expertise and experience in assessing the types of communication technologies needed by individuals with hearing loss. The Commission seeks comment on whether state TRS programs should be required (as a condition of FCC certification under section 225(f) of the Act) to fulfill this user eligibility obligation—whether on their own, through state equipment distribution programs (EDPs), or through contracting entities.

56. If this approach is adopted, the Commission also seeks comment on how user screenings can be most effectively and efficiently conducted. Should all such assessments comport with certain standards and practices established by the Commission for nationwide application, or should states each be permitted to establish their own eligibility criteria and processes for IP CTS screenings? The Commission also seeks information, if available, on the number of users that each state program likely will be able to screen in a given period of time, such as on a monthly basis. Finally, the Commission seeks comment on the current capacity of state programs to take on this task, and what amount of time may be needed to obtain the necessary resources and begin conducting such assessments.

57. The Commission asks commenters to share information about the costs and benefits of having state programs assume this function, based on state CTS screenings that have taken place to date. Regarding costs, the Commission estimates that the likely cost for state entities to conduct an appropriate evaluation of every new IP CTS user would total approximately $9 million annually. According to some sources, estimates of the cost of a comprehensive hearing evaluation for the purpose of determining whether an individual needs a hearing aid range from $54 to more than $224. The type of evaluation needed to establish eligibility for IP CTS, however, need not include all the elements of a general hearing evaluation—for example, a physical examination of the ear—and therefore may not cost as much as the upper range of a general hearing evaluation. Recently, TEDPA conducted a survey of state equipment distribution programs seeking information on the cost incurred by such agencies in assessing and evaluating a new applicant's qualifications for program services and equipment. Respondents' estimates of the average cost of such assessments or evaluations ranged from $50 at the low end to $250 at the high end. Estimates varied significantly based on whether assessments were conducted at an office, for which the median cost estimate was approximately $100, or at the applicant's home, for which the median cost estimate was approximately $200. Based on the assumption that the majority of assessments would be conducted at an agency's offices, as a preliminary estimate, the Commission estimates the average cost of such an evaluation to be approximately $125 per new user. Assuming no change in the current rate at which new users are being added (*i.e.,* approximately 6,000 new IP CTS users per month), and multiplying that rate by the estimated average cost (*i.e.,* $125 per user), the cost of evaluating new users can be estimated at approximately $750,000 per month, or $9 million per year. The Commission seeks comment on this estimate and the underlying assumptions.

58. To the extent private professional assessments are currently being conducted, the Commission invites providers to submit estimates of how many of their new users currently undergo such evaluations, and it invites parties generally to submit estimates of the costs currently incurred by users, hearing health professionals, and others to complete such evaluations. The Commission estimates that these currently incurred evaluation costs will be saved to the extent that state agencies take over the evaluation function, because such private evaluations will not be necessary.

59. Consistent with the requirement of section 225 of the Act for the costs of providing intrastate TRS ''generally'' to be recovered from each intrastate jurisdiction, the Commission seeks comment on whether states should be permitted to recover expenses associated with such screenings from their intrastate telephone subscribers, much along the same lines that they now recover other costs associated with the provision of intrastate TRS. The Commission further seeks comment on whether a share of the costs of providing these assessments, proportionate to the interstate minutes of use by each state's residents, should be reimbursed to the states by the TRS Fund.

60. Next, the Commission seeks comment on how to ensure that independent screenings are conducted in nonparticipating states that do not have EDPs. For example, should the Commission enter into contracts with third parties, on a national, regional, or local basis, that have the necessary expertise to fill this gap? If so, what qualifications should such parties possess, in terms of administrative capabilities, professional staffing, and experience? The Commission invites state equipment programs and hearing health professionals who have performed assessments of need for CTS or IP CTS to describe what assessment tools they have used to determine whether these services are necessary in addition to or in lieu of other assistive technologies. The Commission further proposes that assessments conducted by such independent contractors adhere to the same criteria and standards as will apply to state programs taking on this function. Additionally, to ensure the neutrality of any screening entity—be it a state program or independent contractor—the Commission proposes that any personnel conducting assessments not have any business, family, or social relationships with any IP CTS provider or personnel.

Alternatively, should the Commission allow assessments by third-party professionals, as outlined below, in states without equipment distribution programs? The Commission seeks comment on these proposals.

61. *Assessments by Third-Party Professionals.* An alternative to having state programs conduct IP CTS screenings is to require IP CTS providers to obtain from each potential IP CTS user a certification from an independent, third-party hearing health professional affirming the user's eligibility to use IP CTS. The Commission continues to be concerned, however, about the difficulties associated with relying on this gatekeeping function, especially when it is conducted by professionals who may be subject to the enticements of free phones for their clients and other marketing promotions that can interfere with their impartial judgment about a client's eligibility. For this reason, if the Commission adopts this approach, it believes that strict safeguards should be put into place to improve the objectivity and accuracy of these professional assessments, so that only individuals who actually need IP CTS will be permitted to register for this service. For this purpose, the Commission seeks comment on the following measures, and further asks commenters to share any other requirements they believe to be necessary to ensure the independence, expertise, and objectivity of certifying entities.

62. First, to ensure that a certifying third-party professional is qualified to assess a consumer's need for IP CTS, the Commission proposes to require that providers only be permitted to accept user assessment certifications signed by physicians specializing in otolaryngology, audiologists, or other state certified or licensed hearing health professionals qualified to evaluate an individual's hearing loss in accordance with applicable professional standards. Under this proposal, a person whose profession does not ordinarily encompass evaluating hearing loss would not be permitted to provide a third-party certification. The Commission seeks comment on this proposal and any other qualifications needed for such professionals. To ensure compliance with this requirement, and to prevent the possible emergence of ''third-party certification mills,'' the Commission also seeks comment on whether to require IP CTS providers to report annually to the Commission the names and qualifications of professionals that certify multiple users annually, and the number of individuals each professional certifies for IP CTS in each Fund year.

63. Second, to provide assurance that a third-party professional's certification of a consumer's need for IP CTS is not directly or indirectly influenced by IP CTS providers through compensation, opportunities for meeting potential clients, or other provider enticements, the Commission proposes to prohibit an IP CTS provider from accepting a certification from any professional that has a business, family, or social relationship with the IP CTS provider or with any officer, director, partner, employee, agent, subcontractor, sponsoring organization, or affiliated entity (collectively, ''affiliate'') of the IP CTS provider. The Commission proposes that this prohibition specifically include situations where the professional, the professional's organization, or a colleague within that organization has been referred to the consumer, either directly or indirectly, by the IP CTS provider or any affiliate. The Commission also proposes to prohibit IP CTS providers from facilitating or otherwise playing a role in the acquisition of professional certifications by arranging, sponsoring, hosting, conducting, or promoting seminars, conferences, meetings, or other activities in community centers, nursing homes, apartment buildings, or any other location where hearing health professionals offer free hearing screenings. Generally, then, providers would be prohibited from soliciting, facilitating, or collecting user certifications directly from hearing health professionals. Rather, in order to become registered for IP CTS, the Commission believes that consumers, rather than providers on their behalf, should initiate the process of obtaining a third-party certification. The Commission believes that these neutrality requirements would impose minimal costs on IP CTS providers and hearing health professionals. The Commission seeks comment on this view and on the costs and benefits of adopting this proposal (including its impact on consumers), as well as whether there are other types of relationships or interactions between providers and hearing health professionals that should be prohibited to ensure the latter's neutrality.

64. Third, the Commission proposes that before signing a certification as to a consumer's need for IP CTS, the certifying professional be required to: (1) Conduct functional assessments that evaluate the individual's need for IP CTS to achieve functionally equivalent telephone communication (as compared to a general determination of hearing loss) and (2) assess whether an amplified telephone or other services or devices would be sufficient to provide functionally equivalent telephone service for the applicant. The Commission seeks comment on these proposed requirements and their costs and benefits, including whether an assessment that considers multiple options can enable professionals to more objectively determine a consumer's need for IP CTS. The Commission also seeks comment on the extent to which the proposed certification requirement would impose additional costs beyond those already incurred by IP CTS users, providers, hearing health professionals, and others in connection with such assessments. In addition, the Commission seeks comment on how the costs and benefits of user assessments, which are discussed in more detail above, differ based on whether such assessments are conducted by or under the supervision of state entities or by third-party professionals without supervision by state entities. The Commission also seeks comment on whether the Commission or contracting entities should establish an appeals process that would allow potential IP CTS users to contest the results of such assessment and, if so, what form such process should take.

65. Fourth, the Commission proposes to require IP CTS providers to accept only third-party professional certifications that are in writing, submitted under penalty of perjury, and include an attestation from the professional that he or she has conducted an evaluation of the individual in accordance with applicable professional standards and the Commission's rules, and that in the professional's opinion, the applicant has a hearing loss that necessitates use of IP CTS for the individual to achieve effective telephone communication. The Commission further proposes that such attestation state that the professional understands, and has explained to the consumer, that (1) the captions used for IP CTS may be generated by a CA who listens to the other party on the line and provides the captions received by the IP CTS subscriber; and (2) there is a per-minute cost to provide captioning on each IP CTS call, which is funded through a federal program. This requirement will ensure that both the third-party professional and the consumer understand the nature of IP CTS, and help eliminate confusion between the costs associated with television captioning, which is not based on usage, and telephone

captioning, for which there are ongoing, measured costs. The Commission proposes application of these certification requirements to all new users other than those who are able to document that they have obtained IP CTS devices from a state program administering this function.

66. Additionally, to assist with enforcement of these rules, the Commission proposes that each IP CTS provider be required to maintain a copy of each third-party professional certification for a minimum of ten years after termination of service to the consumer, and to make such records available to the TRS Fund administrator or the Commission upon request. The Commission further proposes that failure to provide such records may result in denial of compensation for minutes incurred by that user, and may be grounds for termination of a provider's certification to provide IP CTS. Finally, the Commission proposes that IP CTS providers be prohibited from disclosing users' certification information in a personally identifiable form, except upon request of the Commission or the TRS Fund administrator or as otherwise required by law.

67. The Commission believes that such attestation and record storage requirements would impose minimal costs on IP CTS providers. The Commission seeks comment on this view and on the costs and benefits of adopting these proposals.

68. *Costs and Benefits of Ensuring Independent Assessments of IP CTS User Eligibility.* The Commission seeks comment on the costs and benefits of both approaches. The Commission tentatively concludes that significant additional benefits, in the form of savings to the TRS Fund, will result if evaluations are more objective and better focused on an individual's ability to effectively communicate by telephone than the evaluations that are currently conducted.

69. Usage data provided by Rolka Loube indicates that the average new IP CTS user adds approximately 1,250 minutes in the first year after initiating service. Accordingly, the Commission estimates that the approximately 72,000 new users added in the course of a year will generate approximately 90 million minutes of IP CTS in their first year of service. If, in the future, 10 percent of the IP CTS usage generated by new users results from registration of users who do not need IP CTS, then the Commission estimates that improved screening of new users has the potential to save the Fund, in the first year, the cost of 9 million minutes (10 percent × 90 million), at a rate of $1.58 per minute, or approximately $14.2 million. If 20 percent of such usage is unnecessary, the potential first year's savings would be approximately $28.4 million.

70. The Commission notes that benefits to the Fund of ensuring appropriate usage accrue cumulatively over time. In the second year, a comparable amount of unnecessary usage from new users would be saved, and there would be continued savings from the users screened out in the first year. According to usage data provided by Rolka Loube, in a user's second year, the minutes of use for an average user drop to approximately 66 percent of the user's first-year minutes. Thus, the minutes saved in the second year would be approximately 1.66 times those saved in the first year. If there is a further 10 percent reduction of the IP CTS compensation rate in Fund Year 2020–21, savings of unnecessary minutes and Fund expenditures in the second year would total approximately 14.9 million minutes and approximately $21.1 million if 10 percent of usage is unnecessary, and approximately 29.8 million minutes and approximately $42.2 million if 20 percent of usage is unnecessary. In the third and subsequent years, because of the continued savings from the screenings conducted in the first two years, the Commission believes the amounts saved would continue to multiply. The Commission seeks comment on its tentative conclusion and the assumptions underlying these estimates.

Communications and Messaging on IP CTS

71. In response to concerns raised in the record about what has been perceived as aggressive IP CTS messaging, some of which may be misleading or lacking complete information, the Commission seeks comment on measures to ensure that accurate information about IP CTS is being imparted by providers to consumers, service providers and other members of the public. The importance of ensuring the accuracy of marketing information is heightened by use of IP CTS predominantly by seniors, as they may be particularly vulnerable to schemes that could result in fraud and abuse.

72. *Written Marketing Materials.* The Commission proposes to require that all provider-distributed online, print, and orally delivered materials used to market IP CTS be complete and accurate. The Commission seeks comment on whether such a requirement would ensure that marketing materials make clear that IP CTS may not be necessary for everyone and that to qualify for IP CTS use, consumers with hearing loss must be able to certify that captioning is needed to enable them to understand telephone conversations. The Commission also seeks comment on whether and to what extent this proposed rule change, which may require reprinting of previously produced marketing materials, would impose a significant cost or administrative burden on providers.

73. *Free Phone Offers.* The Commission also continues to be concerned about advertised offers of a free phone for anyone with hearing loss who wants to subscribe to this service, which could both encourage consumers to sign up for IP CTS (just to obtain the phone) even if they do not need it and give such individuals the misimpression that the associated IP CTS services are also free. In addition to enticing consumers, the Commission believes that the incentive of a free phone can sway the opinion of third-party professionals, whose certification may become more of a stamp of approval on a decision made by the consumer in response to provider marketing efforts, rather than an independent evaluation of the consumer's need for IP CTS. Would a requirement to eliminate from promotional materials, including print materials and websites, promises of a free phone for *anyone with hearing loss,* without specifying that this service (and the associated phones) are only intended for individuals who have a hearing loss that makes it difficult to use the phone, remove such improper incentives and reduce the number of consumers who sign up for IP CTS without a specific need for this service? The Commission seeks comment on the merits of taking this measure and how the First Amendment might apply in this context.

74. *Equipment Installer Notifications.* To ensure that consumers are given full information about the nature and costs of IP CTS prior to allowing providers to install these devices in their homes, the Commission proposes that whenever there is a home installation of an IP CTS device by a provider's employee, agent, or contractor, such installer must explain to the consumer, prior to conducting such installation: (1) The manner in which IP CTS works, (2) the per-minute cost of providing captioning on each call (*i.e.,* the applicable rate of provider compensation), and (3) that the cost of captioning is funded through a federal program. The Commission seeks comment on this proposal.

75. *Incentives to Caretakers and Service Providers for Seniors.* The

Commission proposes to amend its rules to expressly prohibit providers from offering or providing any form of direct or indirect incentives, financial or otherwise, to any person or entity for the purpose of encouraging referrals of potential users, registrations, or use of IP CTS. The Commission seeks comment on this proposal.

76. The Commission tentatively concludes that compliance with these requirements regarding marketing materials, notifications by equipment installers, and prohibition of certain incentives would impose minimal costs on IP CTS providers. The Commission seeks comment on this tentative conclusion and on the costs and benefits of adopting this proposal.

77. Finally, the Commission seeks comment on whether there are any other components of an IP CTS provider's public relations, marketing, media planning, product pricing and distribution, or sales strategy that could lead to waste, fraud, and abuse in the IP CTS program, and what rules the Commission should adopt to halt such practices.

IP CTS Registration Renewal and Phone Reclamation

78. The Commission seeks comment on what rules are needed to prevent the unauthorized use of a registered user's IP CTS device after the authorized user ceases to use the service. In light of the reportedly high level of attrition among IP CTS users, the Commission believes there is a risk that providers may not be notified when the registered user of an IP CTS device discontinues use, and that such users' IP CTS devices may end up in the possession of others who are not properly registered to use IP CTS. To minimize the risk of inappropriate IP CTS use, the Commission proposes to require that IP CTS providers biennially obtain from their users a self-certification of their continuing need to use IP CTS to achieve functionally equivalent telephone communication, and retain copies of each self-certification, as well as other registration information, for a period of ten years. Further, the Commission proposes to prohibit such providers from receiving compensation for IP CTS provided to any such individual who fails to re-certify within the specified interval or for calls associated with any device for which such certification was required. At present, the Commission does not see the need to apply these new requirements to web and wireless IP CTS because the use of log-in credentials will reduce the likelihood of unauthorized use of such services upon their discontinuation by consumers who have been registered to use them. The Commission seeks comment on this belief.

79. The Commission also seeks comment on whether to require IP CTS providers to notify each individual who receives an IP CTS device, at the time of such receipt and initial registration, that the user has an obligation to ensure that the provider is notified if such user discontinues use of the captioning service. If this proposal is adopted, the Commission further proposes that recipients of IP CTS devices be permitted to fulfill such obligation either on their own or through a designated representative, at which time the provider would be required to terminate the provision of IP CTS via that device. The Commission further seeks comment on whether to adopt a rule requiring the provider to either disable the IP CTS capability of an end-user device or ensure that the consumer (or his or her designee) returns the device to the provider, after notification that the authorized user is no longer using the device for IP CTS. Finally, the Commission seeks comment on other steps that IP CTS providers should take to ensure that the person who initially registers for a captioning service remains the exclusive user of the captioning service provided on that user's device.

80. The Commission believes that compliance with these registration renewal and phone reclamation requirements would impose minimal costs on providers and seeks comment on this view and on the costs and benefits of adopting these proposals.

Requiring an Easy Way To Turn Captions On or Off

81. The Commission proposes to require providers to ensure that their IP CTS equipment provides an easy way to turn captions *on or off,* either before placing a call or while a call is in progress, and to prohibit provider practices designed to induce an individual to turn captions on, or leave them on, when that person otherwise would not do so.

82. Accordingly, the Commission proposes to require both (1) an easily operable button, icon, or other comparable feature that requires a single step for consumers to turn captioning on or off, and (2) a prohibition against the installation of features in provider-distributed services or devices that have the foreseeable effect of encouraging IP CTS users to turn on captions even when they are not needed. The Commission believes that compliance with these requirements would impose minimal costs on IP CTS providers and seeks comment on this view and on the costs and benefits of adopting these proposals as a means of reducing waste and improving the efficiency of IP CTS. The Commission also seeks comment on the amount of time that would be needed to effect their implementation.

Additional Measures

83. The Commission also seeks comment on additional steps it could take to help prevent waste, fraud, and abuse in the provision of IP CTS. What other measures could the Commission implement to better ensure that limited program dollars are used to support the use of IP CTS by eligible individuals with hearing loss? For instance, do IP CTS providers currently have processes in place to enable or require call takers to identify individual calls or patterns of calls that may suggest noncompliance with program rules? Should the FCC impose requirements on providers that they enable or require CAs to flag individual calls that may suggest that IP CTS functionality is being used improperly? For example, some consumers in a household may use captioning features who do not actually need them. Should any steps the Commission takes focus on individual calls or identified patterns? Should IP CTS providers have an obligation to report any such flags to the TRS Fund administrator or the FCC? Should the Commission take steps to ensure that any particular calls where IP CTS is improperly used are not compensated out of program dollars? Are there auditing procedures that the FCC, the TRS Fund administrator, or IP CTS providers should take to identify any such calls and to ensure providers are offering IP CTS only to eligible consumers?

84. The Commission also seeks comment on whether it should consider additional measures to ensure call quality for 911 calls made using IP CTS. Given the important and often exigent circumstances associated with 911 calls, the Commission previously adopted rules requiring IP CTS providers to transfer emergency calls to 911, to prioritize emergency calls, and to communicate essential information to first responders answering 911 calls. Are these requirements sufficient to ensure proper emergency call handling by IP CTS providers? Are IP CTS providers taking sufficient steps to detect and remedy 911 call failures? Have callers encountered technical difficulties or call quality issues when making 911 calls? To what extent should the Commission adopt standards for the accuracy and synchronicity of captions on 911 calls handled by IP CTS

providers, to enable the effective and timely exchange of information in an emergency? Are there other minimum criteria that should be established for such calls? Are there unique challenges with respect to relaying calls to 911 associated with any of the methods used to generate IP CTS captions (*i.e.,* fully automated ASR, CA-assisted ASR or stenographic supported captions)? Finally, are additional auditing requirements, beyond those already governing TRS providers, necessary to ensure compliance with the Commission's 911 IP CTS call handling requirements? For example, should the Commission conduct regular testing to ensure such compliance? The Commission asks commenters to address the costs and benefits associated with any proposed measures.

Technological Advances

85. The Commission also seeks comment on the extent to which alternative communication services and applications, which are not funded through the TRS program, can complement or reduce reliance on IP CTS. For example, to what extent can amplified telephones, high definition VoIP services (HD voice) over wired and wireless networks, video over broadband and cellular networks, noise-canceling techniques, audio personalization, and various forms of text-based communications—for example, real-time text (RTT), email, short messaging services, instant messaging, and online chat sessions—meet the communications needs of people with hearing and speech disabilities? To the extent that these mainstream technologies enable functionally equivalent access to voice telephone services for some individuals, the Commission believes they may reduce reliance on IP CTS and thereby help preserve the TRS Fund for others for whom IP CTS is essential for telephone communication. The Commission seeks comment on this belief, and whether there are registered IP CTS users who only use their IP CTS devices in certain situations, but rely on more direct alternatives, such as phone amplification, in other situations. The Commission further seek comment on how it can collect data on the potential markets for these off-the-shelf technologies, as well as their usage by individuals who are current or potential users of IP CTS.

Notice of Inquiry

Performance Goals

86. The Commission seeks comment on appropriate performance goals for the IP CTS program. The Commission's objective here is to state these goals in terms that lend themselves to evaluating progress toward achieving the Congressional objectives set forth in section 225 of the Act.

87. The Commission believes that the primary goals for the IP CTS program should be: (1) To make communications services available to individuals with communications disabilities that are functionally equivalent to communications services used by individuals without such disabilities; (2) to keep up with technological changes and advances in the telecommunications industry; and (3) consistent with the concepts of good government and proper stewardship of the Fund, to improve the efficiency of IP CTS, and reduce the incidence of waste, fraud, and abuse. The Commission seeks comment on whether these or other goals are appropriate for assessing the IP CTS program and IP CTS provider performance.

88. *Goal #1: Functional Equivalence.* Given the requirement in section 225 of the Act for the Commission to ensure, to the extent possible, the availability of TRS for people with hearing or speech disabilities that is functionally equivalent to voice telephone services used by people without such disabilities, the Commission seeks comment on whether it should set as its first goal that communications services used by these populations be comparable to communications services used by the general public, including communications that take place over the PSTN, cellular networks, and VoIP transmissions. In April 2011, consumer groups suggested that functional equivalence be defined as enabling ''[p]ersons receiving or making relay calls . . . to participate equally in the entire conversation with the other party or parties and . . . experience the same activity, emotional context, purpose, operation, work, service, or role (function) within the call as if the call is between individuals who are not using relay services on any end of the call.'' The Commission seeks comment on the extent to which this is an appropriate definition of functional equivalence for the purpose of defining this performance goal.

89. *Goal #2: Technological Advances.* Section 225 of the Act directs the Commission to adopt regulations that encourage the use of existing technology and . . . do not discourage or impair the development of improved technology. The Commission therefore asks whether the second goal of the IP CTS program should be to ensure that this program utilizes technological changes and advances in the telecommunications industry to the greatest extent possible, as needed to achieve functionally equivalent communication for this population. This goal would not be limited to current technological capabilities, but rather would seek to ensure that people with communication disabilities are able to take full advantage of innovative communication technologies, such as ASR, as these continue to be developed. The Commission seeks comment on this goal, and more specifically, on how the use of mainstream and off-the-shelf technologies can provide functional alternatives to, or supplement, IP CTS in meeting the needs of individuals who are deaf, hard of hearing, deaf-blind, or have speech disabilities. For example, to what extent can individuals who use IP CTS also be able to communicate directly with others through the use of amplified telephones, high definition VoIP services over wired and wireless networks, video over broadband and cellular networks, and text-based communications (*i.e.,* electronic messaging services, such as email, short messaging service, instant messaging, and online chat sessions)? The Commission asks commenters to address the types of circumstances when these or other emerging technologies can be used to provide functionally equivalent telephone communication for people with communications disabilities. What steps, if any, should the Commission be taking to foster such direct communication solutions?

90. *Goal #3: Provision of Service in the Most Efficient Manner.* Section 225 of the Act directs that TRS be made available ''in the most efficient manner.'' To this end, the Commission asks whether the third program goal should be to improve the efficiency of the IP CTS program and to reduce this program's incidence of waste, fraud, and abuse. The Commission also seeks comment on whether efficiency can be measured solely in terms of the cost incurred to achieve a certain level of functional equivalence, or whether there are additional factors, such as timeliness and effectiveness, that should go into this determination. The Commission further seeks comment on how this goal should be balanced against the performance goal of ensuring the provision of a functionally equivalent conversational experience through IP CTS.

Performance Measures

91. To ensure that its performance goals are being met, the Commission must define measurements that can

provide valuable empirical evidence to objectively assess these goals. In addition to enabling the Commission to track the progress and success of the IP CTS program, these measurements will provide valuable empirical evidence for Commission policy makers to craft rules for effective implementation and oversight of the IP CTS program, as well as to ensure that consumers are provided with the information they need to make informed choices in their selection of provider services.

92. Some of these metrics may be observed automatically, *e.g.,* by call processing logs or other measurement tools, while others may require evaluation by IP CTS users or human subject matter experts. The Commission seeks comment on whether the derivation of data used to measure IP CTS service quality should be overseen by the TRS Fund administrator or otherwise developed through contractual or similar arrangements with independent third parties selected by the Commission. The Commission believes that calculations resulting from IP CTS performance measures will have greater efficacy if they are conducted independently (*i.e.,* not by the regulated entities).

93. The Commission also seeks comment on whether it should publish the metrics achieved for each provider, as it appears likely that making these results available to the public in a standard format will aid users in their selection of IP CTS providers. If shared publicly, the Commission seeks comment on the merits of developing a system by which IP CTS users can rate the quality and performance of IP CTS calls (based on the metrics discussed below) to increase competition. Finally, the Commission seeks comment on how such information should be presented to users, and whether there are concerns with such information being utilized in outreach or marketing materials.

94. *Functional Equivalence.* The Commission seeks comment on use of the following metrics to measure IP CTS service quality: (1) Transcription accuracy; (2) transcription synchronicity; (3) transcription speed; (4) speed of answer; (5) dropped or disconnected calls; (6) service outages; and (7) usage data. How frequently should such testing or data gathering be performed and how should the information from such testing be reported?

95. *Transcription Accuracy.* The Commission believes that standard measurements of captioning accuracy (using either CA-assisted and ASR versions) are needed to effectively measure functional equivalence on a regular basis, and seeks comment on this belief, as well as on the appropriate components that should go into such assessments. The Commission notes that it has defined accuracy in the context of closed captioning for video programming as including (in relevant part) considerations for the order of the words, proper spelling and punctuation, and correct tense. The Commission seeks comment on whether these guidelines are appropriate for IP CTS, and if so, how they should be measured. Should the Commission adjust accuracy measurements or standards to take account of the type of call measured, *e.g.,* calls to 911 or calls for services that use a specialized vocabulary, such as calls pertaining to medical, legal, or technical computer support?

96. What methods do providers currently use to evaluate the accuracy of IP CTS transcription? Are there metrics used to assess the accuracy of computer-assisted real-time translation (CART) or court reporting that could be effectively applied to IP CTS? The Disability Advisory Committee (DAC) suggests evaluating accuracy by calculating major errors (*i.e.,* errors that change the meaning of a transcription) and minor errors (*i.e.,* errors that while technically incorrect, do not substantively change the meaning of the transcription). The MITRE Corporation (MITRE), a contractor for the Commission, suggests differentiating between transcription completeness and accuracy. It defines completeness as a measure of all the words transcribed, whether correctly or incorrectly as a percentage of the total words spoken, and accuracy as the percentage of words from the conversation that are correctly transcribed on the screen. Another way of assessing accuracy may be to examine the semantic error rate, which, according to one source, considers ''the fraction of utterances in which we misinterpret the meaning.'' Additionally, should transcription readability, which can be affected by correct punctuation and capitalization, be a component of accuracy? The Commission seeks comment on whether and how these various factors should be used to measure IP CTS accuracy, whether CA-assisted or entirely automated through ASR, and any other metrics that the Commission should use for this purpose.

97. Finally, the Commission seeks comment on the tools that should be used to evaluate transcription accuracy given that its rules prohibit TRS providers from retaining records of the content of any conversation beyond the duration of a call. Are there real-time or other methods that can be used to measure the accuracy of calls consistent with this prohibition? For example, should the Commission use anonymous callers to make and record call interactions for later analysis by experts? Alternatively, should the Commission have independent third parties test transcription accuracy using test call scripts?

98. *Transcription Synchronicity.* Should the Commission measure the synchronicity of communications during an IP CTS call as a measure of functional equivalency. The Commission seeks comment on use of synchronicity as an appropriate metric, and how best to assess it, reminding commenters of its past suggestion to calculate the lag time between the hearing party's response and the time when the captions appear. MITRE proposes a slight variation, to define transcription delay as the time elapsed from when an IP CTS user hears the other party's voice on a caption phone to when captions of that speech are displayed on the phone's screen. The Commission seeks comment on each of these approaches.

99. The Commission also seeks comment on methods that may be available to evaluate the synchronicity of captions. Should providers be required to collect and report the amount of transcription delay on each IP CTS call? Alternatively, should the Commission have independent third parties test for this delay using test scripts? How should the information from the testing be reported and how frequently should such testing and data gathering be performed? To the extent that a delay occurs, the Commission seeks comment on how a performance measure should factor in its causes, be they technical, network- or equipment-related, or dependent on the speech of the party whose conversation is being captioned.

100. *Transcription Speed.* The Commission seeks comment on the need to measure the speed of IP CTS transcription. The DAC proposes defining transcription speed by calculating the number of words transcribed divided by the time needed to transcribe those words (measured in seconds) and multiplied by 60. Suggesting that speed cannot be accurately measured for live calls because the speaking speed of the non-captioned telephone user is unknown and there may be ''silence gaps'' during conversations, the DAC instead proposes to rely on test scripts to measure compliance with speed requirements. The Commission seeks comment on the feasibility of measuring the speed of live calls, as well as the use

of test scripts versus other methods to assess this metric. Are there environmental or other factors that may affect whether a speed test using a test script accurately reflects transcription speed on a live call? The Commission also seeks comment on whether the TRS Fund administrator or an independent third-party contracted by the Commission should conduct speed tests and the frequency with which these tests should be performed.

101. *Speed of Answer.* Commission rules require that 85 percent of all IP CTS calls be answered within ten seconds. Providers must include data that enables tracking of their speed of answer in their CDRs and related filings submitted to the TRS Fund administrator. The Commission currently measure speed of answer for IP CTS calls by the time it takes for CAs to establish the connection between an IP CTS user's request for captioning and the start of captioning services. The collection of this data enables the Commission to monitor the extent to which provider connection time for IP CTS users is comparable to the connection time for voice telephone users. The Commission seeks comment on inclusion of this metric to assess functional equivalency, and how it can best be measured. Should the Commission rely on IP CTS providers to measure and report their connection delay, or use independent third parties for this purpose? How frequently should the Commission test and require the reporting of connection delays?

102. *Dropped or Disconnected Calls.* The Commission seeks comment on whether to track and measure the percentage and frequency of ''dropped'' or disconnected calls, and to compare these results with the various telephone communication technologies used by the hearing community. The Commission believes that to achieve functional equivalency, the number of dropped or disconnected IP CTS calls should be comparable to the number of dropped or disconnected voice calls placed by the hearing public. It seeks comment on use of this metric for this purpose, and how such data should be compared with dropped or disconnected telephone calls made over mainstream voice networks. Should such data be collected through user feedback, test calls, by analyzing provider logs or by a combination of these measures? The Commission further seeks comment on how such data should be presented to IP CTS users, if made publicly available.

103. *Service Outages.* Commission rules require all internet-based TRS providers to notify the Commission in the event of an unplanned service outage of any duration or a voluntary service interruption of less than 30 minutes, and to seek advance approval for voluntary interruptions of longer duration. In addition, redundancy of facilities is a requirement for all forms of TRS. In general, to achieve functional equivalence, the Commission believes that the frequency and extent of IP CTS service outages and interruptions should not exceed that of outages and interruptions occurring on transmission services used by hearing people. The Commission seeks comment on this belief and use of this metric to measure the goal of functional equivalency.

104. *Usage Data.* One measure of determining the extent to which IP CTS is successfully providing functionally equivalent communication is the extent to which this service is being used by people with hearing disabilities who are in need of this service. While the Commission generally gathers data on minutes of use, at present, the Commission lacks conclusive information about the number of eligible individuals using IP CTS in the United States. However, this data could be obtained through collection in the TRS-User Registration Database (TRS–URD). After measures are implemented to prevent individuals from using this service if they do not need it, when measured against demographic statistics regarding various kinds and levels of hearing loss, this metric may help to assess the program's success and determine whether functionally equivalent communication via IP CTS has been made available ''to the extent possible,'' as mandated by section 225(b) of the Act. The Commission also seeks comment from IP CTS providers on what kind of information they collect about the demographics of their users, and invite them to submit summaries of such information.

105. The Commission seeks comment on whether there are other metrics that the Commission should consider for measuring the extent to which IP CTS call quality achieves functional equivalency for its users.

106. *Technological Advances.* The Commission seeks comment on ways to measure the extent to which evolving communications technologies can provide functionally equivalent communications services for people with disabilities who cannot use traditional voice telephone options. For example, the Commission seeks comment on whether and how it should assess the extent to which these alternative technologies can improve the accuracy, synchronicity, speed of answer, frequency of dropped or disconnected calls, and frequency of service outages of telephone calls placed by such individuals. The Commission asks commenters who have made such measurements to submit their data.

107. The Commission believes that, consistent with section 225(d)(2) of the Act, it should encourage the use of off-the-shelf or assistive technologies to achieve direct calling arrangements, so long as the service quality afforded by these technologies represents at least the same level as, or is an improvement over, the level of quality realized by using IP CTS, and seeks comment on this belief. In this regard, the Commission notes that whether an individual's use of any off-the-shelf or assistive technology creates a functionally equivalent direct calling experience will always be unique to the individual. Is there some minimum level of service quality below which the use of off-the-shelf or assistive technologies to achieve direct calling arrangements should not be encouraged?

108. The Commission further seeks comment on how it can collect data on the potential markets for these off-the-shelf technologies, as well as their usage by individuals who are current or potential users of IP CTS. The Commission believes it can better achieve its goal of ensuring that individuals with disabilities make use of technological advances with a more complete understanding of who uses IP CTS as compared to alternative means of communication. For example, are there registered IP CTS users who only use their IP CTS devices in certain situations, but rely on more direct alternatives, such as phone amplification, in other situations? What measures should be used to evaluate the extent to which alternatives to IP CTS are being used by people with hearing or speech disabilities? For example, should the Commission contract for a survey of deaf and hard of hearing individuals to collect such information?

109. In addition, the Commission seeks comment and data on the extent to which any existing TRS regulations ''discourage or impair the development of improved technology.'' The Commission asks commenters to specifically identify such regulations and whether they should be amended.

110. *Program Efficiency.* Data on potential and existing IP CTS users can help ensure that waste, fraud, and abuse of the TRS program are kept to a minimum. Accurate information about the number of users and the frequency and duration of their calls will assist the Commission in protecting program integrity and ensuring that this program

is being used properly in accordance with Congress's goal of ensuring effective telecommunications access to people with communication disabilities. The Commission seeks comment on metrics that would be appropriate to ensure the efficiency of the IP CTS program.

111. *Other Measures.* The Commission seeks comment on other metrics it could employ to measure the performance goals for IP CTS. Commenters should address, with specificity, what should be measured, how it should be measured, and how often it should be measured, along with any estimated costs and benefits of such measurements.

Initial Regulatory Flexibility Act Analysis

112. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Further Notice. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the Further Notice specified in the **DATES** section. The Commission will send a copy of the document 18–79 to the Chief Counsel for Advocacy of the Small Business Administration.

Need for, and Objectives of, the Proposed Rules

113. In the Further Notice, the Commission proposes to adopt a multi-year cost-based compensation rate methodology for IP CTS.

114. The Commission proposes several different methods to restructure the funding and administration of IP CTS: (1) Expanding the Interstate Telecommunications Relay Services (TRS) Fund base to include intrastate revenues; (2) permitting or requiring states to assume responsibility for the funding and administration of intrastate IP CTS and how to address the funding and administration of intrastate IP CTS for states that choose not to assume these duties; and (3) having assessments of user need for IP CTS performed under the purview of state TRS programs so that the assessments can be neutral, objective and independent from provider influence, or allowing or requiring IP CTS providers to obtain from new and existing IP CTS users a certification from an independent, third-party professional affirming the user's eligibility to use IP CTS.

115. The Commission proposes to include caregivers and other professionals within the scope of the prohibition of provider incentives to use IP CTS, and to include organizations along with individuals in the prohibitions of provider incentives.

116. The Commission proposes measures to ensure that accurate information about IP CTS is being imparted by providers to consumers, service providers and other members of the public.

117. The Commission proposes to require IP CTS providers to biennially obtain from each user a self-certification of the user's continuing need to use IP CTS to achieve functionally equivalent telephone communications and to prohibit such providers from receiving compensation for IP CTS provided to any such individual who fails to recertify within the specified interval or for calls associated with any device for which such certification was required. The Commission also seeks comment on whether to require providers to reclaim or disable any IP CTS devices that are no longer associated with registered users.

118. Finally, the Commission proposes to require providers to ensure that their IP CTS equipment provides an easy way to turn captions *on or off,* either before placing a call or while a call is in progress.

Legal Basis

119. The authority for this proposed rulemaking is contained in sections 1 and 225 of the Act, as amended, 47 U.S.C. 151, 225.

Small Entities Impacted

120. The rules proposed in document FCC 18–79 will affect obligations of: Wired telecommunications carriers; telecommunications resellers; wireless telecommunications carriers (except satellite); and all other telecommunications.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

121. The proposed expansion of the TRS Fund base may require common carriers that provide only intrastate telecommunications service that are not currently registered with the TRS Fund administrator to register with the administrator and submit contribution payments to the TRS Fund.

122. The proposal to require or allow states to administer the IP CTS program or oversee IP CTS user eligibility may require states to provide additional information in their applications for certification to the Commission to indicate the role the state will undertake and include information concerning the state's ability to take on this additional role.

123. The proposed third-party certification of IP CTS user eligibility would require IP CTS providers to obtain a copy of such certification from the user and retain the copy while the user is receiving IP CTS and for a minimum of ten years after the user has discontinued use of IP CTS.

124. The proposed marketing rules may require IP CTS providers to include specific information in IP CTS informational materials and on their websites. The proposal regarding biennial self-certification of IP CTS users would require providers to again collect and retain these self-certifications from the users. The proposal to require IP CTS providers to reclaim or disable IP CTS devices no longer associated with registered users may require IP CTS providers to notify users of the need to return the devices when no longer using them and may require the providers to keep records associated with the device reclamation or disabling process.

125. The proposal to require providers to ensure that their IP CTS equipment provides an easy way to turn captions *on or off,* either before placing a call or while a call is in progress would not create direct reporting, recordkeeping or other compliance requirements.

Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

126. The Commission seeks comment from all interested parties on alternatives to its proposals. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the document FCC 18–79, in reaching its final conclusions and taking action in this proceeding.

Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals

127. None.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications, Telephones.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

For the reasons discussed in the preamble, the Federal Communications

Commission proposes to amend 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 201, 202, 218, 222, 225, 226, 227, 228, 251(e), 254(k), 403(b)(2)(B), (c), 616, 620, 1401–1473, unless otherwise noted.

■ 2. Amend § 64.604 by:
■ a. Revising paragraphs (c)(8)(ii), (c)(9)(x), (c)(10)(i), and (c)(11)(v);
■ b. Redesignating paragraph (c)(8)(v) as paragraph (c)(8)(vi) and paragraph (c)(10)(ii) as paragraph (c)(10)(iii); and
■ c. Adding paragraphs (c)(8)(v), (c)(9)(iii)(E), (c)(10)(ii), and (c)(11)(vi).

The additions and revisions read as follows:

§ 64.604 Mandatory Minimum Standards.

* * * * *

(c) * * *

(8) * * *

(ii) An IP CTS provider shall not offer or provide to any other person or entity any direct or indirect incentives, financial or otherwise, to encourage referrals of potential users, registrations, or use of IP CTS. Where an IP CTS provider offers or provides IP CTS equipment, directly or indirectly, to a hearing health professional, or any other person or entity, and such person or entity makes or has the opportunity to make a profit on the sale of the equipment to consumers, such IP CTS provider shall be deemed to be offering or providing a form of incentive to encourage referrals of potential users, registrations or use of IP CTS.

* * * * *

(v) IP CTS providers, and their agents and contractors, may not discuss the availability of a free IP CTS device in marketing presentations and promotional materials unless such presentations and materials also clearly and prominently state that IP CTS and IP CTS devices are only intended for individuals who have a hearing loss that makes it difficult to use the phone.

(vi) Any IP CTS provider that does not comply with this paragraph (c)(8) shall be ineligible for compensation for such IP CTS from the TRS Fund.

(9) * * *

(iii) * * *

(E) Within two years after obtaining a consumer's self-certification, or within two years of the effective date of this paragraph (c)(9)(iii)(E), whichever is later, and within every two years thereafter, an IP CTS provider shall obtain a new self-certification from the consumer in accordance with the requirements of this paragraph (c)(9)(iii). Minutes of use of any consumer who has not provided a new self-certification by the end of the two-year period shall be deemed non-compensable, the provider shall be required to re-register the consumer for IP CTS service in accordance with the requirements of this paragraph (c)(9), and the IP CTS provider shall not be compensated for minutes of use associated with that consumer during the period of such lapsed registration.

* * * * *

(x) Each IP CTS provider shall maintain records of any registration and certification information for a period of at least ten years after the consumer ceases to obtain service from the provider and shall maintain the confidentiality of such registration and certification information, and may not disclose such registration and certification information or the content of such registration and certification information except as required by law or regulation.

* * * * *

(10) *IP CTS Settings.* Each IP CTS provider shall ensure that, for each IP CTS device it distributes, directly or indirectly:

(i) The device includes a button, key, icon, or other comparable feature that is easily operable and requires only one step for the consumer to turn captioning on or off;

(ii) The device shall not include any features that have the foreseeable effect of encouraging IP CTS users to turn on captions when they are not needed for effective communication; and

(iii) Any volume control or other amplification feature can be adjusted separately and independently of the caption feature.

* * * * *

(11) * * *

(v) IP CTS providers shall ensure that their informational materials and websites used to market, advertise, educate, or otherwise inform consumers and professionals about IP CTS includes the following language in a prominent location in a clearly legible font: ''FEDERAL LAW PROHIBITS ANYONE BUT REGISTERED USERS WITH HEARING LOSS FROM USING INTERNET PROTOCOL (IP) CAPTIONED TELEPHONES WITH THE CAPTIONS TURNED ON. IP Captioned Telephone Service may use a live operator. The operator generates captions of what the other party to the call says. These captions are then sent to your phone. There is a cost for each minute of captions generated, paid from a federally administered fund. IP CAPTIONED TELEPHONE SERVICE IS NOT FOR EVERYONE WITH HEARING LOSS. In order to use captioning, a consumer must be able to certify that captioning is needed to hear telephone conversations. Other technologies, such as amplified telephones, may better serve a consumer's need to hear telephone conversations.'' For IP CTS provider websites, this language shall be included on the website's home page, each page that provides consumer information about IP CTS, and each page that provides information on how to order IP CTS or IP CTS equipment. IP CTS providers that do not make any use of live CAs to generate captions may shorten the notice to leave out the second, third, and fourth sentences.

(vi) If an IP CTS provider knows or should have known that a user is deceased or no longer eligible to use IP CTS, including, but not limited to, a user failing to provide a new self-certification in accordance with the requirements of paragraph (9)(c)(iii)(E), the IP CTS provider shall either deactivate the captioning feature on the IP CTS equipment distributed to that consumer or reclaim the equipment, and minutes of use associated with the equipment shall not be compensable.

* * * * *

[FR Doc. 2018–15336 Filed 7–17–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 13–39; Report No. 3098]

Petitions for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petitions for Reconsideration.

SUMMARY: Petitions for Reconsideration (Petitions) have been filed in the Commission's Rulemaking proceeding by Michael R. Romano, on behalf of NTCA—The Rural Broadband Association (''NTCA''), and Kevin G. Rupy, on behalf of USTelecom—The Broadband Association.

DATES: Oppositions to the Petition must be filed on or before August 2, 2018. Replies to an opposition must be filed on or before August 13, 2018.

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

FOR FURTHER INFORMATION CONTACT: Zach Ross, Wireline Competition Bureau, at: (202) 418–1580; email: *Zachary.Ross@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3098, released July 2, 2018. The full text of the Petitions is available for viewing and copying at the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. It also may be accessed online via the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/.* The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. because no rules are being adopted by the Commission.

Subject: Rural Call Completion, Second Report and Order, FCC 18–45, published at 83 FR 21723, May 10, 2018, in WC Docket No. 13–39. This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 2.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–14859 Filed 7–17–18; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 83, No. 138
Wednesday, July 18, 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

July 13, 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 August 17, 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), *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.

Food and Nutrition Service

Title: Evaluation of the Independent Review of Applications Process.

OMB Control Number: 0584–NEW.

Summary of Collection: The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) is conducting this voluntary study to provide key information about the processes and overall effectiveness of the Independent Review of Applications (IRA) requirement. The IRA requirement is intended to reduce the number of administrative certification errors in the National School Lunch Program (NSLP) and in the School Breakfast Program (SBP). The NSLP and SBP are federally funded meal programs operating in public and nonprofit private schools and residential childcare institutions. Federal cash reimbursement is provided to most local educational agencies (LEAs) based on certifying students as eligible for free, reduced price, or paid meal benefits. LEAs certify students through household applications or by direct certification through a household's participation in federal means-tested programs. Administrative certification errors can occur when the LEA incorrectly certifies a student as free, reduced price, or paid based on the information provided by the household in the application.

Need and Use of the Information: This study will collect data from 51 state agency child nutrition directors and from a purposive sample of LEA directors who have completed the IRA process. The data will be used to provide a description of the IRA process at the state and LEA levels, its results, and its overall effectiveness in reducing administrative certification errors.

FNS will evaluate the processes and the effectiveness of the IRA in reducing administrative certification error and will use that information to disseminate best practices and to determine if changes may be needed to the IRA requirement.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 204.

Frequency of Responses: Reporting: One-time.

Total Burden Hours: 433.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–15315 Filed 7–17–18; 8:45 am]

BILLING CODE 3410–30–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Mississippi Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the Mississippi Advisory Committee to the Commission will convene by conference call at 1:00 p.m. (CST) on Friday, July 27, 2018. The purpose of the meeting is to continue discussion for potential topics of study.

DATES: Friday, July 27, 2018, at 1:00 p.m. CST.

Public Call-In Information: Conference call-in number: 1–877–719–9788 and conference call 7669812.

FOR FURTHER INFORMATION CONTACT: Corrine Sanders at *csanders@usccr.gov* or by phone at (312)–353–8312.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–877–719–9788 and conference call 7669812. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–888–364–3109 and providing the operator with the toll-free conference call-in number: 1–877–719–9788 and conference call 7669812.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 230 S. Dearborn Street, Suite 2120, Chicago, IL, faxed to (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov*. Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=279,* click the ''Meeting Details'' and ''Documents'' links.Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Midwestern Regional Office at the above phone numbers, email or street address.

Agenda: Friday, July 27, 2018:

I. Rollcall
II. Welcome and Introductions
III. SAC Discussion on Civil Rights Issues in MS
IV. Adjourn

Dated: July 12, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–15293 Filed 7–17–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–46–2018]

Foreign-Trade Zone (FTZ) 41—Milwaukee, Wisconsin; Notification of Proposed Production Activity; CNH Industrial America LLC (Tractors, Component Parts, and Axle Subassemblies); Sturtevant, Wisconsin

CNH Industrial America LLC (CNH Industrial) submitted a notification of proposed production activity to the FTZ Board for its facility in Sturtevant, Wisconsin. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on July 11, 2018.

CNH Industrial already has authority to produce tractors and tractor/combine components, as well as 4-wheel drive axle subassemblies within Subzone 41I. The current request would add finished products and foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as set forth below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt CNH Industrial from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, CNH Industrial would be able to choose the duty rates during customs entry procedures that apply to: Rubber hoses reinforced with metal fittings; linear acting cylinders; housing pump drives; solenoid valves; regulating valves; spool assemblies; valve assemblies; carrier bearing housings; power take-offs; final drives; differentials; clutch assemblies; rotor gear, transmission or differential cases; covers for transmission, axle, differential or clutch cases; rear track, final drive, hydraulic pump, front track, speed or power take-off housings; and, certain sub-assemblies for tractors suitable for agricultural use (specifically: Brakes; carrier assemblies; brake adjusters; shafts; gearbox assemblies; cases; covers; housings; test transmission wheels; flanges; frames; axle shafts; suspension saddles; radiators; clutches; gears; plates; supports; hydraulic returns; and, brackets) (duty rate ranges from duty-free to 5.0%). CNH Industrial would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include: Reclaimed rubber pads/flaps/seals; pneumatic rubber tires for use on agricultural vehicles and machines; retreaded/used rubber tires; corrugated floor pads and protectors; cardboard box/packaging; roller chain; copper alloy tube/pipe fittings; spray guns; lead-acid storage batteries; color video cameras; GPS navigational systems; antennas; electronic control units; discharge lamps; speed sensors, radio antenna cable; and, gear boxes for tractors for agricultural use (duty rate ranges from duty-free to 5.3%). The request indicates that pneumatic rubber tires is subject to antidumping/countervailing duty (AD/CVD) orders if imported from certain countries. The FTZ Board's regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in privileged foreign status (19 CFR 146.41). In addition, color video cameras, GPS navigational systems, antennas, and electronic control units may be subject to special duties under Section 301 of the Trade Act of 1974, if imported from China. The determination of Section 301 duties requires that such merchandise be admitted to the zone in privileged foreign status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 27, 2018.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Juanita Chen at *juanita.chen@trade.gov* or 202–482–1378.

Dated: July 13, 2018.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2018–15329 Filed 7–17–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–45–2018]

Foreign-Trade Zone (FTZ) 70—Detroit, Michigan; Notification of Proposed Production Activity; Brose New Boston, Inc. (Passenger Vehicle and SUV Subassemblies); New Boston, Michigan

Brose New Boston, Inc. (Brose) submitted a notification of proposed production activity to the FTZ Board for its facility in New Boston, Michigan. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on July 6, 2018.

The Brose facility is located within Subzone 70X. The facility will be used

for the production of passenger vehicle and sport utility vehicle (SUV) subassemblies. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Brose from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Brose would be able to choose the duty rates during customs entry procedures that apply to seat frames, motor vehicle seat adjusters, automobile door modules, lift gate spindles, hands-free lift gate access modules, and cooling fan modules (duty rate ranges from duty-free to 4.4%). Brose would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Automotive grease/lubricant; thermal transfer film; plastic tubes; plastic hoses; self-adhesive plastic sheets in rolls; vehicle door plastic handles; plastic mountings; plastic brackets; decals; plastic spacers; plastic seals; rubber o-rings; rubber seals; rubber gaskets; rubber spacers; rubber end stops; rubber caps; blank self-adhesive labels; steel self-tapping screws; screws, bolts, and nut assemblies; steel nuts; steel torsion spring washers and lock washers; steel washers, steel spacers; steel rivets; steel cotters and cotter pins; steel pins; helical steel springs; steel springs; steel cable drum wire; steel metal clips/clamps; motor vehicle locks; base metal mountings; steel brackets; metal mountings for seats; steel tubular rivets; fan impellers, shrouds, and frames; steel bearing balls; transmission shafts; plain shaft bearings; gear boxes, gears, and gearing to adjust vehicle seats; grooved pulleys; gearing housings; motors to lift/tilt vehicle seats (electric DC motors, universal AC/DC motors, DC motors, and multi-phase AC motors); DC generators; electrical lighting or signaling equipment; loudspeakers; anti-pinch sensors; proximity sensors/switches; electronic control modules; coaxial cables; automotive wiring harnesses; vehicle bumper carrier plates; door carrier plates; mechanical cables for motor vehicles; seat pans; coated cross tubes; side panels; slider assemblies; seat frames; black ink ribbons; and, colored ink ribbons (duty rate ranges from duty-free to 8.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 27, 2018.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Juanita Chen at *juanita.chen@trade.gov* or 202–482–1378.

Dated: July 12, 2018.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2018–15328 Filed 7–17–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–876]

Welded Line Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that manufacturers/exporters of welded line pipe from the Republic of Korea sold welded line pipe at less than normal value during the period of review (POR), May 22, 2015, through November 30, 2016.

DATES: Applicable July 18, 2018.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Ross Belliveau, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4952, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers 24 producers and/or exporters. Commerce selected two companies, Hyundai Steel Company (Hyundai Steel) and SeAH Steel Company (SeAH), for individual examination. The producers and/or exporters not selected for individual examination are listed in the ''Final Results of the Review'' section of this notice.

On January 9, 2018, Commerce published the *Preliminary Results.*[1] On February 23, 2018, we postponed the final results by 60 days, until July 11, 2018.[2]

On March 23, 2018, we received case briefs from Hyundai Steel, SeAH, Husteel Co. Ltd. (Husteel), NEXTEEL Co., Ltd., and Maverick Tube Corporation (Maverick).[3] On April 2, 2018, we received rebuttal briefs from Hyundai Steel, SeAH, Husteel, and Maverick.[4] On June 27, 2018, Maverick and SeAH submitted comments in response to factual information Commerce placed on the record on June 25, 2018.[5] On July 2, 2018, Maverick

[1] *See Welded Line Pipe from Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015–2016,* 83 FR 1023 (January 9, 2018) (*Preliminary Results*).

[2] *See* Memorandum, ''Welded Line Pipe from Korea from the Republic of Korea: Extension of Deadline for Final Results of 2015–2016 Antidumping Duty Administrative Reviews,'' dated February 23, 2018.

[3] *See* Hyundai Steel's Case Brief, ''Case Brief of Hyundai Steel Company,'' dated March 23, 2018; SeAH's Case Brief, ''Case Brief of SeAH Steel Corporation,'' dated March 23, 2018; Husteel's Case Brief, ''Case Brief of Husteel Co., Ltd.,'' dated March 23, 2018; NEXTEEL's letter, ''Welded Line Pipe from the Republic of Korea: NEXTEEL's Letter in Support of Respondents' Case Briefs,'' dated March 23, 2018; and Maverick's Case Brief, ''Welded Line Pipe from the Republic of Korea: Case Brief,'' dated March 23, 2018 (Maverick Case Brief). Maverick resubmitted certain pages of its case brief to reflect the public disclosure of certain information previously treated as business proprietary. *See* Maverick's letter, ''Welded Line Pipe from the Republic of Korea*:* Resubmission of Selected Pages in Case Brief,'' dated April 25, 2018.

[4] *See* Hyundai Steel's Rebuttal Brief, ''Rebuttal Brief of Hyundai Steel Company,'' dated April 2, 2018; SeAH's Rebuttal Brief, ''Rebuttal Brief of SeAH Steel Corporation,'' dated April 2, 2018; Husteel's Rebuttal Brief, ''Welded Line Pipe from the Republic of Korea. Case No. A–580–876: Rebuttal Brief,'' dated April 2, 2018; and Maverick's Rebuttal Brief, ''Rebuttal Brief of Maverick Tube Corporation,'' dated April 2, 2018. Hyundai Steel resubmitted certain pages of its case brief to reflect the public disclosure of certain information previously treated as business proprietary. *See* Hyundai Steel's letter, ''Welded Line Pipe from the Republic of Korea: Resubmission of Certain Pages of Hyundai Steel's Rebuttal Brief,'' dated April 25, 2018.

[5] *See* Maverick's Letter, ''Welded Line Pipe from the Republic of Korea: Response to Factual Information Placed on the Record by the Department on June 25,'' dated June 27, 2018. We rejected SeAH's June 27, 2018 letter, which contained untimely-filed written argument. *See* Commerce Letter re: 2015–2016 Administrative Review of Welded Line Pipe from the Republic of Korea, dated June 28, 2018. However, upon further consideration, we authorized SeAH to resubmit its June 27, 2018 submission; we also authorized parties to submit rebuttal comments to SeAH's written arguments. *See* Commerce Letter re: 2015–2016 Antidumping Duty Administrative Review of Welded Line Pipe from the Republic of Korea, dated June 29, 2018. SeAH resubmitted its rejected filing

Continued

submitted information rebutting SeAH's submission.[6]

Scope of the Order

The merchandise subject to the order is welded line pipe.[7] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.5000, 7306.19.1010, 7306.19.1050, 7306.19.5110, and 7306.19.5150. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are listed in the Appendix to this notice and addressed in the IDM.[8] Interested parties can find a complete discussion of these issues and the corresponding recommendations in this public memorandum, which 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 also available to all interested parties in the Central Records Unit, Room B8024, of the main Department of Commerce building. In addition, a complete version of the IDM can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed IDM and the electronic version of the IDM are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain changes to the preliminary weighted-average margin calculations for Hyundai Steel and SeAH.[9]

Final Results of the Review

We are assigning the following weighted-average dumping margins to the firms listed below for the period May 22, 2015, through November 30, 2016:

Exporter/producer	Weighted-average dumping margin (percent)
Hyundai Steel Company/ Hyundai HYSCO[10]	18.77
SeAH Steel Company	17.81

Review-Specific Average Rate Applicable to the Following Companies:[11]

Exporter/producer	Weighted-average dumping margin (percent)
AJU BESTEEL CO., Ltd	18.30
Daewoo International Corporation	18.30
Dong Yang Steel Pipe	18.30
Dongbu Incheon Steel Co	18.30
Dongbu Steel Co., Ltd	18.30
Dongkuk Steel Mill	18.30
EEW Korea Co, Ltd	18.30
HISTEEL Co., Ltd	18.30
Husteel Co., Ltd	18.30
Keonwood Metals Co., Ltd	18.30
Kolon Global Corp	18.30
Korea Cast Iron Pipe Ind. Co., Ltd	18.30
Miju Steel MFG Co., Ltd	18.30
MSTEEL Co., Ltd	18.30
NEXTEEL Co., Ltd	18.30
Poongsan Valinox (Valtimet Division)	18.30
POSCO	18.30
Sam Kang M&T Co., Ltd	18.30
Sin Sung Metal Co., Ltd	18.30
Soon-Hong Trading Company	18.30
Steel Flower Co., Ltd	18.30
TGS Pipe	18.30

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), where Hyundai Steel and SeAH reported the entered value of their U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where Hyundai Steel did not report entered value, we calculated the entered value in order to calculate the assessment rate. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we will assign an assessment rate based on the average[12] of the cash deposit rates calculated for Hyundai Steel and SeAH. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[13]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this administrative review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of

on June 29, 2018. *See* SeAH's letter, ''Administrative Review of the Antidumping Order on Welded Line Pipe from Korea—Response to New Factual Information,'' dated June 29, 2018.

[6] *See* Maverick's Letter, ''Welded Line Pipe from the Republic of Korea: Rebuttal Comments to SeAH's written argument,'' dated July 2, 2018.

[7] For a complete description of the scope of the order, *see Preliminary Results* and accompanying Preliminary Decision Memorandum.

[8] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2015–2016 Administrative Review of the Antidumping Duty Order on Welded Line Pipe from Korea,'' (dated concurrently with these results) (IDM), which is hereby adopted by this notice.

[9] *See* accompanying IDM.

[10] As discussed in *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value,* 80 FR 61366 (October 13, 2015), and accompanying IDM at 1, Hyundai HYSCO merged with Hyundai Steel subsequent to the period of investigation and Hyundai HYSCO no longer exists. Accordingly, our examination of Hyundai Steel includes entries made by Hyundai HYSCO prior to the date of the merger.

[11] This rate is based on the actual weighted-average margin using the publicly-ranged data calculated for those companies selected for individual review. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for the mandatory respondents. *See Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010); *see also* Memorandum, ''Calculation of the Review-Specific Average Rate for the Final Results,'' dated concurrently with this notice.

[12] This rate was calculated as discussed in footnote 11, above.

[13] *See* section 751(a)(2)(C) of the Act.

this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.38 percent, the all-others rate established in the LTFV investigation.[14] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/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.

[14] *See Welded Line Pipe from the Republic of Korea and the Republic of Turkey: Antidumping Duty Orders,* 80 FR 75056, 75057 (December 1, 2015).

This notice is issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act.

Dated: July 11, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the IDM

[FR Doc. 2018–15327 Filed 7–17–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 171003965–7965–01]

Hollings Manufacturing Extension Partnership Program; Knowledge Sharing Strategies.

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice; request for information.

SUMMARY: The Hollings Manufacturing Extension Partnership (MEP) Program includes a network of centers located in all 50 States and Puerto Rico, and is a source of trusted advice about new technologies, production techniques and business management practices. In order for the MEP System to grow, improve and have a greater impact on the growth and competitiveness of U.S. manufacturers in the global marketplace, the MEP System needs to transform to an organizationally and operationally integrated MEP National Network. This transformation will require a learning and knowledge sharing infrastructure, which NIST MEP envisions will be stood up as ''The MEP Network Learning and Knowledge Sharing System'' (MEP NLKSS). NIST is requesting information from interested vendors and others on possible designs and implementation of networked learning and knowledge sharing. The responses will inform NIST's planning of the MEP NLKSS, including assisting NIST MEP with the development of the final Statement of Work for a performance-based contract.

DATES: NIST will accept responses to this request for information until 11:59 p.m. Eastern Time on August 17, 2018.

ADDRESSES: Responses will be accepted by email only. Responses must be sent to *meprfi@nist.gov* with the subject line ''MEP Network Learning and Knowledge Sharing System RFI Response.''

FOR FURTHER INFORMATION CONTACT: Michael Simpson, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, MD 20899–4800, 301–975–5020, *meprfi@nist.gov;* or Mary Ann Pacelli, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, MD 20899–4800, 301–975–5020, *meprfi@nist.gov.* Please direct media inquiries to NIST's Office of Public Affairs at 301–975–NIST (6478).

SUPPLEMENTARY INFORMATION: NIST will consider the information obtained in response to this request for information in the development of a Scope of Work for a competitively awarded contract to develop and/or implement any or all parts of the MEP NLKSS.

Background—The MEP System

The MEP System consists of NIST MEP and its MEP Centers located in all 50 States and Puerto Rico. For almost 30 years the MEP Centers have served as trusted advisors focused largely on the continuous improvement of U.S. manufacturers for the purpose of achieving improved productivity. MEP Centers are a diverse system of state, university-based, and other non-profit organizations, comprising more than 1,300 technical experts offering products, technical expertise and services that address the critical needs of their local manufacturers. MEP Centers are funded through cooperative agreements issued by NIST.

Each MEP Center works directly with manufacturers in their area to provide expertise and services tailored to their most critical needs, ranging from process improvement and workforce development to business practices and technology transfer. Additionally, MEP Centers connect manufacturers with government and trade associations, universities and research laboratories, and a host of other public and private resources to help manufacturers realize individual business goals.

Through the efforts of its existing MEP Centers to provide services to small and medium-sized U.S. manufacturers, the MEP System addresses many of the needs of small and medium-sized U.S. manufacturers. However, to continue to effectively enhance the productivity and technological performance of U.S. manufacturing, and assist manufacturers with competing in the global economy, MEP Centers require access to expertise specific to a given technology, supply chain and/or sector which any one specific MEP Center may not possess.

Since its creation in 1988, the MEP System has become a source of trusted advice about new technologies, production techniques, and business management practices for a significant number of firms (about 8,000 to 10,000 per year). The MEP System engages another 20,000 to 22,000 firms each year in training and outreach events. However, NIST recognizes that past events do not predict the future, and the MEP program must continue to add new capabilities to all its MEP Centers to improve its support of small and medium-sized U.S. manufacturers in the United States.

While successful in serving U.S. manufacturers locally, there is much more work to be done to support U.S. manufacturing supply chains. In general, the MEP System can do a better job in leveraging its diverse capabilities and regional and national strengths to reach more companies. NIST recognizes a need to provide more services to more manufacturers. The MEP Program understands the need to assist more manufacturers to establish a resilient, dependable, productive, and highly-trained supplier base to meet national manufacturing needs to support a wide array of U.S. industrial sectors, for example, the defense, transportation, and physical infrastructure sectors.

Transformation to a National Network

To address the challenges facing the MEP Program and its customers, the system needs to transform from its current state to one organized and operated as an integrated MEP National Network. The integrated MEP National Network is envisioned as an organization of MEP Centers which collectively act on a regional and national basis to provide solutions to the current and future needs of small and medium-sized manufacturers across the United States.

The transformation of the MEP System to an integrated MEP National Network will require a learning and knowledge sharing infrastructure to assist MEP Centers with obtaining access to integrated solutions for serving U.S. manufacturers. NIST MEP envisions the learning and knowledge sharing infrastructure will be stood up as ''The MEP Network Learning and Knowledge Sharing System'' (MEP NLKSS). The MEP NLKSS is expected to include both the human and digital networks necessary to support access to and the sharing of expertise, best practices, community resources, and training and professional development within the integrated MEP National Network, thus allowing the MEP Centers to access and impart relevant technical and strategic knowledge to small and medium-sized manufacturers locally, regionally, and nationally.

The integrated MEP National Network is being built on the MEP Centers' ability to serve as trusted advisors for their clients. By strengthening the MEP footprint with the connected MEP NLKSS, both manufacturers and MEP Centers can benefit. For example, manufacturers can take advantage of expertise, delivery credibility, and services that are not offered by their local MEP Center or that need to be delivered across regions. More specifically, using the NKLSS, manufacturers will be able to benefit from the following:

- Access to resources and capabilities from the MEP National Network to address their unique, complex, critical business and technology challenges quickly, even if their local MEP Center does not possess such solutions;
- In those situations where a manufacturer has multiple locations in multiple states the MEP National Network, and the NKLSS will allow the creation and sharing of new processes, technologies, and capabilities for all locations, consistently and seamlessly from multiple MEP Centers.

Similarly, through the NLKSS, MEP Centers will be able to share resources and expertise, communicate frequently and widely on market and manufacturing trends, and assist each other across the U.S. Moreover, MEP Centers will be able to take advantage of the broad base of expertise the integrated MEP National Network will offer and can bring the right resources to bear regardless of their location. More specifically, the NLKSS will provide MEP Centers opportunities to:

- Serve more manufacturers;
- Partner with other MEP Centers to provide services locally, regionally, or nationally;
- Deliver services that have been developed at other MEP Centers;
- Increase capacity and capabilities for project activities with existing and new manufacturers;
- Assist manufacturers to bring new products to market quickly and effectively;
- Share timely intelligence about manufacturing trends as a repeatable process;
- Train MEP Center personnel on new services, approaches, and tools used at other MEP Centers;
- Share and deploy the unique strengths inherent to the three types of MEP Center host organizations: states, universities, and non-profit organizations.

No Confidential Proprietary, Business or Personally Identifiable Information

No confidential proprietary information, business identifiable information, or personally identifiable information should be included in the written responses to this request for information. Reponses received by the deadline may be made publicly available without change at: *www.nist.gov/mep.*

Request for Information

Considering the description of the MEP NLKSS above, NIST MEP is seeking input and information regarding how other organizations and vendors have modeled and addressed organization learning and knowledge sharing, especially in a manufacturing services environment. The responses are intended to inform NIST's planning of the MEP NLKSS, including assisting NIST MEP with the development of the final Statement of Work for a performance-based contract. Through this notice, NIST requests information from interested vendors and others on possible designs and implementation of networked learning and knowledge sharing, particularly with respect to the following issues:

(1) Key problems and issues NIST MEP and the network will face related to knowledge management in the near-term (1 to 2 years), mid-term (3 to 5 years) and/or long-term (more than 5 years);

(2) Solutions (technical and non-technical) available to address the problems/issues identified in question 1

in the near-term (1 to 2 years), mid-term (3 to 5 years) and/or long-term (more than 5 years). More specifically,

a. Specific solutions available to address the needs of working groups/communities of practice;

b. Specific solutions available to address the more immediate needs of individual practitioners and management;

c. How information is best disseminated to the leadership and staff of organizations within a network, and whether this would be applicable for the integrated MEP National Network;

(3) Cultural and technical barriers that need to be addressed by any system(s) of knowledge management;

(4) Complementary services, including information services, that are and/or will be needed by NIST MEP and the MEP Centers to take full advantage of any knowledge management system and culture;

(5) Any other critical issues that NIST MEP should consider in its strategic planning for investments in this area that are not covered by the first four issues. Further information on the MEP program is available at: *https://www.nist.gov/mep.*

Authority: 15 U.S.C. 278k.

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2018–15265 Filed 7–17–18; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Protected Areas Federal Advisory Committee; Public Meeting

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of a virtual meeting of the Marine Protected Areas Federal Advisory Committee (MPA FAC) via teleconference.

DATES: The meeting will be held on Wednesday, September 19, 2018, from 11:00 a.m. to 12:30 p.m. Pacific Time (2:00 p.m. to 3:30 p.m. Eastern Time). These times and the agenda topics described below are subject to change. Please refer to the Committee's webpage for the most up-to-date meeting agenda. *http://marineprotectedareas.noaa.gov/fac.*

ADDRESSES: The meeting will be held virtually via teleconference. Register by contacting Nicole Capps at *Nicole.Capps@noaa.gov* or 831–647–6451 at least one working day in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Charles M. Wahle, Ph.D., Designated Federal Officer, MPA FAC, National Marine Protected Areas Center, 99 Pacific St., Suite 100–F, Monterey, CA 93940. (Phone: 831–647–6460; Fax: 831–647–1732; email: *charles.wahle@noaa.gov*; or visit the National MPA Center website at *http://marineprotectedareas.noaa.gov/fac*).

SUPPLEMENTARY INFORMATION: The Committee, composed of external, knowledgeable representatives of stakeholder groups, was established by the Department of Commerce (DOC) to provide advice to the Secretaries of Commerce and the Interior on implementation of Section 4 of Executive Order 13158, on marine protected areas (MPAs). The MPA FAC was continued via Presidential Executive Order on September 29, 2017. The meeting is open to the public, and public comment will be accepted from 12:15 p.m. to 12:30 p.m. Pacific Time on Wednesday, September 19, 2018. In general, each individual or group will be limited to a total time of three (3) minutes. If members of the public wish to submit written statements, they should be submitted to the Designated Federal Officer by Friday, September 14, 2018.

Matters to be Considered: This meeting will focus on: (i) Approving the Committee's final findings and recommendations on Sustaining MPA Benefits in a Changing Ocean; and, (ii) approving updates to the Cultural Resources Toolkit developed previously by the Committee and published on the MPA Center website (*https://marineprotectedareas.noaa.gov/toolkit/*). The agenda is subject to change. The latest version will be posted at *http://marineprotectedareas.noaa.gov/fac.*

Dated: June 14, 2018.

John A. Armor,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2018–15340 Filed 7–17–18; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG257

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Regional Administrator, West Coast Region, NMFS, has made a preliminary determination that an application for an Exempted Fishing Permit warrants further consideration. The application, submitted by the California Wetfish Producers Association, requests an exemption from the prohibition of primary directed fishing for Pacific sardine for the 2018–2019 fishing year to collect Pacific sardine as part of an industry-based scientific survey. NMFS requests public comment on the application.

DATES: Comments must be received by August 2, 2018.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2018–0072, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0072,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. The EFP application will be available under Relevant Documents through the same link.
- *Mail:* Submit written comments to Joshua Lindsay, West Coast Region, NMFS, 501 W. Ocean Blvd., Ste. 4200, Long Beach, CA 90802–4250.
- *Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. 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. 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, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or

otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, West Coast Region, NMFS, (562) 980–4034, *joshua.lindsay@noaa.gov.*

SUPPLEMENTARY INFORMATION: On June 25, 2018, NMFS published a final rule (83 FR 29461) to implement Pacific sardine harvest specifications for the 2018–2019 fishing year off the U.S. West Coast, which began on July 1. This final rule imposed a 7,000 metric ton (mt) annual catch limit (ACL) and a prohibition on primary directed fishing for Pacific sardine off the coasts of Washington, Oregon, and California. This prohibition against ''primary directed fishing'' covers any targeting of Pacific sardine, except very small-scale artisanal harvests, live bait harvests, and harvests by the Quinault Indian Nation. At the April 2018 Pacific Fishery Management Council (Council) meeting, the Council voted in support of two exempted fishing permit (EFP) proposals requesting an exemption from the prohibition on primary directed fishing for Pacific sardine. The Council structured the 2018–2019 Pacific sardine harvest specifications so that up to 610 mt (the combined total of the anticipated harvests under the two EFP proposals the Council reviewed) of the ACL could be harvested under EFPs. The California Wetfish Producers Association (CWPA) requested an EFP to directly harvest up to 600 mt of Pacific sardine for its Coastal Pelagic Species Near-shore Cooperative Survey (CPS–NCS).

Since 2012 the California Department of Fish and Wildlife, in partnership with the CWPA, has been conducting aerial surveys to estimate the biomass and distribution of sardine and certain other CPS species in nearshore waters in the Southern California Bight, and in the Monterey-San Francisco area since the summer of 2017. Currently, there is uncertainty in the biomass estimates from aerial spotter pilots. The CPS–NCS survey under the proposed EFP is part of a research project designed to quantify that level of uncertainty by capturing CPS schools identified by aerial spotter pilots and validating the biomass and species composition of the schools. A portion of each point set (*i.e.* an individual haul of fish captured with a purse seine net) will be retained for biological sampling, and the remainder will be sold by the participating fishermen and processors to offset research costs and avoid unnecessary discard. This research is part of a broader effort to understand the biomass of CPS located in shallower, nearshore areas that NOAA's CPS offshore acoustic trawl survey is unable to access.

If NMFS issues this EFP, the CPS–NCS will survey nearshore waters of the Southern California Bight for 7 days in late August 2018. Any harvest under this EFP would count against the ACL for Pacific sardine. If NMFS does not issue this EFP, then the 600 mt that might have been harvested under this EFP would still be available for harvest under the ACL.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 13, 2018.

Margo B. Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–15342 Filed 7–17–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG343

Marine Mammals; File No. 22272

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Shaw Institute, 55 Main Street, Blue Hill, ME 04614 (Responsible Party: Susan Shaw), has applied in due form for a permit receive, import, and export marine mammal parts for scientific research.

DATES: Written, telefaxed, or email comments must be received on or before August 17, 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. 22272 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. 22272 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: Shasta McClenahan or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant proposes to receive, import, and export biological samples for scientific research from up to 700 individual cetaceans and pinnipeds (excluding walrus) annually for a multi-year international study to measure the combined stress of man-made pollutants and climate change on marine sentinel species. The requested duration of the permit is 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 13, 2018.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–15345 Filed 7–17–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RD18–1–000, RD18–2–000, RD18–3–000 and RD18–5–000]

Commission Information Collection Activities (FERC–725E); Comment Request; Revision

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collection FERC–725E (Mandatory Reliability Standards for the Western Electric Coordinating Council) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. On May 11, 2018, the Commission previously issued a Notice in the **Federal Register** requesting public comments. The Commission received no comments on the FERC–725E and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by August 17, 2018.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0246, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–0710.

A copy of the comments should also be sent to the Commission, in Docket Nos. RD18–1–000, RD18–2–000, RD18–3–000, and RD18–5–000 by either of the following methods:

- *eFiling at Commission's website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–725E, Mandatory Reliability Standards for the Western Electric Coordinating Council.

OMB Control No.: 1902–0246.

Type of Request: Revision to FERC–725E information collection requirements, as discussed in Docket Nos. RD18–1–000 and RD18–3–000.

Abstract: The North American Electric Reliability Corporation (NERC) and Western Electricity Coordinating Council (WECC) filed four joint petitions to modify/retire WECC regional Reliability Standards.

On March 8 2018, NERC and WECC filed a joint petition in Docket No. RD18–2–000 [1] requesting Commission approval of:

- Regional Reliability Standard BAL–004–WECC–3 (Automatic Time Error Correction), and
- the retirement of existing regional Reliability Standard BAL–004–WECC–2.

The petition states: ''Regional Reliability Standard BAL–004–WECC–3 seeks to maintain Interconnection frequency and to ensure that Time Error Corrections and Primary Inadvertent Interchange (''PII'') payback are effectively conducted in a manner that does not adversely affect the reliability of the [Western] Interconnection.'' [2] The proposed modifications to the standard focus on the entities using a common tool. All other proposed changes are for clarification. The Commission is not changing the reporting requirements, nor is it modifying the burden, cost or respondents with this collection, and sees this as a non-material or non-substantive change to a currently approved collection.

On March 16, 2018, NERC and WECC filed a joint petition in Docket No. RD18–5–000 [3] requesting Commission approval of:

- Regional Reliability Standard FAC–501–WECC–2 (Transmission Maintenance), and
- the retirement of existing regional Reliability Standard FAC–501–WECC–1.

The petition states: ''The purpose of FAC–501–WECC–2 is to ensure the Transmission Owner of a transmission path identified in the table titled ''Major WECC Transfer Paths in the Bulk Electric System'' (''WECC Transfer Path Table'' or ''Table''), including associated facilities, has a Transmission Maintenance and Inspection Plan (''TMIP'') and performs and documents maintenance and inspection activities in accordance with the TMIP.'' The modifications to the existing standard are for clarification of the transmission owner's obligations and to directly incorporate the list of applicable transmission paths. This list is currently posted on the WECC website and has not changed. The Commission is not changing reporting requirements nor is it modifying the burden, cost or respondents with this collection, and sees this as a non-material or non-substantive change to a currently approved collection.

The Commission's request to OMB will reflect the following:

- Elimination of the burden associated with regional Reliability Standard VAR–002–WECC–2 (Automatic Voltage Regulators), which is proposed for retirement (addressed in Docket No. RD18–1 and discussed below); [4]
- elimination of the burden associated with regional Reliability Standard PRC–004–WECC–2 (Protection System and Remedial Action Scheme Misoperation), which is proposed for retirement (addressed in Docket No. RD18–3 and discussed below),[5]
- non-material or non-substantive changes (discussed above) in Docket Nos. RD18–2 and RD18–5.

On March 7, 2018, NERC and WECC filed a joint petition in Docket No. RD18–1–000 requesting Commission approval to retire the WECC regional Reliability Standard VAR–002–WECC–2 (Automatic Voltage Regulators). According to the petition, the purpose of the proposed retirement is based on WECC's experience with regional Reliability Standard VAR–002–WECC–2 which has shown that the reliability-related issues addressed in the regional standard are adequately addressed by the continent-wide voltage and reactive

[1] The joint petition and exhibits are posted in the Commission's eLibrary system in Docket No. RD18–2–000 (BAL–004–WECC–3 Petition).

[2] BAL–004–WECC–3 Petition, page 1.

[3] The joint petition and exhibits are posted in the Commission's eLibrary system in Docket No. RD18–5–000 (FAC–501–WECC–2 Petition).

[4] The joint petition and exhibits are posted in the Commission's eLibrary system in Docket No. RD18–1–000 (VAR–002–WECC–2 Petition).

[5] The joint petition and exhibits are posted in the Commission's eLibrary system in Docket No. RD18–3–000 (WECC PRC–004–WECC–2 Retirement Petition).

(''VAR'') Reliability Standards [6] and that retention of the regional standard would not provide additional benefits for reliability.

On March 9, 2018, NERC and WECC filed a joint petition in Docket No. RD18–3–000 requesting Commission approval to retire the WECC regional Reliability Standard PRC–004–WECC–2 (Protection System and Remedial Action Scheme Misoperation). The purpose of the proposed retirement is based on NERC and WECC's belief that since the initial development of this regional standard, other continent-wide Reliability Standards [7] have been developed that have made the requirements of this regional Reliability Standard redundant and no longer necessary for reliability in the Western Interconnection.

Type of Respondents: Transmission owners, transmission operators, generator operators, and generator owners.

Estimate of Annual Burden: [8] Details follow on the changes in Docket Nos. RD18–1–000 and RD18–3–000 which will be submitted to OMB for approval in a consolidated package under FERC–725E.

Estimate of Changes to Burden Due to Docket No. RD18–1: The Commission estimates the reduction in the annual public reporting burden for the FERC–725E (due to the retirement of regional Reliability Standard VAR–002–WECC–2) as follows:[9] [10]

FERC–725E, MANDATORY RELIABILITY STANDARDS FOR THE WESTERN ELECTRIC COORDINATING COUNCIL, REDUCTIONS DUE TO DOCKET NO. RD18–1–000

Entity	Number of respondents	Annual number of responses per respondents	Annual number of responses	Average burden hours and cost per response ($)	Total annual burden hours and total annual cost ($)	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
Retirement of Regional Reliability Standard VAR–002–WECC–2 and Associated Reductions						
Reporting Requirements (Annually):						
Generator Operators.	228	1	228	10 hr.; $769.90	2,280 hr.; $175,537 (reduction).	$770 (reduction).
Transmission Operators applicable to standard VAR–002.	86	4	344	10 hr.; $769.90	3,440 hr.; $264,846 (reduction).	$3,080 (reduction).
Recordkeeping Requirements (Annually):						
Generator Operators.	228	1	228	1 hr.; $31.19	228 hr.; $7,111 (reduction).	$31 (reduction).
Transmission Operators applicable to standard VAR–002.	86	1	86	4 hr.; $124.76	344 hr.; $10,729 (reduction).	$125 (reduction).
Total Reduction.	.....	.....	886	.....	6,292 hr.; $458,223 (reduction).	

[6] The burdens related to continent-wide Reliability Standards VAR–001–4.2 (Voltage and Reactive Control) and VAR–002–4.1 (Generator Operation for Maintenance Network Voltage Schedules) are included in FERC–725A (Mandatory Reliability Standards for the Bulk-Power System, OMB Control No. 1902–0244).

[7] The burdens related to continent-wide Reliability Standards mentioned in the petition: FAC–003–4 (Transmission Vegetation Management) are included in FERC–725M (Mandatory Reliability Standards for the Bulk-Power System, OMB Control No. 1902–0263); PRC–001–1.1(ii) (System Protection Coordination) are included in FERC–725A (Mandatory Reliability Standards for the Bulk-Power System, OMB Control No. 1902–0244); PRC–004–5(i) (Protection System Misoperation Identification and Correction), PRC–005–6 (Protection System, Automatic Reclosing, and Sudden Pressure Relaying Maintenance), PRC–012–2 (Remedial Action Schemes) are included in FERC–725G (Mandatory Reliability Standards for the Bulk-Power System: PRC Standards, OMB Control No. 1902–0252); PRC–016–1 (Remedial Action Scheme Misoperations), PRC–017–1 (Remedial Action Scheme Maintenance and Testing), TOP–001–3 (Transmission Operations) and TOP–003–3 (Operational Reliability Data) are included in FERC–725A (Mandatory Reliability Standards for the Bulk-Power System, OMB Control No. 1902–0244).

[8] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[9] The reductions in burden and cost shown in the table are the same figures as those in the current OMB-approved inventory for the reporting and recordkeeping requirements that are now being retired.

[10] The hourly cost (for salary plus benefits) uses the figures from the Bureau of Labor Statistics for three positions involved in the reporting and recordkeeping requirements. These figures include salary (*http://bls.gov/oes/current/naics2_22.htm*) and benefits (*http://www.bls.gov/news.release/ecec.nr0.htm*) and are: Manager: $89.07/hour, Engineer: $64.91/hour, and File Clerk: $31.19/hour.

The hourly cost for the reporting requirements ($76.99) is an average of the cost of a manager and engineer. The hourly cost for recordkeeping requirements uses the cost of a file clerk.

Estimate of Changes to Burden Due to Docket No. RD18–3: The Commission estimates the reduction in the annual public reporting burden for the FERC–725E (due to the retirement of regional Reliability Standard PRC–004–WECC–2) as follows: [11] [12]

FERC–725E, MANDATORY RELIABILITY STANDARDS FOR THE WESTERN ELECTRIC COORDINATING COUNCIL, REDUCTIONS DUE TO DOCKET NO. RD18–3–000

Entity	Number of respondents	Annual number of responses per respondents	Annual number of response	Average burden hours and cost per response ($)	Total annual burden hours and total annual cost ($)	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
Retirement of regional Reliability Standard PRC–004–WECC–2 and Associated Reductions						
Reporting Requirements (Annually): Transmission Owners that operate qualified transfer paths.	5	2	10	40 hr.; $3,079.60	400 hr.; $30,796 (reduction).	$6,159 (reduction).
Recordkeeping Requirements (Annually): Transmission Owners that operate qualified transfer paths.	5	1	5	6 hr.; $187.14	30 hr.; $936 (reduction).	$187 (reduction).
Total Reduction.	.....	.....	15	.....	430 hr.; $31,732 (reduction).	

Total Reduction in Burden for FERC–725E, for Submittal to OMB. The total reduction in burden due to the proposed retirements of regional Reliability Standards VAR–002–WECC–2 and PRC–004–WECC–2 is detailed below:

- Total Reduction of Annual Responses: 901.
- Total Reduction of Burden Hours: 6,722.
- Total Reduction of Burden Cost: $489,955.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: July 12, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–15325 Filed 7–17–18; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP18–512–000; CP18–513–000; PF15–26–000]

Notice of Application: Corpus Christi Liquefaction Stage III, LLC; Corpus Christi Liquefaction, LLC; Cheniere Corpus Christi Pipeline, LP

Take notice that on June 28, 2018, Corpus Christi Liquefaction Stage III, LLC (CCL Stage III) filed an application under section 3(a) of the Natural Gas Act (NGA) and parts 153 and 380 of the Commission's regulations for authorization to site, construct, and operate an expansion of the Corpus Christi Liquefaction Project, previously approved by the Commission in Docket No. CP12–507–000. The proposed expansion project consists of the addition of seven midscale liquefaction trains and one liquefied natural gas (LNG) storage tank (Stage 3 LNG Facilities). Corpus Christi Liquefaction, LLC (CCL) is currently constructing the liquefaction project, and would provide interconnects between the liquefaction project and the Stage 3 LNG Facilities, as well as control building modifications to accommodate the Stage 3 LNG Facilities.

In addition, pursuant to section 7(c) of the NGA, and in accordance with parts 157 and 380 of the Commission's regulations, Cheniere Corpus Christi Pipeline, LP (CCPL) filed an application for authorization to construct, own, operate, and maintain new interstate natural gas pipeline, compression, and related facilities in San Patricio County, Texas (Stage 3 Pipeline). The Stage 3 Pipeline, which would be approximately 21 miles long and 42 inches in diameter, would originate at CCPL's Sinton Compressor Station and generally run parallel to CCPL's existing 48-inch-diameter interstate natural gas pipeline (Corpus Christi Pipeline)

[11] The reductions in burden and cost shown in the table are the same figures as those in the current OMB-approved inventory for the reporting and recordkeeping requirements, now being retired.

[12] The hourly cost (for salary plus benefits) uses the figures from the Bureau of Labor Statistics for three positions involved in the reporting and recordkeeping requirements. These figures include salary (*http://bls.gov/oes/current/naics2_22.htm*) and benefits (*http://www.bls.gov/news.release/ecec.nr0.htm*) and are: Manager: $89.07/hour, Engineer: $64.91/hour, and File Clerk: $31.19/hour. The hourly cost for the reporting requirements ($76.99) is an average of the cost of a manager and engineer. The hourly cost for recordkeeping requirements uses the cost of a file clerk.

previously authorized by the Commission in Docket No. CP12–508–000. This new pipeline would be capable of supplying feed gas to, and bringing natural gas from, the Stage 3 LNG Facilities. The Stage 3 Pipeline would be integrated and operated as part of the Corpus Christi Pipeline system, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

On June 9, 2015, the Commission staff granted the applicants' request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF15–26–000 to staff activities involving the project. Now, as of the filing of this application on June 28, 2018, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket Nos. CP18–512–000 and CP18–513–000, as noted in the caption of this Notice.

The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, (202) 502–8659.

Any questions regarding the proposed project should be directed to Karri Mahmoud, Cheniere Energy, Inc., 700 Milam Street, Suite 1900, Houston, Texas 77002, or by calling (713) 375–5000 or by email at *Karri.Mahmoud@cheniere.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 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: August 2, 2018.

Dated: July 12, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–15322 Filed 7–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–506–000]

Notice of Intent To Prepare an Environmental Assessment for the Proposed Portland Xpress Project, and Request for Comments on Environmental Issues: Portland Natural Gas Transmission System

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Portland Xpress Project involving construction and operation of facilities by Portland Natural Gas Transmission Systems (Portland) to Portland owned, and Portland and Maritime jointly owned, facilities in Cumberland and York Counties, Maine and Middlesex County, Massachusetts. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on August 13, 2018.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider and address all filed comments during the preparation of the EA.

If you sent comments on this project to the Commission before the opening of this docket on June 19, 2018, you will need to file those comments in Docket No. CP18–506–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

Portland provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP18–506–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Portland proposes to perform the following activities for construction of the project to provide 24,375 million cubic feet per day (Mcf/d) to Portland owned facilities, and 22,339 Mcf/d on Portland and Maritimes jointly owned facilities.

Westbrook Compressor Station (CS), Cumberland County, Maine

- Install a new electrical control building with motor control center, emergency generator building and generator and ancillary equipment; and

Eliot CS, York County, Maine

- Expansion of the existing building to include one new 6,300 horsepower (hp) gas-fired compression unit and ancillary equipment; and
- Install an auxiliary building housing a replacement emergency generator and boiler.

Dracut Meter and Regulator (M&R) Station, Middlesex County, Massachusetts

- Install a low flow meter and transmitters and replace ultrasonic meter assemblies;
- Install a new 86-hp emergency generator; and
- Installation of ancillary equipment.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb 21.6 acres of land for the aboveground facilities. The Westbrook CS would utilize 8.4 acres, the Eliot CS would require 11.9 acres, and the Dracut M&R would disrupt 1.3 acres during construction. Construction access to each of the three sites would be from existing permanent access roads. No land outside the existing compressor station or meter station properties would be impacted for construction or operations of the Project.

The EA Process

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present Commission staffs' independent analysis of the issues. The EA will be available in the public record through eLibrary. Commission staff will consider and address all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the EA.[2] Agencies that would like to request cooperating agency status should follow the instructions for filing

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Offices (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[3] Commission staff will define the project-specific Area of Potential Effects (APE) in consultation with the SHPOs as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). The EA for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that information related to this environmental review is sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the Commission publishes and distributes the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of a CD version or would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP18–506). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: July 12, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–15321 Filed 7–17–18; 8:45 am]

BILLING CODE 6717–01–P

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2017–0639; FRL—9980–77–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Production, Import, Export, Destruction, Transhipment, and Exempted Uses of Ozone-Depleting Substances (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Production, Import, Export, Destruction, Transhipment, and Exempted Uses of Ozone-Depleting Substances (EPA ICR No. 1432.34, OMB Control No. 2060–0170), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed revision of the ICR, which is currently approved through October 2018. Public comments were previously requested via the **Federal Register** on January 19, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 17, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HW–OAR–2017–0639, to EPA online using *www.regulations.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

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: Katherine Sleasman, Stratospheric Protection Division, (6205T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–7716; fax number: (202) 343–2338; email address: *sleasman.katherine@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 *https://www.epa.gov/dockets.*

Abstract: EPA is seeking to combine multiple ICRs to establish one ICR for all recordkeeping and reporting related to the production, import, export, transformation, destruction, transhipment, and exempted uses of all ozone-depleting substances (ODS). As part of this consolidation, the ICR is also being updated to include the option of electronic reporting and improvements to the electronic forms under Title VI of the Clean Air Act (CAA). The ICRs being consolidated into the existing ICR for Class I ODS (ICR No. 1432.33; OMB Control No. 2060–0170) are the ICRs for Class II ODS (HCFC Allowance System—EPA ICR Number 2014.08; OMB Control Number 2060–0498) and Methyl Bromide Critical Use Exemptions (Protection of Stratospheric Ozone: Request for Applications from Critical use Exemption for the Phase-out of Methyl Bromide—EPA ICR Number 2031.09; OMB Control Number 2060–0482).

This ICR covers the requirements under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol) and Title VI of the CAA that establish limits on total U.S. production, import, and export of class I and class II controlled ODS (or controlled substances). Production and import of class I controlled substances (chlorofluorocarbons and others) was phased out in the United States with exemptions for essential uses, critical uses of methyl bromide, quarantine and pre-shipment uses of methyl bromide, previously used material, and material that will be transformed or destroyed. There are also limits and reduction schedules leading to the eventual phaseout of class II controlled substances, with limited exemptions for previously used material, and material that will be transformed, destroyed, or exported to developing countries. To implement the CAA provisions and meet commitments under the Montreal Protocol, the ODS phaseout regulations establish control measures for individual companies. EPA monitors company compliance through the recordkeeping and reporting requirements established in the regulations at 40 CFR part 82, subpart A. As part of this ICR renewal, EPA is also removing reporting elements that are no longer needed, revising others to address changes to a new electronic ODS Tracking System, and consolidating forms.

Forms: Class I Producer Quarterly Report, Class II Producer Quarterly Report, Methyl Bromide Producer Quarterly Report, Class I Importer Quarterly Report, Class II Importer Quarterly Report, Methyl bromide Importer Quarterly Report, Class I Exporter Annual Report, Class II Exporter Quarterly Report, Methyl Bromide Exporter Quarterly Report, Second-Party Destruction Annual Report, Second-Party Transformation Annual Report, Class I Laboratory Supplier, Methyl Bromide Pre-2005 Stocks Annual Report, Distributor of QPS Methyl Bromide Quarterly Report, Methyl Bromide Trades Report, Methyl Bromide Sales of Critical Use Annual Report, Class II Request for Additional Consumption Allowances, and Class II Trades Report.

Respondents/affected entities: Chemical producers, importers, and exporters (chlorofluorocarbons and hydrochlorofluorocarbons); research and development (laboratories); and methyl bromide producers, importers, exporters, distributors, and applicators.

Respondent's obligation to respond: Mandatory—Section 603(b) of the Clean Air Act.

Estimated number of respondents: 2,929 (total).

Frequency of response: Quarterly, annually, and as needed.

Total estimated burden: 3,763 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $442,926 (per year), which includes $13,082 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 1,726 hours in the total estimated respondent burden compared with the three ICRs currently approved by OMB. This decrease is a result of efficiencies from transitioning from paper to electronic reporting. While the one-time burden increase is associated with the transition to electronic reporting, overall burden will decrease from efficiencies associated with electronic reporting. Additionally, EPA estimates fewer companies reporting on imports and exports of ODS based on 2015 reporting activity.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–15311 Filed 7–17–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2004–0006; FRL–9980–74–OLEM]

Proposed Information Collection Request; Comment Request: Community Right-to-Know Reporting Requirements Under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), EPA ICR Number 1352.14, OMB Control Number 2050–0072

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Community Right-to-Know Reporting Requirements under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), EPA ICR Number 1352.14, OMB Control Number 2050–0072 to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 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 December 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 September 17, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2004–0006, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *superfund.docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

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: Wendy Hoffman, Office of Emergency

Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–8794; email address: *hoffman.wendy@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: The authority for these requirements is sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 1986 (42 U.S.C. 11011, 11012). EPCRA Section 311 requires owners and operators of facilities subject to OSHA Hazard Communication Standard (HCS) to submit a list of chemicals or MSDSs (for those chemicals that exceed thresholds, specified in 40 CFR part 370) to the State Emergency Response Commission (SERC) or Tribal Emergency Response Commission (TERC), Local Emergency Planning Committee (LEPC) or Tribal Emergency Planning Committee (TEPC) and the local fire department (LFD) with jurisdiction over their facility. This is a one-time requirement unless a facility becomes subject to the regulations or has updated information on the hazardous chemicals that were already submitted by the facility. EPCRA Section 312 requires owners and operators of facilities subject to OSHA HCS to submit an inventory form (for those chemicals that exceed the thresholds, specified in 40 CFR part 370) to the SERC (or TERC), LEPC (or TEPC), and LFD with jurisdiction over their facility. This inventory form, Tier II (Emergency and Hazardous Chemical Inventory Form), is to be submitted on March 1 of each year and must include the inventory of hazardous chemicals present at the facility in the previous calendar year.

The burden estimates, numbers and types of respondents, wage rates and unit and total costs for this ICR renewal will be revised and updated as necessary during the 60-day comment period while the ICR Supporting Statement is undergoing review at OMB.

Form Numbers: Tier II Emergency and Hazardous Chemical Inventory Form, EPA Form No. 8700–30.

Respondents/affected Entities: Entities potentially affected by this ICR are manufacturers and non-manufacturers required to have available a Material Safety Data Sheet (or Safety Data Sheet) under the OSHA HCS.

Respondent's Obligation To Respond: Mandatory (Sections 311 and 312 of EPCRA).

Estimated Number of Respondents: 393,552. This figure will be updated as needed during the 60-day OMB review period.

Frequency of Response: Annual.

Total Estimated Burden: 5,915,254 hours (per year). This figure will be updated as needed during the 60-day OMB review period. Burden is defined at 5 CFR 1320.03(b).

Total Estimated Cost: $6,389,900 (per year), includes annualized capital or operation & maintenance costs. This figure will be updated with most recent available wage rates from BLS and to account for any changes in O&M costs, burden and number of respondents.

Changes in Estimates: Any change in burden will be described and explained in this section when the updated ICR Supporting Statement is completed during the 60-day OMB review period.

Dated: June 28, 2018.

Gilberto Irizarry,

Acting Director, Office of Emergency Management.

[FR Doc. 2018–15337 Filed 7–17–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2005–0008; FRL–9980–75–OLEM]

Proposed Information Collection Request; Comment Request; Emergency Planning and Release Notification Requirements (EPCRA Sections 302, 303, and 304); (EPA ICR No. 1395.10, OMB Control No. 2050–0092)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Emergency Planning and Release Notification Requirements (EPCRA sections 302, 303, and 304).'' (EPA ICR No. 1395.10, OMB Control No. 2050–0092) 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 December 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 September 17, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2005–0008, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *superfund.docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

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: Wendy Hoffman, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–8794; email address: *hoffman.wendy@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: The authority for the emergency planning and emergency release notification requirements is Sections 302, 303, and 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA) 1986 (42 U.S.C. 11002, 11003, and 11004). EPCRA established broad emergency planning and facility reporting requirements. Section 302 requires facilities to notify their state emergency response commission (SERC) and the local emergency planning committee (LEPC) that the facility is subject to emergency planning. This activity was completed soon after the law was passed. Only new facilities that may become subject to these requirements must notify the SERC and the LEPC. Currently covered facilities are required to notify the LEPC of any changes that occur at the facility which would be relevant to emergency planning. Section 303 requires the LEPC to prepare local emergency response plans for their planning district using the information provided by facilities under Section 302. LEPC may request any information from facilities necessary to develop emergency response plans. Emergency response plans were developed within a few months after the law was passed. LEPCs are required to review and update the plan at least annually or more frequently as changes occur in the community. Section 304 requires facilities to report to SERCs and LEPCs releases in excess of the reportable quantities listed for each extremely hazardous substance (EHS). This ICR also covers the notification and the written follow-up required under Section 304. The implementing regulations are codified in 40 CFR part 355.

Form Numbers: None.

Respondents/Affected Entities: Entities potentially affected by this action are those which have a threshold planning quantity of an extremely hazardous substance (EHS) listed in 40 CFR part 355, Appendix A and those which have a release of any of the EHSs above a reportable quantity. Entities more likely to be affected by this action may include chemical manufacturers, retailers, petroleum refineries, utilities, etc.

Respondent's Obligation To Respond: Mandatory under EPCRA Sections 302, 303 and 304.

Estimated Number of Respondents: 108,556.

Frequency of Response: EPCRA Section 302 reporting is a one-time notification unless there are changes to the reported information; EPCRA Section 304 notification is only when a release occurs from a facility.

Total Estimated Burden: 259,456 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total Estimated Cost: $10.85 million (per year), including $68,867 annual operations and maintenance costs. There are no capital costs associated with this ICR.

Changes in Estimates: The number of facilities subject to Section 302 is 95,000, which is the same as in the previous ICR. There is an increase of 4,500 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to an adjustment to the estimate, which corrected for a math error in the previous ICR renewal.

Dated: June 28, 2018.

Gilberto Irizarry,

Acting Director, Office of Emergency Management.

[FR Doc. 2018–15338 Filed 7–17–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 2, 2018.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Director of Applications) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Paula Swiber individually and as trustee for Wallace Carline and Gracie Carline, Mike Swiber, Glen David Carline, Carline Land Corporation, Carline Bouef Properties, all of Morgan City, Louisiana; Lisa Carline, of Miramar Beach, Florida; and Stephen Swiber, of Gibson, Louisiana;* to retain shares of M C Bancshares, Inc., and thereby indirectly retain shares of M C Bank & Trust Company, both of Morgan City, Louisiana.

Board of Governors of the Federal Reserve System, July 13, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–15330 Filed 7–17–18; 8:45 am]

BILLING CODE P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting July 24, 2018, Telephonic, 12:00 p.m., 10th Floor Board Meeting Room, 77 K Street NE, Washington, DC 20002

Agenda

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD MEMBER MEETING STATUS: All parts will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of the Minutes for the June 25, 2018 Board Member Meeting
2. Monthly Reports
   (a) Participant Activity
   (b) Legislative Report
3. Quarterly Reports
   (c) Investment Performance
   (d) Budget Review
   (e) Audit Status
4. Enterprise Risk Management Update
5. IT Update

CONTACT PERSON FOR MORE INFORMATION: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: July 16, 2018.

Dharmesh Vashee,

Deputy General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2018–15433 Filed 7–16–18; 4:15 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB NO.: 0970–0383]

Submission for OMB Review; Comment Request; Evaluation of the Transitional Living Program (TLP)—Extension

Description:

The Family and Youth Services Bureau (FYSB) and the Office of Planning, Research, Evaluation (OPRE) in the Administration for Children and Families (ACF) are requesting to continue collecting data as part of a currently approved information collection (OMB No. 0970–0383). The purpose is to continue baseline data collection at study enrollment and follow-up data collection for the Evaluation of the Transitional Living Program (TLP). The TLP evaluation was designed to examine the effects of FYSB's Transitional Living Program on runaway and homeless youth, focusing on such outcomes as housing and homelessness, education or training, employment, social connections, socio-emotional well-being, and risk behaviors.

Data collection will include three primary surveys: (1) A survey administered at the time of TLP enrollment (baseline), (2) a survey administered 6 months after enrollment, which will collect information on short-terms outcomes; and (3) a survey administered at 12 months, which will collect information on longer-term outcomes.'' Participants will be enrolled through the TLP study sites.

Respondents: Runaway and homeless youth ages 16 to 22 who agree to participate in the study upon enrollment into one of the TLP study sites.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Young Adult Baseline Survey	600	200	1	0.62	124
Young Adult 6-Month Follow Up Survey	600	200	1	0.61	122
Young Adult 12-Month Follow Up Survey	600	200	1	0.61	122
Estimated Total Burden Hours					368

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 B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2018–15307 Filed 7–17–18; 8:45 am]

BILLING CODE 4184–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0742]

Agency Information Collection Activities; Proposed Collection; Comment Request; Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection for drug establishment registration and product listing.

DATES: Submit either electronic or written comments on the collection of information by September 17, 2018.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 17,

2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of September 17, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2011–N–0742 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution—21 CFR Part 207

OMB Control Number 0910–0045—Extension

This information collection supports FDA's drug establishment registration and listing regulations and associated guidance intended to assist respondents in this regard. Requirements for drug establishment registration and drug listing are set forth in section 510 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360), and section 351 of the Public Health Service Act (42 U.S.C. 262). Section 224 of the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85) amended section 510(p) of the FD&C Act to require electronic drug establishment registration and drug listing. Regulations implementing these provisions are established under 21 CFR part 207. Except as provided in § 207.65, all information submitted must be transmitted to FDA in electronic format by using our electronic drug registration and listing system, in a form that we can process, review, and archive. Establishment registration information helps FDA identify who is manufacturing, repacking, relabeling,

and salvaging drugs and where those operations are performed. Drug listing information gives FDA a current inventory of drugs manufactured, repacked, relabeled, or salvaged for commercial distribution. Both types of information facilitate implementation and enforcement of the FD&C Act and are used for many important public health purposes.

Registration Under Part 207

Unless otherwise exempt under section 510(g) of the FD&C Act or § 207.13, all manufacturers, repackers, relabelers, and salvagers must register each domestic establishment that manufactures, repacks, relabels, or salvages a drug, or an animal feed bearing or containing a new animal drug, and each foreign establishment that manufactures, repacks, relabels, or salvages a drug, or an animal feed bearing or containing a new animal drug, that is imported or offered for import into the United States. When operations are conducted at more than one establishment and common ownership and control among all the establishments exists, the parent, subsidiary, or affiliate company may submit registration information for all establishments.

Private label distributors who do not also manufacture, repack, relabel, or salvage drugs are not required to register under part 207. FDA will accept registration or listing information submitted by a private label distributor only if it is acting as an authorized agent for and submitting information that pertains to an establishment that manufactures, repacks, relabels, or salvages drugs.

Under § 207.21, domestic manufacturers, domestic repackers, domestic relabelers, and domestic drug product salvagers must complete initial registration of each establishment no later than 5 calendar days after beginning to manufacture, repack, relabel, or salvage a drug. In addition, foreign manufacturers, foreign repackers, foreign relabelers, and foreign drug product salvagers must register each establishment before the drug is imported or offered for import into the United States.

The information that must be provided to FDA for registration is described in § 207.25 and includes the following: (1) Name of the owner or operator of each establishment; if a partnership, the name of each partner; if a corporation, the name of each corporate officer and director, and the place of incorporation; (2) each establishment's name, physical address, and telephone number(s); (3) all name(s) of the establishment, including names under which the establishment conducts business or names by which the establishment is known; (4) registration number of each establishment, if previously assigned by FDA; (5) a Unique Facility Identifier in accordance with the system specified under section 510 of the FD&C Act; (6) all types of operations performed at each establishment; (7) name, mailing address, telephone number, and email address of the official contact for the establishment, as provided in § 207.69(a); and (8) additionally, with respect to foreign establishments subject to registration, the name, mailing address, telephone number, and email address must be provided for: (a) The U.S. agent, as provided in § 207.69(b); (b) each importer in the United States of drugs manufactured, repacked, relabeled, or salvaged at the establishment that is known to the establishment; and (c) each person who imports or offers for import such drug to the United States.

Registrants must update their registration information as prescribed under § 207.29.

National Drug Code (NDC)

The NDC for a drug is a numeric code. Each finished drug product or unfinished drug subject to the listing requirements of part 207 must have a unique NDC to identify its labeler, product, and package size and type. The format of an NDC is described under § 207.33.

Under § 207.35, registrants must notify us of a change in any of the drug characteristics (except certain identifying information) for an NDC in § 207.33, and assign a new product code and package code for that drug.

Listing Under Part 207

Under § 207.41, registrants must list each drug that it manufactures, repacks, relabels, or salvages for commercial distribution. Each domestic registrant must list each such drug regardless of whether the drug enters interstate commerce. When operations are conducted at more than one establishment, and common ownership and control exists among all the establishments, the parent, subsidiary, or affiliate company may submit listing information for any drug manufactured, repacked, relabeled, or salvaged at any such establishment. A drug manufactured, repacked, or relabeled for private label distribution must be listed in accordance with the requirements.

Registrants must provide listing information for each drug in accordance with the listing requirements described in §§ 207.49, 207.53, and 207.54 that correspond to the activity or activities they engage in for that drug. For both animal and human drugs, each registrant must list each drug it manufactures, repacks, or relabels for commercial distribution under the trade name or label of a private label distributor using an NDC that includes such private label distributor's labeler code.

Additionally, in the case of human drugs, each registrant must list each human drug it manufactures, repacks, or relabels using an NDC that includes the registrant's own labeler code, regardless of whether the drug is commercially distributed under the registrant's own label or trade name or under the label or trade name of a private label distributor.

Under § 207.45, for each drug being manufactured, repacked, relabeled, or salvaged for commercial distribution at an establishment at the time of initial registration, drug listing information must be submitted no later than 3 calendar days after the initial registration of the establishment.

Each registrant must provide the listing information described under § 207.49 for each drug it manufactures for commercial distribution. Each registrant must also provide the listing information for each drug it repacks or relabels under § 207.53. A registrant who also relabels or repacks a drug that it salvages must list the drug it relabels or repacks in accordance with § 207.53. Registrants who perform only salvaging with respect to a drug must provide the listing information for that drug as required under § 207.54. Additional information may be requested for a listed drug as described in § 207.55.

Under § 207.57, registrants must update drug listing information submitted previously (either when the change is made or, at a minimum, each June and December). Registrants must also notify FDA if any listed drug has been discontinued from marketing or if any discontinued drug has been reintroduced and provide listing information for any drug not yet listed (at the time of annual establishment registration if not sooner).

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity; 21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Initial establishment registration; §§ 207.17, 207.21, 207.25.	1,480	2	2,960	1	2,960
Annual review and update of registration information (including expedited updates); § 207.29.	10,000	1	10,000	.5 (30 minutes)	5,000
Initial listing (including NDC); §§ 207.33, 207.41, 207.45, 207.49, 207.53, 207.54, 207.55.	1,713	7.28	12,470	1.5	18,705
June and December review and update (or certification) of listing; §§ 207.35, 207.57.	5,300	20	106,000	.75 (45 minutes)	79,500
Waiver requests; § 207.65	1	1	1	.5 (30 minutes)	1
Public disclosure exemption requests; § 207.81(c)	100	1	100	1	100
Total					106,266

[1] There are no capital or operating and maintenance costs associated with the information collection.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Standard operating procedure (SOP) for creating and uploading the SPL file	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Preparation of SOP	1,000	1	1,000	40	40,000

[1] There are no capital or operating and maintenance costs associated with the information collection.

Based on FDA data, we estimate that 1,480 respondents will submit 2,960 new establishment registrations annually. Based on the number of registered establishments in our database, we estimate 10,000 registrants will provide 10,000 annual reviews and updates of registration information (including expedited updates) or reviews and certifications that no changes have occurred. The estimates include the registration of establishments for both domestic and foreign manufacturers, repackers, relabelers, and drug product salvagers, and registration information submitted by anyone acting as an authorized agent for an establishment that manufactures, repacks, relabels, or salvages drugs. The estimates include an additional 80 positron emission tomography (PET) drug producers who are not exempt from registration and approximately 30 manufacturers of plasma derivatives.

We estimate that it will take 1 hour for registrants to submit initial registration information electronically for each new establishment. We also estimate that it will take approximately 30 minutes for each annual review and update of registration information (including any expedited updates) or each review and certification that no changes have occurred. The burden hour estimates above are based on our familiarity with the amount of time it takes registrants to input registration information electronically since June 2009. The estimates are an average of the time it would take to register a domestic or foreign establishment and an average of the time it would take to review registration information and update several registration items in the database or review registration information and only certify that no changes have occurred.

Based on the number of drugs listed annually since June 2009, we estimate that approximately 1,713 registrants will report 12,469 new listings annually (including the information submitted to obtain a labeler code and to reserve an NDC for future use).

Based on the number of drugs in our listing database and the current number of changes to listing information submitted, we estimate 5,300 registrants will each report 20 reviews and updates (including the information submitted to revise an NDC) for a total of 106,000 annually.

The estimates for the number of drug listings include both domestic and foreign listings, listings submitted by registrants for products sold under their own names as well as products intended for private label distribution, and information submitted related to an NDC and to obtain a labeler code. The estimate for the number of drugs subject to the listing requirements includes PET drugs and approximately 30 plasma derivatives. The estimates for the number of June and December reviews and updates of listing information include the number of changes to drug characteristics pertaining to the drug product code to obtain a new NDC and the reports of the withdrawal of an approved drug from sale under 21 CFR 314.81(b)(3)(iii).

Based on our familiarity with the time required to input listing information electronically since June 2009, we estimate that it will take registrants 1 hour and 30 minutes to submit information electronically for each drug they list for the first time (for both foreign and domestic registrant listings). These estimates are an average of the time it will take manufacturers, repackers, relabelers, and drug product salvagers, with drug product salvagers taking considerably less time than manufacturers. The estimates include the time for submitting the content of labeling and other labeling in electronic format. (For drugs subject to an approved marketing application, the electronic submission of the content of labeling under § 314.50(*l*)(1)(i) is approved under OMB control number 0910–0001). We also estimate that it will take 45 minutes for each June and December review and update. These estimates represent the average amount of time to review and update listing information or to review and certify that no changes have occurred. The estimates include the time for submitting any labeling for each drug, changes to the drug's characteristics submitted for a new NDC, and reports of the withdrawal of an approved drug from sale under § 314.81(b)(3)(iii).

In 2009, to help respondents transition to the current electronic reporting requirements, FDA issued the guidance for industry entitled

''Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Drug Listing.'' The document provides guidance to industry on the statutory requirement to submit electronically drug establishment registration and drug listing information. The guidance describes the types of information to include for purposes of drug establishment registration and drug listing and how to prepare and submit the information in an electronic format (Structured Product Labeling (SPL) files) that FDA can process, review, and archive. The burden attributed to the guidance includes the preparation of an SOP for creating and uploading the SPL file. Although most firms will already have prepared an SOP for the electronic submission of drug establishment registration and drug listing information, each year additional firms will need to create an SOP. As reflected in table 2, FDA estimates that approximately 1,000 firms will expend 40 hours to prepare, review, and approve an SOP, for a total of 40,000 hours annually.

Dated: July 12, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–15298 Filed 7–17–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–2281]

Innovative Approaches for Nonprescription Drug Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Innovative Approaches for Nonprescription Drug Products.'' This draft guidance describes two innovative approaches that may be useful to consider for demonstrating safety and effectiveness for a nonprescription drug product in cases where the drug facts labeling (DFL) alone is not sufficient to ensure that the drug product can be used safely and effectively in a nonprescription setting: The development of labeling in addition to the DFL and the implementation of additional conditions so that consumers appropriately self-select and use the product.

DATES: Submit either electronic or written comments on the draft guidance by September 17, 2018 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–2281 for ''Innovative Approaches for Nonprescription Drug Products; Draft Guidance for Industry; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Chris Wheeler, Center for Drug Evaluation and Research, 10903 New

Hampshire Ave., Bldg. 51, Rm. 3330, Silver Spring, MD 20993, 301–796–0151.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Innovative Approaches for Nonprescription Drug Products.'' FDA approves new drugs as prescription or nonprescription drug products under section 505 of the Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355). A drug product must be dispensed by prescription if it is not safe to use except under the supervision of a practitioner licensed by law to administer the drug (*health care practitioner*) (see section 503(b)(1) of the FD&C Act (21 U.S.C. 353(b)(1)). If a drug product does not meet the criteria for prescription-only dispensing, it may be marketed as a nonprescription drug product. FDA determines whether the information submitted as part of a new drug application (NDA) for a nonprescription drug product is sufficient to ensure that the drug product is safe and effective for nonprescription use under the conditions prescribed, recommended, or suggested in its proposed labeling (see section 505(d) and 503(b)(1) of the FD&C Act.

Nonprescription drug products must comply with applicable labeling requirements for over-the-counter (OTC) drug products under 21 CFR part 201, including, but not limited to, the format and content requirements for OTC drug product labeling under § 201.66. Labeling created to satisfy the requirements in § 201.66 is commonly referred to as the DFL. The DFL is intended to help enable consumers to appropriately self-select and use the nonprescription drug product safely and effectively.

FDA has received a number of inquiries about: (1) Additional labeling, beyond the DFL, that FDA can approve for nonprescription drug products and (2) whether applications may be submitted for nonprescription drug products with one or more additional conditions that consumers must fulfill to ensure that the drug product is safe and effective for nonprescription use.

FDA is issuing this draft guidance to describe two innovative approaches to consider that may be useful for demonstrating safety and effectiveness for a nonprescription drug product in cases where the DFL alone is not sufficient to ensure that the drug product can be used safely and effectively in a nonprescription setting: (1) The development of labeling in addition to the DFL and (2) the implementation of additional conditions so that consumers appropriately self-select and use the product. The appropriateness and specific details of either of these approaches will depend on the circumstances that apply to a particular drug product. FDA believes the innovative approaches described in this draft guidance could lead to the approval of a wider range of nonprescription drug products. FDA currently intends to issue a proposed rule that provides more details regarding the use of additional conditions for nonprescription drug products.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Innovative Approaches for Nonprescription Drug Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The submission of NDAs under 21 CFR 314.50 to market nonprescription drug products has been approved by OMB under control number 0910–0001. In addition, OTC Drug Facts Labeling requirements under § 201.66 have been approved under OMB control number 0910–0340.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: July 12, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–15296 Filed 7–17–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–1324]

Advisory Committee; Science Board to the Food and Drug Administration; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the renewal of the Science Board to the Food and Drug Administration (Committee) by the Commissioner of Food and Drugs (Commissioner). The Commissioner has determined that it is in the public interest to renew the Science Board to the Food and Drug Administration for an additional 2 years beyond the charter expiration date. The new charter will be in effect until June 26, 2020.

DATES: Authority for the Science Board to the Food and Drug Administration will expire on June 26, 2020, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Rakesh Raghuwanshi, Office of the Chief Scientist, Office of the Commissioner, Food and Drug Administration, White Oak Building 1, Rm. 3309, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–4769, *rakesh.raghuwanshi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services pursuant to 45 CFR part 11 and by the General Services Administration, FDA is announcing the renewal of the Science Board to the Food and Drug Administration. The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Science Board advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility. The Science Board shall provide advice to the Commissioner and other appropriate officials on specific complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board will provide advice that supports the Agency in keeping pace with technical and scientific developments, including in

regulatory science; and input into the Agency's research agenda; and on upgrading its scientific and research facilities and training opportunities. It will also provide, where requested, expert review of Agency-sponsored intramural and extramural scientific research programs.

The Committee shall consist of a core of 21 voting members including a Chair and Co-Chair. The members, Chair, and Co-Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of food science, safety, and nutrition; chemistry; pharmacology; translational and clinical medicine and research; toxicology; biostatistics; medical devices; imaging; robotics; cell and tissue based-products; regenerative medicine; public health and epidemiology; international health and regulation; product safety; product manufacturing sciences and quality; and other scientific areas relevant to FDA regulated products such as systems biology, informatics, nanotechnology, and combination products. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. The Committee may also include technically qualified Federal members. The Commissioner or designee shall have the authority to select members of other scientific and technical FDA advisory committees (normally not to exceed 10 members) to serve temporarily as voting members and to designate consultants to serve temporarily as voting members when: (1) Expertise is required that is not available among current voting standing members of the Committee (when additional voting members are added to the Committee to provide needed expertise, a quorum will be based on the combined total of regular and added members), or (2) to comprise a quorum when, because of unforeseen circumstances, a quorum is or will be lacking. Because of the size of the Committee and the variety in the types of issues that it will consider, FDA may, in connection with a particular committee meeting, specify a quorum that is less than a majority of the current voting members. The Agency's regulations (21 CFR 14.22(d)) authorize a committee charter to specify quorum requirements. If functioning as a medical device panel, a non-voting representative of consumer interests and a non-voting representative of industry interests will be included in addition to the voting members.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/ScienceBoardtotheFoodandDrugAdministration/ucm115356.htm* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please check *https://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: July 12, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–15297 Filed 7–17–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–1771]

Metal Expandable Biliary Stents—Premarket Notification (510(k)) Submissions; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''Metal Expandable Biliary Stents—Premarket Notification (510(k)) Submissions.'' This draft guidance provides recommendations for information and testing that should be included in 510(k) submissions for metal expandable biliary stents and their associated delivery systems intended to provide luminal patency of malignant strictures in the biliary tree. This draft guidance is not final nor is it in effect at this time.

DATES: Submit either electronic or written comments on the draft guidance by September 17, 2018 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–1771 for ''Metal Expandable Biliary Stents—Premarket Notification (510(k)) Submissions.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper

submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Metal Expandable Biliary Stents—Premarket Notification (510(k)) Submissions'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: April Marrone, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G218, Silver Spring, MD 20993–0002, 240–402–6510.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance provides draft recommendations for 510(k) submissions for metal expandable biliary stents and their associated delivery systems. These devices are intended to provide luminal patency of malignant strictures in the biliary tree. FDA is updating this guidance to reflect current review practices. The scope of this guidance is limited to metal expandable biliary stents regulated under 21 CFR 876.5010 (*Biliary catheter and accessories*) and with product code FGE (Catheter, Biliary, Diagnostic). This draft guidance applies only to biliary stents indicated for palliation of malignant strictures in the biliary tree. It does not apply to biliary stents indicated to treat benign strictures or stents intended to be used in the vasculature, tracheal/bronchial tubes, or other gastrointestinal anatomy. This draft guidance, when final, will supersede the guidance ''Guidance for the Content of Premarket Notifications for Metal Expandable Biliary Stents,'' issued on February 5, 1998.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Metal Expandable Biliary Stents—Premarket Notification (510(k)) Submissions.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This draft guidance is also available at *https://www.regulations.gov.* Persons unable to download an electronic copy of ''Metal Expandable Biliary Stents—Premarket Notification (510(k)) Submissions'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500070 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR parts 50 and 56 have been approved under OMB control number 0910–0755; the collections of information in 21 CFR 56.115 have been approved under OMB control number 0910–0130; the collections of information in 21 CFR 50.23 have been approved under OMB control number 0910–0586; and the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485.

Dated: July 12, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–15294 Filed 7–17–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Preparedness and Response; Statement of Organization, Functions and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS) is being amended at Chapter AN, Office of the Assistant Secretary for Preparedness and Response (ASPR), as last amended at 79 FR 70.535 (Nov. 26, 2014), 78 FR 25277 (April 30, 2013), 78 FR 7784 (Feb. 4, 2013), 75 FR 35.035 (June 21, 2010) to realign the functions of ASPR to reflect the changes mandated by the 21st Century Cures Act and to address ever-increasing manmade and naturally occurring threats which degrade public health, access to healthcare, access to emergency medical services and

national security. The changes are as follows.

I. Under AN.10 Organization, delete all of the components and replace with the following:

A. Immediate Office of the Assistant Secretary for Preparedness and Response (ANA)
B. Office of Biomedical Advanced Research and Development Authority (ANB)
C. Office of the Principal Deputy Assistant Secretary (ANC)
D. Office of the Deputy Assistant Secretary Incident Command and Control (ANG)

II. Delete AN.20 Functions, in its entirety and replace with the following:

Section AR.20 Functions.

A. Immediate Office of the Assistant Secretary for Preparedness and Response: The Immediate Office of the Assistant Secretary for Preparedness and Response (IO/ASPR) is headed by the Assistant Secretary, who provides leadership and executive and strategic direction for the ASPR organization. The Assistant Secretary is the principal advisor to the Secretary on all matters related to Federal public health and medical preparedness and response for public health emergencies. The Assistant Secretary is responsible for carrying out ASPR's mission and implementing the functions of ASPR. The IO/ASPR (1) ensures development and maintenance of liaison relationships with HHS operating and staff divisions and represents HHS at interagency meetings, as required; (2) establishes and maintains effective communications and outreach guidance and support for all external communications, including legislative and executive branch questions and inquiries, and serves as the principal advisor to the ASPR on all legislative strategies to fulfill the Office of the ASPR and the HHS mission under section 2811 and other relevant sections of the Public Health Service Act, as amended; (3) oversees advanced research, development and procurement of qualified countermeasures, security countermeasures and qualified pandemic or epidemic products; (4) coordinate with relevant federal officials to ensure integration of federal preparedness and response activities for public health emergencies; (5) manages correspondence control for the Assistant Secretary; and (6) coordinates the strategic and operational activities for public health preparedness response and recovery.

B. Office of Biomedical Advance Research and Development Authority (ANB). The Office of Biomedical Advanced Research and Development Authority (BARDA), established in April 2007 in response to the Pandemic and All-Hazards Preparedness Act of 2006, serves preparedness and response roles to provide medical countermeasures (MCM) in order to mitigate the medical consequences of chemical, biological, radiological, and nuclear (CBRN) threats and agents and emerging infectious diseases, including pandemic influenza. BARDA executes this mission by facilitating research, development, innovation, and acquisition of MCM and expanding domestic manufacturing infrastructure and surge capacity of these MCM.

BARDA is headed by a Deputy Assistant Secretary, and includes the following components:

- Division of Influenza (ANB1)
- Division of Emerging Infectious Diseases (ANB2)
- Division of Chemical, Biological, Radiological and Nuclear Threats (ANB3)
- Division of Strategic Science and Technology (ANB4)
- Division of Regulatory and Quality Affairs (ANB5)
- Division of Research, Innovation and Ventures (ANB6)

C. Office of the Principal Deputy Assistant Secretary (ANC). The Office of the Principal Deputy Assistant Secretary (OPDAS) is responsible for providing a well-integrated infrastructure that supports the Department's capabilities to prevent, prepare for, respond to and recover from natural public health and medical threats and emergencies. OPDAS leads the preparedness and response activities required to coordinate public health and healthcare response systems and activities with relevant federal, state, tribal, territorial, local, and international communities under the National Response Framework and Emergency Support Annexes #8, #6 and #14. OPDAS is responsible for the execution of business management operations and managing coordination. OPDAS provides for the facility, logistics, information technology and infrastructure support services necessary to maintain day-to-day operations of ASPR, including functions of Human Resources, Organization and Employee Development, Ethics, United States Public Health Service (USPHS) liaison, acquisitions management, contracts, grants, and all financial planning and analysis.

The Office of the Principal Deputy Assistant Secretary is headed by the Principal Deputy Assistant Secretary, and includes the following components:

- Division of Management Finance and Human Capital (ANC1)
- Division of Emergency Management and Medical Operations (ANC2)
- Division of Resource Management (ANC3)

D. Deputy Assistant Secretary Incident Command and Control (ANG): The Deputy Assistant Secretary (DAS/ICC) is responsible for the policy development, planning analysis, requirements and strategic planning. DAS/ICC manages and operates the HHS Secretary's Operation Center (SOC), intelligence, security, information management and is also responsible for the HHS Continuity of Operations (COOP) and the development of the ASPR COOP Plan. The Office of the Assistant Secretary Incident Command and Control (DAS/ICC) is headed by the Deputy Assistant Secretary Incident Command and Control, and includes the following components:

- Division of Security Intelligence and Information Management
- Division of Strategy, Policy, Planning and Requirements

III. Delegations of Authority. All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

Alex M. Azar II,

Secretary.

[FR Doc. 2018–15310 Filed 7–17–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Sleep Apnea Treatment With Positive Airway Pressure for Prevention of Diabetes Mellitus.

Date: July 27, 2018.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7345, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Bariatric Surgery-Related Applications.

Date: July 30, 2018.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7345, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Type 1 Diabetes Small Business Applications.

Date: August 6, 2018.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ryan G. Morris, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7015, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–4721, *ryan.morris@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA–DK–17–035 Microphysiological Systems (MPS) for Modeling Diabetes (UG3/UH3).

Date: August 7, 2018.

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7119, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity Research.

Date: August 8, 2018.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA–DK–17–030 Advancement of Cell Replacement Therapies for Type 1 Diabetes (R43/R44).

Date: August 8, 2018.

Time: 12:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7119, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK–R01 Telephone Review.

Date: August 10, 2018.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7023, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 12, 2018.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy/

[FR Doc. 2018–15280 Filed 7–17–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Center for Genetic Studies (7797).

Date: July 25, 2018.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD 20892–9550, 301–827–5819, *gm145a@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program No.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: July 12, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–15279 Filed 7–17–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[18X.LLAK941000.L1440000.ET0000; F–92350]

Public Land Order No. 7870; Extension of Public Land Order No. 5645, as Extended by Public Land Order No. 7336; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This Public Land Order (PLO) extends the duration of the withdrawal of public land created by two prior PLOs (PLO No. 5645, as extended by PLO No. 7336), for an additional 20-year term. Approval of this PLO would allow the continued operation of the United States (U.S.) and Canadian Joint Use Port of Entry, Poker Creek Border Station. Without an extension, the current PLO will expire on July 18, 2018. If the withdrawal expires, the selection by the State of Alaska would immediately become effective and the land would be eligible for transfer out of Federal ownership.

PLO No. 5645 withdrew approximately ten acres of public land from settlement, sale, location or entry under the general land laws, including U.S. mining laws, and reserved them for the maintenance of the Poker Creek Border Station in Alaska. PLO No. 7336 extended PLO No. 5645 for an additional 20-year term and transferred administrative jurisdiction from the U.S. Department of the Treasury to the General Services Administration.

DATES: This PLO takes effect on July 19, 2018.

FOR FURTHER INFORMATION CONTACT: David V. Mushovic, BLM Alaska State Office, 222 West Seventh Avenue, Mailstop 13, Anchorage, AK 99513–7504, 907–271–4682, or *dmushovi@blm.gov*. People who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The withdrawal requires this extension to continue to protect and reserve the land for the U.S. and Canadian Joint Use Port of Entry Poker Creek Border Station.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 5645, (43 FR 31006, (1978)), as extended by Public Land Order No. 7336 (63 FR 30511, (1998)), which withdrew public land from settlement, sale, location, or entry, under all of the general land laws, including U.S. mining laws, and reserved it as an administrative site for the maintenance of the Poker Creek Border Station, is hereby extended for an additional 20-year period.

2. The withdrawal extended by this Order will expire on July 18, 2038, unless as a result of a review conducted prior to the expiration date, pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

Dated: June 22, 2018.

Joseph R. Balash,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2018–15335 Filed 7–17–18; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–590 and 731–TA–1397 (Final)]

Sodium Gluconate, Gluconic Acid, and Derivative Products From China; Scheduling of the Final Phase of Countervailing Duty and Anti-Dumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–590 and 731–TA–1397 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of sodium gluconate, gluconic acid, and derivative products from China, provided for in statistical reporting numbers 2918.16.1000, 2918.16.5010, and 2932.20.5020 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be subsidized and sold at less-than-fair-value.

DATES: July 2, 2018.

FOR FURTHER INFORMATION CONTACT: Robert Casanova ((202) 708–2719), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, Commerce has defined the subject merchandise as ''all grades of sodium gluconate, gluconic acid, liquid gluconate, and glucono delta lactone (GDL) (collectively, GNA products), regardless of physical form (including, but not limited to substrates; solutions; dry granular form or powders, regardless of particle size; or as a slurry). The scope also includes GNA products that have been blended or are in solution with other product(s) where the resulting mix contains 35 percent or more of sodium gluconate, gluconic acid, liquid gluconate, and/or GDL by dry weight. Sodium gluconate has a molecular formula of NaC6H11O7.

Sodium gluconate has a Chemical Abstract Service (CAS) registry number of 527–07–1, and can also be called ''sodium salt of gluconic acid'' and/or sodium 2, 3, 4, 5, 6-pentahydroxyhexanoate. Gluconic acid has a molecular formula of C6H12O7. Gluconic acid has a CAS registry number of 526–95–4, and can also be called 2, 3, 4, 5, 6 pentahydroxycaproic acid. Liquid gluconate is a blend consisting only of gluconic acid and sodium gluconate in an aqueous solution. Liquid gluconate has CAS registry numbers of 527–07–1, 526–95–4, and 7732–18–5, and can also be called 2, 3, 4, 5, 6-pentahydroxycaproic acid hexanoate. GDL has a molecular formula of C6H10O6. GDL has a CAS registry number of 90–80–2, and can also be called d-glucono-1, 5-lactone.

The merchandise covered by the scope of this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under statistical reporting numbers 2918.16.1000, 2918.16.5010, and 2932.20.5020. Merchandise covered by

the scope may also enter under HTSUS statistical reporting numbers 2918.16.5050, 3824.99.2890, and 3824.99.9295. Although the HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.''

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by the Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of sodium gluconate, gluconic acid, and derivative products, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on November 30, 2018, by PMP Fermentation Products, Inc., Peoria, Illinois.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on September 5, 2018, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Tuesday, September 18, 2018, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 13, 2018. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on September 14, 2018, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is September 12, 2018. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing+ briefs is September 25, 2018. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before September 25, 2018. On October 10, 2018, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 12, 2018, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's website at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: July 12, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–15277 Filed 7–17–18; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–591 and 731–TA–1399 (Final)]

Common Alloy Aluminum Sheet From China; Scheduling of the Final Phase of Countervailing Duty and Anti-Dumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–591 and 731–TA–1399 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of common alloy aluminum sheet from China, provided for in subheadings 7606.11.30, 7606.11.60, 7606.12.30, 7606.12.60, 7606.91.30, 7606.91.60, 7606.92.30, and 7606.92.60 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be subsidized and sold at less-than-fair-value.

DATES: June 22, 2018.

FOR FURTHER INFORMATION CONTACT: Nathanael N. Comly ((202) 205–3174), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, Commerce has defined the subject merchandise as aluminum common alloy sheet (common alloy sheet), which is a flat rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core. Common alloy sheet may be made to ASTM specification B209–14, but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the common alloy sheet. Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans.

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by the Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of common alloy aluminum sheet, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were instituted in response to a notification of investigations self-initiated by the U.S. Department of Commerce deemed by the Commission as having been filed on December 1, 2017.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on October 16, 2018, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Tuesday, October 30, 2018, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 24, 2018. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral

presentations should participate in a prehearing conference to be held on October 29, 2018, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is October 23, 2018. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is November 8, 2018. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before November 8, 2018. On November 28, 2018, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 30, 2018, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's website at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: July 12, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–15278 Filed 7–17–18; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Microperforated Packaging Containing Fresh Produce (II), DN 3327*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Windham Packaging, LLC on July 12, 2018. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain microperforated packaging containing fresh produce (II). The complaint names as respondents: Growers Express, LLC of Salinas, CA; and C.H. Robinson Worldwide, Inc. of Eden Prairie, MN. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and

desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues should be filed no later than by close of business nine calendar days after the date of publication of this notice in the **Federal Register**. Complainant may file a reply to any written submission no later than the date on which complainant's reply would be due under § 210.8(c)(2) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(c)(2)).

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3327) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electonic Filing Procedures, Electronic Filing Procedures[1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: July 12, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–15288 Filed 7–17–18; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Open Group, L.L.C.

Notice is hereby given that, on June 18, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Open Group, L.L.C. (''TOG'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Beeond, Inc., New Bern, NC; Bliley Technologies, Inc., Erie, PA; China Eastern Airlines, Shanghai, PEOPLE'S REPUBLIC OF CHINA; ConocoPhillips Company, Houston, TX; Miltech Limited, Langley, UNITED KINGDOM; Enterprise Wise LLC, Hoschton, GA; HIMA Paul Hildebrandt GmbH, Houston, TX; International Foundation for Digital Competences, Zaltbommel, THE NETHERLANDS; Kongsberg Maritime, Kungberg, NORWAY; L3 Technologies, Inc., Camden, NJ; Lacibus Ltd., Steaford, UNITED KINGDOM; Leeds City Council, Leeds, UNITED KINGDOM; Phoenix Contact GmbH & Co., Blomberg, GERMANY; Pramana, Paris, FRANCE; QubeStation, Inc., Chantilly, VA; Royal Vopak, Rotterdam, THE NETHERLANDS; Sanofi S.A., Bridgewater, NJ; Seagate Technology, LLC, Cupertino, CA; Symbiosis Institute of Telecom Management, Lavale, INDIA; Telephonics Corporation, Farmingdale, NY; Universitat Rovira i Virgili, Tarragona, SPAIN; University of Ottawa, Ottawa, CANADA; WellAware Holdings, Inc., San Antonio, TX; and Wood Group USA, Inc., Houston, TX, have been added as parties to this venture.

Also, Belcan, LLC, Oldsmar, FL; Cambia Health Solutions, Inc., Portland, OR; Cape Software, Inc., The Woodlands, TX; Costco Wholesale, Issaquah, WA; InProgress sp. z.o.o., Krakow, POLAND; Interos Solutions, Inc., McLean, VA; JNS Solutions, Inc., New Port Richy, FL; Materna GmbH Information & Communications, Dortmund, GERMANY; Mike Moore Consultancy Ltd., Colchester, UNITED KINGDOM; Norwegian University of Science and Technology, Trondheim, NORWAY; On Target Training & Management, LLC, Raleigh, NC; Piotr Golos, Sokolow Podlaski, POLAND; Skillmetrix Knowledge Services LLP, Pune, INDIA; and University of Washington, Kirkland, WA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and TOG intends to file additional written notifications disclosing all changes in membership.

On April 21, 1997, TOG filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the *Federal Register* pursuant to Section 6(b) of the Act on June 13, 1997 (62 FR 32371).

The last notification was filed with the Department on February 8, 2018. A *notice* was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 12, 2018 (83 FR 10752).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018–15274 Filed 7–17–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Media Workflow Association, Inc.

Notice is hereby given that, on June 22, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Advanced Media Workflow Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, NEP Group, Pittsburgh, PA; Media Links Company Ltd., Kawasaki, JAPAN; BFE Studio und Medien Systeme GmbH, Mainz, GERMANY; Chengdu Sobey Digital Technology Company, Ltd., Chengdu, PEOPLE'S REPUBLIC OF CHINA; Net Insight, Stockholm, SWEDED; LEADER Electronics Corporation, Kanagawa, JAPAN; and Douglas McGee (individual member), Culver City, CA, have been added as parties to this venture.

Also, Sohonet, San Jose, CA; Arvato Systems S4M, Coloneum, GERMANY; Tokyo Broadcasting System Television Inc., Tokyo, JAPAN; NRK, Oslo, NORWAY; and Canon U.S.A. Inc., Melville, NY, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Media Workflow Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on March 26, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 24, 2018 (83 FR 17852).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018–15273 Filed 7–17–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, no later than July 30, 2018.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 30, 2018.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW, Washington, DC 20210.

Signed at Washington, DC this 15th day of May 2018.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[128 TAA petitions instituted between 3/31/18 and 5/15/18]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
93690	Johanson Dielectrics Inc. (Company)	Sylmar, CA	04/02/18	03/29/18
93691	Johanson Technology Inc. (Company)	Camarillo, CA	04/02/18	03/29/18
93692	Adecco (State/One-Stop)	Maple Grove, MN	04/02/18	03/30/18
93693	Solo Cup Operating Corporation (Union)	Augusta, GA	04/02/18	03/30/18
93694	American Express (State/One-Stop)	Taylorsville, UT	04/03/18	03/20/18
93695	Elsevier Inc. (Company)	Maryland Heights, MO	04/03/18	04/02/18
93696	Energy Fuels-Henry Mountain/Tony M. Mine (State/One-Stop).	Ticaboo, UT	04/03/18	03/22/18
93697	Mississippi Lime Company (Union)	Huron, OH	04/03/18	04/02/18
93698	Boyd Coffee Company (State/One-Stop)	Council Bluffs, IA	04/04/18	04/02/18
93699	General Electric (Workers)	Anasco, PR	04/04/18	04/03/18
93700	XPO Logistics Managed Transportation, LLC (State/One-Stop).	Portland, OR	04/04/18	04/03/18
93701	Origio Inc. (State/One-Stop)	Charlottesville, VA	04/05/18	04/04/18
93702	Koppers Inc. Follansbee Location (Company)	Follansbee, WV	04/05/18	04/04/18
93703	National Optronics (N.O.) Acquisition Corporation (State/One-Stop).	Charlottesville, VA	04/05/18	04/04/18
93704	Electrolux Major Appliances—Freezer Division (State/One-Stop).	St. Cloud, MN	04/06/18	04/05/18
93705	Nonmetallic Machining & Assembly (State/One-Stop)	Erie, PA	04/06/18	04/04/18
93706	Chesapeake Energy Corporation (6100 N Western Ave., Oklahoma City, OK) & (State/One-Stop).	Oklahoma City, OK	04/09/18	04/06/18

APPENDIX—Continued

[128 TAA petitions instituted between 3/31/18 and 5/15/18]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
93707	GroupSystems DBA ThinkTank (State/One-Stop)	Denver, CO	04/09/18	04/06/18
93708	MOL (America) Inc. (State/One-Stop)	Woodbridge, NJ	04/09/18	04/06/18
93709	ADP, LLC (State/One-Stop)	Portland, OR	04/10/18	04/09/18
93710	Convergys (State/One-Stop)	Omaha, NE	04/10/18	04/06/18
93711	Ericsson (Company)	Overland Park, KS	04/10/18	04/10/18
93712	MAHLE Filter Systems NA (State/One-Stop)	Winterset, IA	04/10/18	04/09/18
93713	Hudson Technologies (State/One-Stop)	Pearl River, NY	04/11/18	04/09/18
93714	NRG-Homer City Generating Station (Union)	Homer City, PA	04/11/18	04/09/18
93715	Teva Pharmaceuticals (State/One-Stop)	Forest, VA	04/11/18	04/10/18
93716	Deco Lighting (State/One-Stop)	Commerce, CA	04/12/18	04/11/18
93717	Jabil Inc. (State/One-Stop)	Poughkeepsie, NY	04/13/18	04/12/18
93718	GE Distributed Power, Inc. d/b/a Waukesha Gas Engines (Union).	Waukesha, WI	04/13/18	04/12/18
93719	NAU International, Inc. (State/One-Stop)	Portland, OR	04/13/18	04/12/18
93720	Ericsson Inc. (Company)	Piscataway, NJ	04/13/18	04/11/18
93721	Toyo Tire Mexico LLC (State/One-Stop)	Chula Vista, CA	04/13/18	04/10/18
93722	Tech Mahindra Americas, Inc. (State/One-Stop)	Alpharetta, GA	04/13/18	04/10/18
93723	Steelcase Inc. (Company)	Grand Rapids, MI	04/13/18	04/11/18
93724	Autolite Fram Group (State/One-Stop)	Fostoria, OH	04/16/18	04/13/18
93725	Hewlett Packard Enterprise (Workers)	Andover, MA	04/16/18	04/12/18
93726	Lonza Inc. (Company)	Allendale, NJ	04/16/18	04/11/18
93727A	Spang & Company (Company)	Pittsburgh, PA	04/16/18	04/16/18
93727	Spang & Company (Company)	East Butler, PA	04/16/18	04/16/18
93728	Technicolor Connected Home USA (State/One-Stop)	Indianapolis, IN	04/16/18	04/13/18
93729	Tridien Medical (Company)	Coral Springs, FL	04/16/18	04/12/18
93730A	Allianz Global Corporate & Specialty (State/One-Stop)	Fresno, CA	04/17/18	04/11/18
93730	Allianz Global Corporate & Specialty (State/One-Stop)	Spokane, WA	04/17/18	04/11/18
93731	GE MDS (State/One-Stop)	Rochester, NY	04/17/18	04/13/18
93732	Itron Inc. (State/One-Stop)	Liberty Lake, WA	04/17/18	04/16/18
93733	ADP Payroll Services (State/One-Stop)	Clackamas, OR	04/18/18	04/17/18
93734	Applied Materials (State/One-Stop)	Austin, TX	04/18/18	04/17/18
93735	Hutchinson Technology Inc. (State/One-Stop)	Hutchinson, MN	04/18/18	04/17/18
93736	Mayer Industries Inc. (State/One-Stop)	Orangeburg, SC	04/18/18	04/17/18
93737	Ocwen Financial Corporation (State/One-Stop)	Addison, TX	04/18/18	04/17/18
93738	Urban Outiftters (State/One-Stop)	Philadelphia, PA	04/18/18	04/17/18
93739	Ericsson (State/One-Stop)	Richardson, TX	04/19/18	04/18/18
93740	The Northern Trust Company (State/One-Stop)	Naperville, IL	04/19/18	04/18/18
93741	Thomson Reuters (State/One-Stop)	New York, NY	04/19/18	04/18/18
93742	East Bay Times (State/One-Stop)	Antioch, CA	04/20/18	04/18/18
93743	Necco (State/One-Stop)	Keller, TX	04/20/18	04/18/18
93744	Tanner Companies, LLC (Workers)	Rutherfordton, NC	04/20/18	04/19/18
93745	CCMA (State/One-Stop)	Amherst, NY	04/23/18	04/20/18
93746	Clinicient, Inc. (Workers)	Portland, OR	04/23/18	04/20/18
93747	CTS Corporation (State/One-Stop)	Elkhart, IN	04/23/18	04/20/18
93748	Milward Alloys (State/One-Stop)	Lockport, NY	04/23/18	04/20/18
93749	Traxys (State/One-Stop)	New York, NY	04/23/18	04/20/18
93750	Yellow Pages Digital & Media Solution LLC (Workers)	Indianapolis, IN	04/23/18	04/20/18
93751	Computershare Inc., Canton Finance Group (Workers)	Canton, MA	04/24/18	04/23/18
93752	Covidien (State/One-Stop)	North Haven, CT	04/24/18	04/23/18
93753	Metaswitch Networks Corp. (State/One-Stop)	Green Village, CO	04/24/18	04/23/18
93754	Monster Moto, LLC (State/One-Stop)	Ruston, LA	04/24/18	04/23/18
93755	AVX Corporation (Company)	Olean, NY	04/24/18	04/23/18
93756	Wide Open West Illinois, LLC (State/One-Stop)	Colorado Springs, CO	04/24/18	04/23/18
93756A	Wide Open West Illinois, LLC (State/One-Stop)	Augusta, GA	04/24/18	04/23/18
93757	A.O. Smith Corporation (Union)	Renton, WA	04/25/18	04/16/18
93758	Endura Products, Inc. (State/One-Stop)	Sparta, TN	04/25/18	04/24/18
93759	Fasten, Inc. (State/One-Stop)	Boston, MA	04/25/18	04/24/18
93760	Radial, Inc. (Workers)	Memphis, TN	04/25/18	04/24/18
93761	Tech Mahindra Americas Inc. for AT&T(Workers)	Plano, TX	04/25/18	04/09/18
93762	VMware, Inc. (State/One-Stop)	Palo Alto, CA	04/25/18	04/24/18
93763	AK Steel Corporation (State/One-Stop)	Lyndora, PA	04/26/18	04/25/18
93764	ATOS (State/One-Stop)	Mason, OH	04/26/18	04/25/18
93765	Ergotron Warehouse (State/One-Stop)	Tualatin, OR	04/26/18	04/25/18
93766	Harmonic Inc. (State/One-Stop)	Beaverton, OR	04/26/18	04/25/18
93767	Heidenhain Corporation (Company)	Jamestown, NY	04/26/18	04/25/18
93768	Woolrich Inc. (State/One-Stop)	New York, NY	04/26/18	04/26/18
93769	Alice Manufacturing Company (State/One-Stop)	Easley, SC	04/27/18	04/27/18
93770	Anchor Glass Container Corp. (State/One-Stop)	Zanesville, OH	04/27/18	04/26/18
93771	Cascade Steel (State/One-Stop)	City of Industry, CA	04/27/18	04/26/18
93772	Gerdau (State/One-Stop)	Rancho Cucamonga, CA	04/27/18	04/26/18

APPENDIX—Continued

[128 TAA petitions instituted between 3/31/18 and 5/15/18]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
93773	Jeffboat LLC (State/One-Stop)	Jeffersonville, IN	04/27/18	04/27/18
93774	Keystone (State/One-Stop)	Chicago Heights, IL	04/27/18	04/26/18
93775	Keystone Steel & Wire (State/One-Stop)	Peoria, IL	04/27/18	04/26/18
93776	Nucor Steel Company (State/One-Stop)	Bourbonnais, IL	04/27/18	04/26/18
93777	Siemens Shared Services, Employee Data Management (Workers).	Orlando, FL	04/27/18	04/26/18
93778	SL Montevideo Technology Inc. (State/One-Stop)	Montevideo, MN	04/27/18	04/26/18
93779	Boeing (State/One-Stop)	Oklahoma City, OK	04/30/18	04/27/18
93780	International Bildrite Inc. (State/One-Stop)	International Falls, MN	05/01/18	04/30/18
93781	Philips Electronics North America Corp. (State/One-Stop)	Andover, MA	05/01/18	04/30/18
93782	Puppet Labs, Inc. (State/One-Stop)	Portland, OR	05/01/18	04/30/18
93783	Westhaven Solar (State/One-Stop)	Yuba City, CA	05/01/18	04/30/18
93784	Eaton Corp (State/One-Stop)	Horseheads, NY	05/02/18	05/01/18
93785	Integrated Manufacturing and Assembly (State/One-Stop)	Detroit, MI	05/02/18	05/01/18
93786	Owens Corning (State/One-Stop)	Brunswick, ME	05/02/18	05/01/18
93787	Airtronics Inc. (State/One-Stop)	Bellevue, WA	05/03/18	04/30/18
93788	Byer Steel Group, Inc. (State/One-Stop)	Cincinnati, OH	05/03/18	05/03/18
93789	C&D Zodiac, Inc. (Company)	Garden Grove, CA	05/03/18	04/30/18
93790	Commercial Metals Company (State/One-Stop)	Magnolia, AR	05/03/18	05/02/18
93791	Demag Cranes & Components Co. (State/One-Stop)	Solon, OH	05/03/18	05/02/18
93792	Harbison Walker International, Inc. (State/One-Stop)	Oak Hill, OH	05/03/18	05/02/18
93793	Hubbell Lighting Hudson (Company)	Hudson, WI	05/03/18	05/03/18
93794	Keystone Steel & Wire Co. (State/One-Stop)	Upper Sandusky, OH	05/03/18	05/03/18
93795	The Howard Young Medical Center, Inc. (Workers)	Woodruff, WI	05/04/18	05/03/18
93796	Finastra/D + H USA Corp/Harland Financial Sol. (State/One-Stop).	Portland, OR	05/04/18	05/03/18
93797	General Electric (Company)	Grove City, PA	05/04/18	05/03/18
93798	Joyson Safety Systems (Takata) (State/One-Stop)	Moses Lake, WA	05/04/18	05/02/18
93799	Toys R Us (6015) (Workers)	Merrillville, IN	05/04/18	05/03/18
93800	Qorvo Oregon, Inc. (State/One-Stop)	Hillsboro, OR	05/08/18	05/07/18
93801	BAE (Company)	Denver, CO	05/08/18	05/07/18
93802	Optum Health UHC (State/One-Stop)	Richardson, TX	05/08/18	05/04/18
93803	Philips Lighting North America Corporation (Company)	Fall River, MA	05/08/18	05/01/18
93804	Ricoh, USA, Inc. (State/One-Stop)	Boulder, CO	05/08/18	05/07/18
93805	U.S. Steel Tubular Products, Inc. (Lone Star Tubular Operations) (State/One-Stop).	Lone Star, TX	05/09/18	05/08/18
93806	Hampton Products (Company)	Willimantic, CT	05/09/18	05/08/18
93807	Hampton Products (Company)	Rice Lake, WI	05/09/18	05/08/18
93808	Cascade Steel Rolling Mills (Company)	McMinnville, OR	05/10/18	05/08/18
93809	Northeast Provider Solutions (State/One-Stop)	Hawthorne, NY	05/10/18	05/10/18
93810	Reviewbuzz Inc. (State/One-Stop)	Oceanside, CA	05/10/18	05/09/18
93811	RF Digital Corp. (State/One-Stop)	Hermosa Beach, CA	05/10/18	05/09/18
93812	Ajax X Ray Inc—Foundry Division (Company)	Sayre, PA	05/11/18	05/10/18
93813	Continental ContiTech North America (State/One-Stop)	Hannibal, MO	05/11/18	05/10/18
93814	DISH Network (subsidiary of Echosphere) (State/One-Stop)	Christiansburg, VA	05/11/18	05/10/18

[FR Doc. 2018–15270 Filed 7–17–18; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; ETA 9161—Self Employment Assistance (SEA) (Regular Program)

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL's) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled ''ETA 9161—Self Employment Assistance (Regular Program).'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by September 17, 2018.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Sybil Felton by telephone at 202–693–3741, TTY 1–877–889–5627 (these are not toll-free numbers), or by email at *Felton.Sybil.O@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, Room S–4520, 200 Constitution Avenue NW, Washington, DC 20210, by email: *Felton.Sybil.O@dol.gov;* or by Fax (202) 693–3975.

FOR FURTHER INFORMATION CONTACT: Lidia Fiore by telephone at 202–693–2716 (this is not a toll-free number) or by email at *Fiore.Lidia@dol.gov.*

Authority: 44 U.S.C. 3506(c)(2)(A).

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998 (Pub. L. 105–306) permanently authorized the SEA program, which is a reemployment program that helps Unemployment Insurance (UI) claimants start their own businesses. Public Law 112–96, the Middle Class Tax Relief and Job Creation Act of 2012 (the 2012 Act), expanded the SEA program to provide states the opportunity to allow UI claimants receiving Extended Benefits to participate in the SEA program. Currently, five states use this reemployment program.

In accordance with statutory requirements, and to assist states in establishing, improving, and administering SEA programs (section 2183(a) of the 2012 Act), the ETA uses the ETA–9161 to collect information specific to the SEA program. Section 2183(b)(1) of the 2012 Act directs the Secretary of Labor to establish reporting requirements for States that have established SEA programs, which shall include reporting on:

(A) The total number of individuals who received unemployment compensation and (i) were referred to a SEA program; (ii) participated in such program; and (iii) received an allowance under such program;

(B) the total amount of allowances provided to individuals participating in a SEA program;

(C) the total income (as determined by survey or other appropriate method) for businesses that have been established by individuals participating in a SEA program, as well as the total number of individuals employed through such businesses; and

(D) any additional information, as determined appropriate by the Secretary.

ETA currently uses Form ETA–9161 as an electronic reporting mechanism to collect this required information. In addition to Public Law 112–96, collection of data is used for oversight of the program as authorized under Section 303(a)(6) of the Social Security Act. Also, the Code of Federal Regulations authorizes this information collection. See 5 CFR 1320.5(a) and 1320.6.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0490.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Type of Review: Extension without changes.

Title of Collection: ETA 9161—Self Employment Assistance (Regular Program).

Form: ETA 9161.

OMB Control Number: 1205–0490.

Affected Public: State Workforce Agencies, SEA participants.

Estimated Number of Respondents: 3,105.

Frequency: Quarterly.

Total Estimated Annual Responses: 24,820.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 12,440 hours.

Total Estimated Annual Other Cost Burden: $0.

Rosemary Lahasky,

Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2018–15267 Filed 7–17–18; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Claims and Payment Activities Report

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL's), Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled ''Claims and Payment Activities Report.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by September 17, 2018.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Quynh Pham by telephone at (202) 693–3681, TTY 1–877–889–5627 (these are not toll-free numbers), or by email at *Pham.Quynh@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, Room S–

4520, 200 Constitution Avenue NW, Washington, DC 20210; by email: *Pham.Quynh@dol.gov;* or by Fax (202) 693–3975.

FOR FURTHER INFORMATION CONTACT: Ronald Wilus by telephone at 202–693–2931 (this is not a toll-free number) or by email at *Wilus.Ronald@dol.gov.*

Authority: 44 U.S.C. 3506(c)(2)(A).

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The ETA 5159 report contains monthly information on claims activities, including the number of initial claims, first payments, weeks claimed, weeks compensated, benefit payments, and final payments. These data are used in budgetary and administrative planning, program evaluation, actuarial estimates, program research, and reports to Congress and the public. The authority to collect this information is provided under Section 303(a)(6) of the Social Security Act.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0010.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Type of Review: Extension without changes.

Title of Collection: Claims and Payment Activities.

Form: ETA 5159.

OMB Control Number: 1205–0010.

Affected Public: State Workforce Agencies.

Estimated Number of Respondents: 53.

Frequency: Monthly.

Total Estimated Annual Responses: 2544.

Estimate Average Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 6996 hours.

Total Estimated Annual Other Cost Burden: $0.

Rosemary Lahasky,

Deputy Assistant Secretary.

[FR Doc. 2018–15268 Filed 7–17–18; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Trade Adjustment Assistance

In accordance with the Section 223 (19 U.S.C. 2273) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (''Act''), as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (''TAA'') for workers by (TA–W) number issued during the period of *March 31, 2018 through May 15, 2018.* (This Notice primarily follows the language of the Trade Act. In some places however, changes such as the inclusion of subheadings, a reorganization of language, or ''and,'' ''or,'' or other words are added for clarification.)

Section 222(a)—Workers of a Primary Firm

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements under Section 222(a) of the Act (19 U.S.C. 2272(a)) must be met, as follows:

(1) The first criterion (set forth in Section 222(a)(1) of the Act, 19 U.S.C. 2272(a)(1)) is that a significant number or proportion of the workers in such workers' firm (or ''such firm'') have become totally or partially separated, or are threatened to become totally or partially separated;

AND (2(A) or 2(B) below)

(2) The second criterion (set forth in Section 222(a)(2) of the Act, 19 U.S.C. 2272(a)(2)) may be satisfied by either (A) the Increased Imports Path, or (B) the Shift in Production or Services to a Foreign Country Path/Acquisition of Articles or Services from a Foreign Country Path, as follows:

(A) Increased Imports Path:

(i) The sales or production, or both, of such firm, have decreased absolutely;

AND (ii and iii below)

(ii) (I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased; OR

(II)(aa) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased; OR

(II)(bb) imports of articles like or directly competitive with articles which are produced directly using the services supplied by such firm, have increased; OR

(III) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

AND

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; OR

(B) Shift in Production or Services to a Foreign Country Path OR Acquisition of Articles or Services from a Foreign Country Path:

(i)(I) There has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; OR

(II) such workers' firm has acquired from a foreign country articles or services that are like or directly competitive with articles which are produced or services which are supplied by such firm;

AND

(ii) the shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

Section 222(b)—Adversely Affected Secondary Workers

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(b) of the Act (19 U.S.C. 2272(b)) must be met, as follows:

(1) A significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

AND

(2) the workers' firm is a supplier or downstream producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act (19 U.S.C. 2272(a)), and such supply or production is related to the article or service that was the basis for such certification (as defined in subsection 222(c)(3) and (4) of the Act (19 U.S.C. 2272(c)(3) and (4));

AND

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; OR

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation determined under paragraph (1).

Section 222(e)—Firms Identified by the International Trade Commission

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(e) of the Act (19 U.S.C. 2272(e)) must be met, by following criteria (1), (2), and (3) as follows:

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1) of the Act (19 U.S.C. 2252(b)(1)); OR

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1) of the Act (19 U.S.C. 2436(b)(1)); OR

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

AND

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) of the Trade Act (19 U.S.C. 2252(f)(1)) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3) (19 U.S.C. 2252(f)(3)); OR

(B) notice of an affirmative determination described in subparagraph (B) or (C) of paragraph (1) is published in the **Federal Register**;

AND

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); OR

(B) notwithstanding section 223(b) of the Act (19 U.S.C. 2273(b)), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (Increased Imports Path) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
92,182	Gerdau Ameristeel US, Inc., Calvert City Mill Division, Insight Global and Hire Level.	Calvert City, KY	September 6, 2015.
92,990	Metlcast Products, Metlcast Industries LLC	Salina, KS	June 30, 2016.
93,352	Tek-Motive, Inc	East Haven, CT	December 7, 2016.
93,408	Sanmina Corporation, Owego Plant 1205, Adecco NA, Kelly Services	Owego, NY	January 5, 2017.
93,410	Sutherland Global Services, Inc., Customer Care Support-AT&T DTV Chat Group, Sutherland Global Holdings, Inc.	Syracuse, NY	December 27, 2016.
93,432	Monofrax LLC, Callista Private Equity GmbH	Falconer, NY	January 16, 2017.
93,498	Yanfeng US Automotive Interior Systems 1, LLC, Malone, Manpower	Highland Park, MI	January 17, 2017.
93,551	Dormeo, Octaspring Division, Adams and Garth	Winchester, VA	February 13, 2017.
93,592	Ardagh Glass Inc., Ardagh Holdings (UK) Ltd	Milford, MA	February 20, 2017.
93,608	Elbeco Incorporated, City Shirt Company Division	Frackville, PA	March 5, 2017.
93,612	Russell Stover Chocolates, LLC, Lindt & Sprungli, Matern Staffing	Ruther Glen, VA	March 5, 2017.
93,617	ADM Milling Co., Archer-Daniels-Midland Company, Express Employment Professionals, etc.	Lincoln, NE	March 7, 2017.
93,660	Johnson Rauhoff, Inc	St. Joseph, MI	March 20, 2017.
93,665	Zurn Industries, LLC, Rexnord-Zurn Holdings, Inc., 1801 Pittsburgh Avenue	Erie, PA	April 20, 2018.
93,665A	Zurn Industries, LLC, Rexnord-Zurn Holdings, Inc., 1302 Raspberry Street	Erie, PA	March 19, 2017.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (Shift in Production or Services to a Foreign Country Path or Acquisition of Articles or Services from a Foreign Country Path) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
92,640	Manpower Group U.S., Inc., Shared Services Department	Milwaukee, WI	February 13, 2016.
92,640A	Manpower Group U.S., Inc., Shared Services Department	Phoenix, AZ	February 13, 2016.
92,685	Ricoh Electronics Inc., Ricoh Company, Ltd., Kimco Staffing Services	Tustin, CA	February 27, 2016.
92,685A	Ricoh USA	Lincoln, NE	February 27, 2016.
92,685B	Ricoh USA	Omaha, NE	February 27, 2016.
92,772	SPX Flow ClydeUnion	Battle Creek, MI	March 28, 2016.
92,895	SmashFly Technologies, Inc., OnPayroll, Gallop Software, Softserve	Concord, MA	May 16, 2016.
93,056	Microsoft Corporation, Windows and Devices Group (WDG), Surface Hub	Wilsonville, OR	August 2, 2016.
93,126	Arvato Entertainment, LLC, Bertelsmann, Inc	Weaverville, NC	December 2, 2016.
93,136	Sykes Enterprises Incorporated, 175 W. Broadway	Eugene, OR	September 12, 2016.
93,136A	Sykes Enterprises Incorporated, 190 W. 8th Avenue	Eugene, OR	September 12, 2016.
93,259	Legend3D Inc	Los Angeles, CA	October 26, 2016.
93,322	Unified Grocers, Inc., Supervalu Inc., TCS Consulting, Cognizant Technology Solutions, Talent, etc.	Commerce, CA	November 20, 2016.
93,348	M.Torres America, Inc., M.Torres Disenos Industriales, S.A., Collabera, Launch Technical, etc.	Everett, WA	December 5, 2016.
93,359	Western Union LLC, Western Union Business Solutions (USA) LLC, E Commerce Group Products, etc.	Montvale, NJ	December 8, 2016.
93,360	5 Point Enterprises LLC, Accounting Department, 5P NH Holding Company LLC, ADP, Accounting, etc.	Austin, TX	December 8, 2016.
93,368	Avanade Inc., Unified Communications and Collaboration Managed Services Division.	Seattle, WA	December 13, 2016.
93,370	Pittsburgh Glass Works LLC, Creighton Plant, Vitro S.A.B. de C.V., Belcan Technical, Robert Half Mgmt.	Craighton, PA	December 13, 2016.
93,393	3M Purification Inc	Enfield, CT	December 22, 2016.
93,425	American Express Travel Related Services Company Inc., Global Servicing Network, Global Strategy & Support Department, etc.	Phoenix, AZ	January 16, 2017.
93,430	Ericsson, Inc., Business Unit Networks Services, Global Services Operations, etc.	Waltham, MA	January 10, 2017.
93,461	AT&T Call Center, Southwestern Bell Telephone Company, AT&T Corp, AT&T Services, etc.	El Paso, TX	January 24, 2017.
93,471	Payless ShoeSource Worldwide, Inc., IT Infrastructure and Operations Group	Topeka, KS	January 26, 2017.
93,506	AIG PC Global Services, Inc., Reinsurance Finance-New York Division, American International Group, etc.	New York, NY	January 31, 2017.
93,523	Sony DADC, Sony Corporation of America, Nexus Employment, CoWorx Staffing, ResourceMFG.	Terre Haute, IN	February 4, 2017.
93,533	Thomson Reuters, Legal, Financial & Risk, Information Security, Randstad Sourceright.	Denver, CO	February 7, 2017.
93,538	Thomson Reuters, Financial & Risk, Reuters & Thomson Reuters Corporate, Randstad Sourceright.	New York, NY	February 8, 2017.
93,543	Ocwen Loan Servicing, LLC, Ocwen Financial Corporation, Kelly Vendor Management Services.	Waterloo, IA	April 19, 2018.
93,546	General Motors, Saginaw Metal Center Operations, Select International	Saginaw, MI	February 13, 2017.
93,549	CellNetix, Puget Sound Institute of Pathology, CompHealth, Delivery Express, etc.	Seattle, WA	February 12, 2017.
93,552	Penske Logistics, El Paso Distribution Center, Customer Service Group, etc	El Paso, TX	January 22, 2017.
93,559	Maplehurst Bakeries, LLC, Weston Foods (US), Ambassador, Express Employment Professionals, etc.	Nashville, TN	February 15, 2017.
93,565	AT&T Services, Inc., AT&T Technology Development Business Unit, Application Production, etc.	Dallas, TX	February 20, 2017.
93,572	Smurfit Kappa North America, LLC, Packaging, Smurfit Kappa Group, Integrity Employment Services, etc.	City of Industry, CA	February 20, 2017.
93,574	Zones, Inc., Zones IT Solutions, Inc	Auburn, WA	February 21, 2017.
93,585	Lufkin Industries LLC, Oilfield â€" Buck Creek, Baker Hughes a GE Company, 3935 FM 326.	Lufkin, TX	May 2, 2017.
93,588	Tridien Medical, Hill-Rom, Kamran Staffing Inc., KForce Inc	Corona, CA	January 31, 2017.
93,589	Trelleborg Sealing Profiles U.S., Inc., Trelleborg A.B., Express Employment Professionals.	Bristol, IN	February 28, 2017.
93,590	Optoplex Corporation, Paychex PEO Service	Fremont, CA	February 27, 2017.
93,594	Kellogg Ready to Eat Cereal Plant—RTEC, Kellogg Company	Battle Creek, MI	March 1, 2017.
93,596	Lee Enterprises Incorporated, Journal Star Printing Co., Graphic Design Division.	Lincoln, NE	March 1, 2017.
93,606	Cuddledown, Inc., Phone Order/Call Center Services, Potpourri Group, Inc., Coworx Staffing.	Yarmouth, ME	March 5, 2017.
93,614	Xylem, Global Financial Shared Services Division, Xylem Inc, Vortex, etc	Seneca Falls, NY	March 5, 2017.
93,616	GCL Solar Materials US I, LLC, SunEdison, Express Employment Professionals, LaborWorks Industrial Staffing.	Portland, OR	March 6, 2017.
93,619	AES Ohio Generation (DP&L), JMSS Division, FeeCorp, Williams, Industrial Field Maintenance, Boral, etc.	Aberdeen, OH	March 6, 2017.

TA–W No.	Subject firm	Location	Impact date
93,619A	AES Ohio Generation (DP&L), JMSS Division, FeeCorp, Williams, Industrial Field Maintenance, Boral, etc.	Manchester, OH	March 6, 2017.
93,619B	AES Ohio Generation (DP&L), Training Center, Adams County Lumber	Manchester, OH	March 6, 2017.
93,621	DaVita Clinical Research, Early Clinical Division, DaVita, Green Key Solutions, Aerotek.	Lakewood, CO	March 6, 2017.
93,621A	DaVita Clinical Research, Early Clinical Division, DaVita, Green Key Solutions, Aerotek.	Minneapolis, MN	March 6, 2017.
93,622	Suntrust Mortgage, Servicing Department	Richmond, VA	March 7, 2017.
93,632	Confluent Medical Technologies, Ryzen Solutions	Sunnyvale, CA	March 12, 2017.
93,636	Technicolor Home Entertainment Services Southeast, LLC, Dynamic Staffing, Inc.	Olyphant, PA	May 27, 2018.
93,636A	Securitas Security Services USA and Sovereign Commercial Services, LLC, Technicolor Home Entertainment Services Southeast, LLC.	Olyphant, PA	March 12, 2017.
93,637	Optum Operations/Population Health Management Division, Commercial Channel/Clinical Call Unit's Coaching—National Accounts, etc.	Eden Prairie, MN	March 13, 2017.
93,637A	Optum Operations/Population Health Management Division, Commercial Channel/Clinical Call Unit.	Atlanta, GA	March 13, 2017.
93,637B	Optum Operations/Population Health Management Division, Commercial Channel/Clinical Call Unit.	Tonawanda, NY	March 13, 2017.
93,637C	Optum Operations/Population Health Management Division, Commercial Channel/Clinical Call Unit.	Richardson, TX	March 13, 2017.
93,637D	Optum Operations/Population Health Management Division, Commercial Channel/Clinical Call Unit.	Lisle, IL	March 13, 2017.
93,649	Genesys, Technical Writer and Technical Documentation Localization	Daly City, CA	March 1, 2017.
93,652	Startek, Customer Service Call Center	Colorado Springs, CO	March 16, 2017.
93,653	AES Services Co. LLC, Accounting Division, Nesco Resources	Dayton, OH	March 19, 2017.
93,657	ACE American Insurance Company dba Chubb, IT Department, Chubb Limited, Chubb INA Holdings Inc.	Warren, NJ	March 19, 2017.
93,658	Motorola Mobility LLC, Lenovo Group Limited, 222 West Merchandise Mart Plaza, Kelly OCG, etc.	Chicago, IL	March 15, 2018.
93,658A	SDI, Motorola Mobility LLC, Lenovo Group, 222 West Merchandise Mart Plaza	Chicago, IL	March 16, 2017.
93,661	dlhBOWLES, Safe Staffing, Employ Temps	Canton, OH	March 20, 2017.
93,661A	dlhBOWLES, Safe Staffing	Carrollton, OH	March 20, 2017.
93,662	The ESAB Group, Inc., Colfax Corporation, Roper Staffing, Aerotek, Manpower.	Union, SC	March 20, 2017.
93,663	Kerr Corporation, Danaher, Sentech Services	Romulus, MI	March 20, 2017.
93,664	Transamerican Auto Parts, TAP Worldwide, 4 Wheel Parts, Polaris Industries, etc.	Compton, CA	March 20, 2017.
93,666	Trulife Inc., Trulife Group, Xcel Staffing Inc	Jackson, MI	March 21, 2017.
93,667	Cargill Meat Solutions Corp., Finance Division, Cargill, Inc., Aerotek, Attero, Russell Tobin, Apex, etc.	Wichita, KS	March 22, 2017.
93,669	E. I. du Pont de Nemours and Company, Chambers Works Aramids Unit, DuPont Chambers Works, DowDupont Inc.	Deepwater, NJ	March 22, 2017.
93,670	MH Sub I, LLC, Auto Credit Express Division, Internet Brands, Inc., Aerotek	Auburn Hills, MI	March 21, 2017.
93,675	Virgin Atlantic Airways, LTD., Finance Department/Accounts Payable	Norwalk, CT	March 23, 2017.
93,676	Computer Sciences Corporation (CSC), DXC Technology Company	Norwich, CT	March 23, 2017.
93,678	North Coast Medical Inc., Customer Service Department	Morgan Hill, CA	March 23, 2017.
93,683	Caterpillar Work Tools Inc., Caterpillar Inc., Kelly Services, AECom	Waco, TX	March 28, 2017.
93,685	Interline Brands, Inc., Tax and Accounting Departments, The Home Depot, Inc	Jacksonville, FL	March 28, 2017.
93,685A	Interline Brands, Inc., Tax and Accounting Departments, The Home Depot, Inc	Mt. Laurel, NJ	March 28, 2017.
93,685B	Interline Brands, Inc., Tax and Accounting Departments, The Home Depot, Inc	Bluefield, WV	March 28, 2017.
93,686	CompuCom, Supply Chain groups for Enterprise Sales Support, etc	Plano, TX	March 29, 2017.
93,688	Medtronic, PLC, Quality Complaint Handling team, Powered Surgical Solutions Products.	Fort Worth, TX	March 28, 2017.
93,690	Johanson Dielectrics Inc., Snelling Staffing	Sylmar, CA	March 29, 2017.
93,691	Johanson Technology Inc., Select Staffing, Pridestaff	Camarillo, CA	March 29, 2017.
93,693	Solo Cup Operating Corporation, Augusta Staffing	Augusta, GA	March 30, 2017.
93,699	General Electric, GE Power Division	Anasco, PR	April 3, 2017.
93,700	XPO Logistics Managed Transportation, LLC, Freight Billing Audit and Payment, XPO Logistics, etc.	Portland, OR	April 3, 2017.
93,701	Origio Inc., CooperSurgical Inc., Adecco Staffing, Adams and Garth-Qualified Staffing.	Charlottesville, VA	April 4, 2017.
93,703	National Optronics (N.O.) Acquisition Corporation, Satisloh North America, Essilor Industries, Adecco, Aerotek.	Charlottesville, VA	April 4, 2017.
93,715	Teva Pharmaceuticals, Teva Global Operations (TGO), Kelly Temporary Services Company.	Forest, VA	April 10, 2017.
93,716	Deco Lighting, Aerotek, Fairway Staffing Services	Commerce, CA	April 11, 2017.
93,718	GE Distributed Power, Inc. d/b/a Waukesha Gas Engines, General Electric Company, Dresser, Inc.	Waukesha, WI	January 11, 2018.
93,727	Spang & Company, Magnetics Division	East Butler, PA	May 18, 2018.
93,727A	Spang & Company, Magnetics Division	Pittsburgh, PA	May 18, 2018.
93,729	Tridien Medical, Hill-Rom, Affinity Staffing, Aerotek, Can-Am Consultants	Coral Springs, FL	April 12, 2017.
93,730	Allianz Global Corporate & Specialty, Allianz Global Risks US Insurance Company, N.A.	Spokane, WA	April 11, 2017.

TA–W No.	Subject firm	Location	Impact date
93,730A	Allianz Global Corporate & Specialty, Allianz Global Risks US Insurance Company, N.A.	Fresno, CA	April 11, 2017.
93,732	Itron Inc., Technical Support-Hardware and Software Services	Liberty Lake, WA	April 16, 2017.
93,741	Thomson Reuters, Technology Service Operations & Engineering Unit, Financial & Risk, etc.	New York, NY	April 18, 2017.
93,753	Metaswitch Networks Corp., Support and Professional Services, Metaswitch Networks Ltd.	Green Village, CO	April 23, 2017.
93,754	Monster Moto, LLC, Manpower, Diversity One Staffing, Advantage Resourcing	Ruston, LA	April 23, 2017.
93,755	AVX Corporation, Olean Advanced Products Division	Olean, NY	April 27, 2018.
93,756	Wide Open West Illinois, LLC, Loyalty/Retention, Wide Open West	Colorado Springs, CO	April 23, 2017.
93,756A	Wide Open West Illinois, LLC, Loyalty/Retention, Wide Open West	Augusta, GA	April 23, 2017.
93,770	Anchor Glass Container Corp., Mould Division	Zanesville, OH	April 26, 2017.
93,778	SL Montevideo Technology Inc., Steel Partners Holdings L.P	Montevideo, MN	April 19, 2018.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
92,648	Ventra Evart, LLC, Plastics Division	Evart, MI	February 15, 2016.
92,821	Jamestown Industries Inc., Mancan, Inc	Youngstown, OH	April 12, 2016.
92,854	PM Industries, Inc	Beaverton, OR	April 27, 2016.
93,529	Eaton Corporation, Vehicle Group North America	Shenandoah, IA	March 1, 2018.
93,705	Nonmetallic Machining & Assembly	Erie, PA	April 4, 2017.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
93,208	Deufol Sunman, CFA, Laborworks	Sunman, IN	October 4, 2016.

The following certifications have been issued. The requirements of Section 222(e) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
93,140	U.S. Steel Tubular Products, Inc., Lone Star Tubular Operations, United States Steel Corporation.	Lone Star, TX	December 5, 2015.
93,154	United States Steel Corporation	Granite City, IL	September 29, 2015.
93,155	California Steel	Fontana, CA	December 5, 2015.
93,456	Joseph T. Ryerson & Son, Inc., Ryerson Holding Corporation, Comet	Vernon, CA	January 26, 2016.
93,493	Joseph T. Ryerson & Son, Inc., Ryerson Holding Corporation, Personnel Placements, Dawson Employment Service.	Blytheville, AR	January 26, 2016.
93,570	Steel Warehouse Quad Cities, LLC, Lerman Holding Co., Inc	Rock Island, IL	January 26, 2016.
93,595	Kloeckner Metals Corporation, 14200 Almeda Drive, Houston Industrial Tradesman, Connect Staffing, etc.	Houston, TX	February 26, 2016.
93,605	ATI Allegheny Ludlum, Inc., ATI Flat Rolled Products, Allegheny Technologies Incorporated.	New Bedford, MA	March 30, 2016.
93,620	Jewel Acquisition, LLC, ATI Flat Rolled Products, Allegheny Technologies Incorporated.	Louisville, OH	March 30, 2016.
93,639	AK Steel Corporation	Butler, PA	March 30, 2016.
93,682	ATI Flat Rolled Products Holdings, LLC, Vandergrift Operations, Allegheny Technologies Incorporated.	Vandergrift, PA	March 30, 2016.
93,689	Outokumpu Stainless USA, LLC, Outokumpu Oyj, Kelly Services	Calvert, AL	March 30, 2016.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for TAA have not been met for the reasons specified.

The investigation revealed that the requirements of Trade Act section 222(a)(1) and (b)(1) (significant worker total/partial separation or threat of total/partial separation), or (e) (firms identified by the International Trade Commission), have not been met.

TA–W No.	Subject firm	Location	Impact date
93,409	Staber Industries Inc	Groveport, OH.	
93,486	Continental Tire The Americas, LLC, Tire Division, Arco Service Corporation	Mt. Vernon, IL.	
93,542	Weldbend	Bedford Park, IL.	
93,596A	Lee Enterprises Incorporated, Beatrice Daily Sun, Graphic Design Division	Beatrice, NE.	
93,597	Joseph T. Ryerson & Son, Inc., Ryerson Holding Corporation, LSI, ProDrivers	Carrollton, TX.	
93,603	North American Stainless, North American Stainless, Acerinox, S.A	Minooka, IL.	

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both), or (a)(2)(B) (shift in production or services to a foreign country or acquisition of articles or services from a foreign country), (b)(2) (supplier to a firm whose workers are certified eligible to apply for TAA or downstream producer to a firm whose workers are certified eligible to apply for TAA), and (e) (International Trade Commission) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
93,339	Ventus Networks LLC, L&T Infotech Limited, L&T Technology Centre	Norwalk, CT.	
93,469	Hemlock Semiconductor Operations, LLC, HSC Holdings, LLC, Adecco USA, Inc., Qualified Staffing Services.	Hemlock, MI.	
93,502	KES Acquisition Company d/b/a Kentucky Electric Steel (KES), Specialty Steel Works Incorporated (SSWI).	Ashland, KY.	

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports), (a)(2)(B) (shift in production or services to a foreign country or acquisition of articles or services from a foreign country), (b)(2) (supplier to a firm whose workers are certified eligible to apply for TAA or downstream producer to a firm whose workers are certified eligible to apply for TAA), and (e) (International Trade Commission) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
93,106	New Castle Stainless Plate, LLC	New Castle, IN.	
93,237	A.L. Lee Corporation	Lester, WV.	
93,277	Bay Valley Foods Portland Distribution Center, TreeHouse Foods, Inc	Portland, OR.	
93,308	Oak-Mitsui Inc., ABC Division, Adecco	Hoosick Falls, NY.	
93,371	RL Fisher Inc	Hartford, CT.	
93,427	Fremont Plastic Products dba The Plastics Group, Cardinal Staffing, Flex Temps.	Fremont, OH.	
93,445	CB&I El Dorado, Inc., CB&I Group, Inc	El Dorado, AR.	
93,452	Air Products and Chemicals, Inc., Liquefied Natural Gas (LNG) Manufacturing Plant.	Hanover, PA.	
93,474	TE Connectivity	Mt. Joy, PA.	
93,490	LSC Communications, Long Prairie, Manpower, Doherty Staffing	Long Prairie, MN.	
93,510	Transact Technologies Incorporated, Staff King	Ithaca, NY.	
93,545	Flambeau River Papers LLC	Park Falls, WI.	
93,547	J.R. Simplot Company, Food Group Division	West Memphis, AR.	
93,571	S.E. Wood Products, Inc	Colville, WA.	
93,580	Embarq Missouri, Inc., CenturyLink, Embarq Corporation, Quality Analysis Team.	Jefferson City, MO.	
93,583	Health Care Service Corporation, Main Center Operations	Naperville, IL.	
93,586	West Facilities LLC, West Corporation, Apex Systems, Ask Mgmt, Capstone Consulting Inc., etc.	Omaha, NE.	
93,626	The C.I. Thornburg Co., Inc., 4340 Terrace Avenue	Huntington, WV.	
93,626A	The C.I. Thornburg Co., Inc., 4034 Altizer Avenue	Huntington, WV.	
93,626B	The C.I. Thornburg Co., Inc., 740 Enterprise Drive	Lexington, KY.	
93,635	Northrop Grumman Systems Corporation, ISS Contract	Little Rock, AR.	
93,642	Fred Meyer Stores, Inc., Print Shop Division, The Kroger Co	Portland, OR.	
93,651	IBM Kenexa (Kenexa Survey Software Engineers/Managers), Talent and Collaboration Solutions Division, IBM.	Lincoln, NE.	
93,680	Vixlet, LLC, Vixlet CA, LLC Division	Los Angeles, CA.	

Determinations Terminating Investigations of Petitions for Trade Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's website, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
93,516	Amtrol Inc., Worthington Industries, Inc	West Warwick, RI.	
93,641	Bosal Industries Georgia, Inc	Ypsilanti, MI.	

The following determinations terminating investigations were issued because the worker group on whose behalf the petition was filed is covered under an existing certification.

TA–W No.	Subject firm	Location	Impact date
92,862	Symantec Corporation, Human Resources Division, Veritas Software Corporation.	Springfield, OR.	
92,951	Mersen USA Newburyport-MA, LLC, Mersen USA BN Corporation, Resource MFG.	El Paso, TX.	
93,187	Faurecia	Sterling Heights, MI.	
93,188	Faurecia, 17805 Masconic Boulevard	Fraser, MI.	
93,189	Faurecia, 6100 Sims Drive	Sterling Heights, MI.	
93,296	Trialon Corporation, Trialon Holding Company	Warren, OH.	
93,421	Titan Tire Corporation of Bryan	Bryan, OH.	
93,448	Manpower Group U.S., Inc., Shared Services Department	Milwaukee, WI.	
93,527	Ricoh USA	Lincoln, NE.	
93,527A	Ricoh USA	Omaha, NE.	
93,579	APTIM and Securitas Critical Infrastructure Services	Metropolis, IL.	
93,584	Victory Personnel Services, LEDVANCE, LLC, Osram Sylvania, LEDVANCE, GMBH.	St. Marys, PA.	
93,601	Software Galaxy Systems, Adecco, Yoh Services LLC, Sunrise Systems, etc., GE Inspection Technologies, GE Oil & Gas.	Lewistown, PA.	
93,692	Adecco, Quantum Spatial, Inc	Maple Grove, MN.	
93,746	Clinicient, Inc	Portland, OR.	

I hereby certify that the aforementioned determinations were issued during the period of *March 31, 2018 through May 15, 2018.* These determinations are available on the Department's website *https://www.doleta.gov/tradeact/taa/taa_search_form.cfm* under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC this 15th day of May 2018.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2018–15269 Filed 7–17–18; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2018–050]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records they no longer need to conduct agency business. NARA invites public comments on such records schedules.

DATES: NARA must receive requests for copies in writing by August 17, 2018. Once NARA finishes appraising the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

Mail: NARA (ACRA); 8601 Adelphi Road; College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Appraisal and Agency Assistance (ACRA); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: NARA publishes notice in the **Federal Register** for records schedules they no longer need to conduct agency business. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no

longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Agriculture, Animal and Plant Health Inspection Service (DAA–0463–2017–0002, 2 items, 2 temporary items). Records of an electronic information cost management system. Includes routine tracking records for the balance of allocations for all levels of the program, such as ledgers, status processes, and reporting documents.

2. Department of Agriculture, Forest Service (DAA–0095–2018–0106, 1 item, 1 temporary item). Administrative records related to solid waste systems. Included are waste system project records that contain documentation of solid waste disposal and collection.

3. Department of Agriculture, Forest Service (DAA–0095–2018–0108, 1 item, 1 temporary item). Program records related to travel management, including administrative analysis records and reports of the Travel Management Program.

4. Department of Agriculture, Forest Service (DAA–0095–2018–0110, 3 items, 3 temporary items). Administrative records related to transportation system development. Included are records that contain documentation of construction projects, system structures, and standard specifications.

5. Department of Agriculture, Forest Service (DAA–0095–2018–0111, 2 items, 2 temporary items). Administrative records related to operation and maintenance of road systems, including inspection reports, expenditure documents, and road system plans and studies.

6. Department of Health and Human Services, Indian Health Service (DAA–0513–2018–0002, 2 items, 2 temporary items). The Office of Clinical and Preventive Services program records. Included are medical staff applicant credentialing and privileging records such as correspondence, meeting minutes, and quality assurance files.

7. Department of Homeland Security, Transportation Security Administration (DAA–0560–2018–0003, 1 item, 1 temporary item). Forms signed by law enforcement officers acknowledging that they have read and will adhere to agency and department policies on use of force and firearms.

8. Department of Homeland Security, Transportation Security Administration (DAA–0560–2018–0004, 1 item, 1 temporary item). Records related to the designation of Senior Federal Air Marshals, including program administration and candidate files.

9. Department of Justice, Federal Bureau of Investigation (DAA–0065–2016–0001, 2 items, 2 temporary items). Audio, video, or other electronic surveillance recordings created in the course of investigations.

10. National Archives and Records Administration, Research Services (N2–169–18–2, 1 item, 1 temporary item). Correspondence record slips of the Foreign Economic Administration (1944–1945) used to track and control correspondence as it moved through the agency. These records were accessioned to the National Archives but lack sufficient historical value to warrant continued preservation.

11. Office of the Housing Expediter, Office of Rent Stabilization (DAA–0252–2018–0001, 7 items, 6 temporary items). Routine administrative records documenting the agency's rent control activities. Included are appeals of rent increases or decreases, property inspections, exhibits, correspondence, affidavits, rent inspector reports, property surveys, and attorney's interpretation files. Proposed for permanent retention are rent decontrol surveys that document the local economic conditions in urban areas throughout the Southeast region of the United States in the period immediately after World War II.

12. Office of Personnel Management, Federal Executive Boards (DAA–0478–2018–0003, 16 items, 11 temporary items). Records related to headquarters and regional policy and operations, including routine meetings, training products, interim reports, and working papers. Proposed for permanent retention are central program and project records, final summary reports of significant regional and central activities, and government-wide training products.

13. Securities and Exchange Commission, Office of the Chief Operating Officer (DAA–0266–2017–0011, 2 items, 1 temporary item). Records related to the coordination of mission-related audits. Proposed for permanent retention are records related to mission-related audit findings and follow-up on recommendations.

14. United States Judiciary, Judicial Conference of the United States (DAA–0516–2018–0001, 2 items, 2 temporary items). Federal Judicial Center records related to the Women Judges Oral History Project, including transcripts and audio recordings.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2018–15281 Filed 7–17–18; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–352, 50–353, 72–65, 50–171, 50–277, 50–278, 72–79; NRC–2018–0148]

Exelon Generation Company, LLC; Limerick Generating Station, Units 1 and 2; Peach Bottom Atomic Power Station, Units 1, 2, and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to licenses held by Exelon Generation Company, LLC (Exelon, the licensee) for the operation of Limerick Generating Station (Limerick), Units 1 and 2, and Peach Bottom Atomic Power Station (Peach Bottom), Units 1, 2, and 3 (the facilities). The proposed amendments would revise the emergency response organization (ERO) positions identified in the emergency plan for each facility. The NRC is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) associated with the proposed license amendments.

DATES: The EA and FONSI referenced in this document is available on July 18, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0148 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0148. 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.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Blake A. Purnell, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1380; email: *Blake.Purnell@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of amendments to the following licenses held by Exelon: (1) Renewed Facility Operating License Nos. NPF–39 and NPF–85 for the operation of Limerick, Units 1 and 2, respectively, located in Montgomery County, Pennsylvania; (2) Facility Operating License No. DPR–12 for the possession of Peach Bottom, Unit 1, located in York and Lancaster Counties, Pennsylvania; and (3) Renewed Facility Operating License Nos. DPR–44 and DPR–56 for the operation of Peach Bottom, Units 2 and 3, respectively, located in York and Lancaster Counties, Pennsylvania.

In accordance with section 51.21 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC prepared the following EA that analyzes the environmental impacts of the proposed licensing action. Based on the results of this EA, and in accordance with 10 CFR 51.31(a), the NRC has determined not to prepare an environmental impact statement for the proposed licensing action, and is issuing a FONSI.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would revise the ERO positions identified in the emergency plan for each facility. The on-shift, minimum, and full-augmentation ERO staffing requirements listed in the emergency plan would be revised. The proposed revisions include eliminating ERO positions; adding ERO positions; changing position descriptions, duties, and duty locations; and relocating certain position descriptions to other parts of the emergency plan or to implementing procedures.

The proposed action is in accordance with the licensee's application dated May 10, 2018 (ADAMS Package Accession No. ML18149A290).

Need for the Proposed Action

Nuclear power plant owners, Federal agencies, and State and local officials work together to create a system for emergency preparedness and response that will serve the public in the unlikely event of an emergency. An effective emergency preparedness program decreases the likelihood of an initiating event at a nuclear power reactor proceeding to a severe accident. Emergency preparedness cannot affect the probability of the initiating event, but a high level of emergency preparedness increases the probability of accident mitigation if the initiating event proceeds beyond the need for initial operator actions.

Each licensee is required to establish an emergency plan to be implemented in the event of an accident. The emergency plan, in part, covers preparation for evacuation, sheltering, and other actions to protect individuals near plants in the event of an accident.

The NRC, as well as other Federal and State regulatory agencies, reviews the emergency plan to ensure that it provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

Separate from this EA, the NRC staff is performing a safety assessment of Exelon's proposed changes to the emergency plan for each facility. This safety review will be documented in a safety evaluation. The safety evaluation will determine whether, with the proposed changes to the emergency plan for each facility, there continues to be reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at Limerick or Peach Bottom, in accordance with the standards of 10 CFR 50.47(b) and the requirements in appendix E to 10 CFR part 50.

The proposed action is needed to align the emergency plans for the facilities with draft Revision 2 to NUREG–0654/FEMA–REP–1, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants'' (ADAMS Accession Nos. ML14163A605 and ML17083A815). This change would provide Exelon with greater flexibility in staffing ERO positions, and reflects changes in NRC regulations and guidance and advances in technologies and best practices that have occurred since NUREG–0654/FEMA–REP–1, Revision 1, was

published in 1980. The Commonwealth of Pennsylvania reviewed a draft of the licensee's application and had no concerns. The State of Maryland reviewed a draft of the license amendment request for Peach Bottom and found the proposed changes acceptable.

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the environmental impacts of the proposed action.

The proposed action consists mainly of changes related to the staffing levels and positions specified in the emergency plans for Limerick and Peach Bottom. The on-shift, minimum, and full-augmentation ERO staffing requirements listed in the emergency plan would be revised. The revisions include eliminating ERO positions; adding ERO positions; changing position descriptions, duties, and duty locations; and relocating certain position descriptions to other parts of the emergency plan or to implementing procedures.

With regard to potential nonradiological environmental impacts, the proposed changes would have no direct impacts on land use or water resources, including terrestrial and aquatic biota, as they involve no new construction or modification of plant operational systems. There would be no changes to the quality or quantity of nonradiological effluents and no changes to the plants' National Pollutant Discharge Elimination System permits would be needed. Changes in staffing levels could result in minor changes in vehicular traffic and associated air pollutant emissions, but no significant changes in ambient air quality would be expected from the proposed changes. In addition, there would be no noticeable effect on socioeconomic conditions in the region, no environment justice impacts, and no impacts to historic and cultural resources from the proposed changes. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

With regard to potential radiological environmental impacts, if the NRC staff's safety review of the proposed changes to the licensee's emergency plans determines that, with the proposed changes, the emergency plans continue to meet the standards of 10 CFR 50.47(b) and the requirements in appendix E to 10 CFR part 50, then the proposed action would not increase the probability or consequences of radiological accidents. Additionally, the NRC staff has concluded that the proposed changes would have no direct radiological environmental impacts. There would be no change to the types or amounts of radioactive effluents that may be released and, therefore, no change in occupational or public radiation exposure from the proposed changes. Moreover, no changes would be made to plant buildings or the site property from the proposed changes. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the license amendment request (*i.e.,* the ''no-action'' alternative). Denial of the license amendment request would result in no change in current environmental impacts. Accordingly, the environmental impacts of the proposed action and the no-action alternative are similar.

Alternative Use of Resources

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

Agencies and Persons Consulted

No additional agencies or persons were consulted regarding the environmental impact of the proposed action.

III. Finding of No Significant Impact

The licensee has requested license amendments pursuant to 10 CFR 50.54(q) to revise the ERO positions identified in the emergency plans for Limerick and Peach Bottom by eliminating ERO positions; adding ERO positions; changing position descriptions, duties, and duty locations; and relocating certain position descriptions to other parts of the emergency plan or to implementing procedures. The NRC is considering issuing the requested amendments. The proposed action would not significantly affect plant safety, would not have a significant adverse effect on the probability of an accident occurring, and would not have any significant radiological or nonradiological impacts. The reason the environment would not be significantly affected is because the proposed changes would only result in minor changes in staffing levels and a small change in air pollutant emissions associated with vehicular traffic. This FONSI incorporates by reference the EA in Section II of this notice. Therefore, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Previous considerations regarding the environmental impacts of operating Limerick, Units 1 and 2, and Peach Bottom, Units 2 and 3, in accordance with their renewed operating licenses, are described in the following documents:

- NUREG–1437, Supplement 49, Volumes 1 and 2, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Limerick Generating Station, Units 1 and 2,'' Final Report, dated August 2014 (ADAMS Accession Nos. ML14238A284 and ML14238A290 (package)).
- NUREG–1437, Supplement 10, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Peach Bottom Atomic Power Station, Units 2 and 3,'' Final Report, dated January 2003 (ADAMS Package Accession No. ML030270059).

Previous considerations regarding the environmental impacts of decommissioning Peach Bottom, Unit 1, are described in NUREG–0586, Supplement 1, Volumes 1 and 2, ''Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities: Regarding the Decommissioning of Nuclear Power Reactors,'' Final Report, dated November 2002 (ADAMS Package Accession Nos. ML023470327 and ML023500228).

This FONSI and other related environmental documents may be examined, and/or copied for a fee, at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Publicly-available records are also accessible online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *pdr.resource@nrc.gov.*

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No.
Exelon, License Amendment Request for Approval of Changes to Emergency Plan Staffing Requirements, dated May 10, 2018.	ML18149A290 (package).
NUREG–0654/FEMA–REP–1, draft Revision 2, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants.''.	ML14163A605 and ML17083A815.
NUREG–1437, Supplement 49, Volumes 1 and 2, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Limerick Generating Station, Units 1 and 2,'' Final Report, dated August 2014.	ML14238A284 and ML14238A290 (package).
NUREG–1437, Supplement 10, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Peach Bottom Atomic Power Station, Units 2 and 3,'' Final Report, dated January 2003.	ML030270059 (package).
NUREG–0586, Supplement 1, Volumes 1 and 2, ''Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities: Regarding the Decommissioning of Nuclear Power Reactors,'' Final Report, dated November 2002.	ML023470327 (package) and ML023500228 (package).

Dated at Rockville, Maryland, this 12th day of July, 2018.

For the Nuclear Regulatory Commission.

Blake A. Purnell,

Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–15282 Filed 7–17–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–012 and 52–013; NRC–2008–0091]

Nuclear Innovation North America, LLC; South Texas Project, Units 3 and 4

AGENCY: Nuclear Regulatory Commission.

ACTION: Termination of licenses.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is terminating the South Texas Project (STP) Units 3 and 4 Combined Licenses (COLs) designated as NPF–97 and NPF–98, and their included licenses to manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material. By letter dated June 22, 2018, Nuclear Innovation North America, LLC (NINA) requested that the NRC terminate the STP Units 3 and 4 COLs. Construction was not initiated for STP Units 3 and 4, and nuclear materials were never procured or possessed under these licenses. Consequently, the STP Units 3 and 4 site is approved for unrestricted use.

DATES: The termination was issued on July 13, 2018.

ADDRESSES: Please refer to Docket ID NRC–2008–0091 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0091. 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.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: James Shea, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1388, email: *James.Shea@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The NRC issued STP Units 3 and 4 COLs, NPF–97 and NPF–98, to NINA and its co-applicants STP Nuclear Operating Company, NINA Texas 3 LLC, NINA Texas 4 LLC, and the City of San Antonio, Texas, acting by and through the City Public Service Board, for the STP Units 3 and 4 on February 12, 2016 (ADAMS Accession No. ML16033A010). Since issuance of the licenses, NINA has not begun construction of Units 3 and 4 or procured nuclear materials for use under the licenses. In NINA's letter dated June 14, 2018 (ADAMS Accession No. ML18176A019), NINA informed the NRC that it no longer plans to move forward with building STP Units 3 and 4 and would consequently submit an application for termination of the licenses. By subsequent letter dated June 22, 2018 (ADAMS Accession No. ML18184A338), NINA requested termination of COLs NPF–97 and NPF–98 and their included title 10 of the *Code of Federal Regulations* (10 CFR) parts 30, 40, and 70 licenses for STP Units 3 and 4.

II. License Termination

Termination of COLs issued under 10 CFR part 52 is controlled by 10 CFR 52.110, ''Termination of license.'' As discussed in ''Current NRC Staff Views on Applying the 1987 Policy Statement on Deferred Plants'' (ADAMS Accession No. ML18065B257), the NRC staff does not apply the requirements for termination in 10 CFR 52.110 to plants that have not begun operation. Requirements for termination of the included licenses under sections 30.36, 40.42, and 70.38 of 10 CFR include the submission of NRC Form 314 or equivalent information. The staff finds that NINA met these requirements through the information provided as part of its June 22, 2018, submission.

Further, as there was no construction associated with the STP Unit 3 and 4 licenses and nuclear materials have never been procured or possessed under these licenses, there is no need for a site radiation survey to be conducted under 10 CFR parts 30, 40, or 70. With no radiological contamination associated with the licenses, the STP Unit 3 and 4 site may be released for unrestricted use pursuant to 10 CFR 20.1402.

III. Environmental Review

NINA seeks to terminate the STP Unit 3 and 4 COLs for which construction never commenced and nuclear material was never procured or brought onsite. Terminating a COL is a licensing action that would ordinarily require an environmental assessment under 10 CFR 51.21, unless a categorical exclusion in 10 CFR 51.22(c) applies and no special circumstances under 10 CFR 51.22(b) exist. Actions listed in 10 CFR 51.22(c) were previously found by the Commission to be part of a category of actions that ''does not individually or cumulatively have a significant effect on the human environment.''

The categorical exclusion identified in 51.22(c)(20) includes:

Decommissioning of sites where licensed operations have been limited to the use of—

(i) Small quantities of short-lived radioactive materials;

(ii) Radioactive materials in sealed sources, provided there is no evidence of leakage of radioactive material from these sealed sources; or

(iii) Radioactive materials in such a manner that a decommissioning plan is not required by 10 CFR 30.36(g)(1), 40.42(g)(1), or 70.38(g)(1) and the NRC has determined that the facility meets the radiological criteria for unrestricted use in 10 CFR 20.1402 without further remediation or analysis.

This categorical exclusion captures decommissioning activities at sites where contamination from radioactive material is determined to be nominal. In the case of STP Units 3 and 4, no associated radiological contamination exists because construction never commenced and nuclear material was never procured or brought on site. As a result, a decommissioning plan for this site is not required by 10 CFR 30.36(g)(1), 40.42(g)(1), or 70.38(g)(1), and the site meets the radiological criteria for unrestricted use in 10 CFR 20.1402 without further remediation or analysis. Further, no special circumstances under 10 CFR 51.22(b) apply. The factors listed in 10 CFR 51.22(c)(20) are consistent with the circumstances here because there is no environmental impact associated with the STP Unit 3 and 4 COLs, which is even less than the nominal impacts anticipated by the categorical exclusion. Therefore, application of the categorical exclusion to the termination of the STP Units 3 and 4 COLs is warranted. Consequently, in accordance with 10 CFR 51.21, an environmental assessment is not required for the termination of COLs NPF–97 and NPF–98 and their included 10 CFR parts 30, 40, and 70 licenses.

IV. Conclusion

As discussed above, the Commission has determined that the STP Unit 3 and 4 COL termination request meets the categorical exclusion criteria set forth in 10 CFR 51.22(c)(20) and that the unrestricted use criteria pursuant to 10 CFR 20.1402 are met. The Commission grants NINA's request to terminate the COLs designated as NPF–97 and NPF–98 and their included 10 CFR parts 30, 40, and 70 licenses for STP Unit 3 and 4. This license termination was effective upon NINA's receipt of NRC's termination letter, dated July 12, 2018 (ADAMS Accession No. ML18179A217).

Dated at Rockville, Maryland, this 13th day of July 2018.

For the Nuclear Regulatory Commission.

Allen H. Fetter,

Acting Chief, Licensing Branch 3, Division of Licensing, Siting, and Environmental Analysis Office of New Reactors.

[FR Doc. 2018–15302 Filed 7–17–18; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2018–268]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 20, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2018–268; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 7 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* July 12, 2018; *Filing Authority:* 39 CFR 3015.5*; Public Representative:* Nina Yeh; *Comments Due:* July 20, 2018.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–15300 Filed 7–17–18; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. PI2018–1; Order No. 4708]

Classification of the Inbound Letter Post Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is establishing a public inquiry regarding Postal Service's claim that the Inbound Letter Post product is subject to competition. This notice informs the public of this proceeding, invites public comment, and takes other administrative steps.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

I. Introduction

In recent proceedings, the Postal Service claimed that the Inbound Letter Post product [1] is subject to competition. The Commission establishes this docket to examine these and related claims.

II. Background

A. The Universal Postal Union

The Universal Postal Union (UPU) is a United Nations specialized agency comprising 192 member countries, including the United States.[2] Member countries negotiate international agreements governing the exchange of international mail, including applicable rates for the delivery of international mail. The UPU identifies three types of international mail: Letter Post, Parcel Post, and Express Mail Service (EMS).[3]

UPU Letter Post mailpieces consist of letters, postcards, printed papers, and small packets weighing up to 2 kilograms.[4] The UPU divides UPU Letter Post mail into three shapes: Letters and cards (format P); large letters or ''flats'' (format G); and bulky letters and small packets (format E). In January 2018, the Universal Postal Convention (UPU Convention) began differentiating UPU Letter Post mail by content in addition to shape.[5] The UPU Convention limits the contents of cards, letters, flats, and bulky letters to documents. UPU Convention, Article 17.2. Small packets are UPU Letter Post mailpieces containing goods. *Id.* Article 17.3.

B. Statutory Framework

In 2006, the Postal Accountability and Enhancement Act (PAEA) [6] was enacted. The PAEA separated postal products into two distinct classifications: Market dominant and competitive.[7] Pursuant to 39 U.S.C. 3642(b), market dominant products are those products over which ''the Postal Service exercises sufficient market power that it can effectively set the price of such product[s] substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.'' [8] Competitive products ''consist of all other products.'' [9]

Section 3642 of title 39 governs the addition of products to, removal of products from, or transfer of products (or components of a product) between the market dominant and competitive product lists.[10] The Commission may consider a change to a product's market dominant or competitive classification upon request of the Postal Service, users of the mail, or upon its own initiative. 39 U.S.C. 3642(a). The criteria for assigning a product to either the market dominant or competitive product list is described in 39 U.S.C. 3642(b). When transferring products between product lists, there is nothing to prevent transfer of only part of a product. 39 U.S.C. 3642(c).

The criteria for assigning a product to either the market dominant or competitive product list are based on a measure of the Postal Service's market power; whether or not the product is covered by the postal monopoly; and the concerns of the private sector, users of the product, and small businesses. 39 U.S.C. 3642(b).

The market power criteria are specified in 39 U.S.C. 3642(b)(1) as follows:

[The text of 39 U.S.C. 3642(b)(1) was removed to comply with the **Federal Register** Document Drafting Handbook, section 2.6. *See* 39 U.S.C. 3642(b)(1).].

The postal monopoly criteria are specified in 39 U.S.C. 3642(b)(2) as follows:

[The text of 39 U.S.C. 3642(b)(2) was removed to comply with the **Federal Register** Document Drafting Handbook, section 2.6. *See* 39 U.S.C. 3642(b)(2).].

The private sector, users of the product, and small businesses criteria are specified in 39 U.S.C. 3642(b)(3) as follows:

[The text of 39 U.S.C. 3642(b)(3) was removed to comply with the **Federal Register** Document Drafting Handbook, section 2.6. *See* 39 U.S.C. 3642(b)(3).].

When including products on the competitive product list, the product must also meet the financial requirements of 39 U.S.C. 3633(a), which:

[The text of 39 U.S.C. 3633(a) was removed to comply with the **Federal Register** Document Drafting Handbook, section 2.6. *See* 39 U.S.C. 3633(a).].

C. Classification of Inbound Letter Post

Sections 3621 and 3631 of title 39 listed the products preliminarily classified as market dominant and competitive, respectively. The PAEA preliminarily classified single-piece international mail as market dominant and bulk international mail as competitive. 39 U.S.C. 3621(a)(10) and 3631(a)(4). When the Commission requested comments related to the classification of inbound international mail in its initial rulemaking pursuant to the requirements of PAEA, the Postal Service argued that the Commission should not classify inbound

[1] As defined in section 1130 of the Mail Classification Schedule (MCS).

[2] The full list of UPU member countries is available at *http://www.upu.int/en/the-upu/member-countries.html.*

[3] EMS mail is an express service for documents and merchandise, which member countries have the option of providing. MCS Section 2515.6.1. EMS prices are set through bilateral or multilateral negotiations. *Id.* Sections 2515.6.4., 2515.6.6.

[4] UPU Convention, Article 17. UPU Letter Post mail also consists of literature for the blind weighing up to 7 kilograms and M-bags weighing up to 30 kilograms. *Id.* M-bags are special bags containing newspapers, periodicals, books, and similar matter mailed to a single address. *Id.*

[5] *See* International Mailing Services: Proposed Product and Price Change—CPI, 82 FR 49160, 49161 (October 24, 2017); Docket No. R2018–1, Notice of Market Dominant Price Adjustment, October 6, 2017, at 10.

[6] Public Law 109–435, 120 Stat. 3198 (2006).

[7] 39 U.S.C. 3621, 3631, 3642. The PAEA exempted experimental products from the requirement that they be classified as market dominant or competitive products. 39 U.S.C. 3641(a)(2).

[8] 39 U.S.C. 3642(b)(1). Examples of market dominant products include products in the First-Class Mail, USPS Marketing Mail, and Periodicals classes.

[9] *Id.* Examples of competitive products include Priority Mail, Priority Mail Express, and First-Class Package Service.

[10] 39 U.S.C. 3642. The implementing regulations for this section appear in 39 CFR part 3020.

international mail as market dominant or competitive.[11]

The Commission found the Postal Service's arguments for exceptional treatment of inbound international mail as neither market dominant nor competitive unpersuasive and inconsistent with section 3642.[12] The Commission concluded, ''[h]ad Congress intended to exempt inbound international mail from the requirement that all products be categorized as either market dominant or competitive, it would have done so explicitly, as it did by specifically exempting experimental products from the requirements of section 3642.'' Order No. 43 at 78 (footnote omitted). The Commission found that the PAEA unambiguously requires the Commission to classify inbound international mail products as either market dominant or competitive. *Id.* Consistent with section 3621, the Commission classified Inbound Letter Post as a market dominant product. *Id.* at 85.

III. Claims of Competition and Commission Action

In Docket Nos. R2018–1 and Docket ACR2017, the Postal Service repeatedly claimed that Inbound Letter Post is subject to ''considerable,'' ''substantial,'' and ''intense'' competition, especially Inbound Letter Post small packets.[13] However, the Postal Service filed documents in support of its claims of competition for the first time when it filed its Motion for Reconsideration. Motion for Reconsideration, Attachments 1–4. Despite these claims of competition, the Postal Service acknowledged that the Inbound Letter Post product is on the market dominant product list and that it has not requested to transfer all or part of the Inbound Letter Post product to the competitive product list. Motion for Reconsideration at 6.

In its Motion for Reconsideration, the Postal Service stated that it explored the potential transfer of Inbound Letter Post small packets from the market dominant to the competitive products list. *Id.* However, the Postal Service stated that one obstacle to transferring all or part of the Inbound Letter Post product from the market dominant product list to the competitive product list relates to the ''inability to separate Inbound Letter Post that is subject to the Private Express Statutes [(PES)] from Inbound Letter Post that is not subject to the PES.'' *Id.*

These claims raised the question of whether Inbound Letter Post should be wholly or partially transferred from the market dominant product list to the competitive product list. Rather than attempt to address these issues in Docket No. ACR2017, the Commission concluded that the best course of action is to initiate a separate proceeding to evaluate these issues, including the non-public attachments the Postal Service provided with its Motion for Reconsideration.

Accordingly, the Commission establishes the instant proceeding to examine the classification of the Inbound Letter Post product. The Commission is issuing a Commission Information Request (CIR) concurrently with this Order. Once a sufficient record has been developed, the Commission will issue a procedural schedule inviting comment.

Pursuant to 39 U.S.C. 505, James Waclawski is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

Additional information may be accessed via the Commission's website at *http://www.prc.gov.*

IV. Ordering Paragraphs

It is ordered:

1. The Commission hereby establishes Docket No. PI2018–1 to review issues related to the classification of the Inbound Letter Post product and parts thereof.

2. Pursuant to 39 U.S.C. 505, James Waclawski is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–15284 Filed 7–17–18; 8:45 am]

BILLING CODE 7710–FW–P

[11] Docket No. RM2007–1, Initial Comments of the United States Postal Service in Response to Order No. 26, September 24, 2007, at 13–22.

[12] Docket No. RM2007–1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007, at 78 (Order No. 43).

[13] *See* Docket No. ACR2017, United States Postal Service Motion for Reconsideration of Order No. 4451, April 6, 2018, at 4 (Motion for Reconsideration) (''Inbound Letter Post is subject to substantial competition.''); *id.* at 8–9 (cited filings in other Commission proceedings that allege the private sector competes in the Inbound Letter Post market); *id.*at 10 (''the vast majority of Inbound Letter Post mail faces substantial competition''); *id.* at 12–13 (''existing market research regarding inbound package volume, which is included in Nonpublic Attachment 1, illustrates the intense competition for Inbound Letter Post faced by the Postal Service and foreign postal operators.'' (footnote omitted)); Docket No. ACR2017, Response of the United States Postal Service to Order No. 4409, February 23, 2018, at 5 (small packets ''already face considerable competition today.'' (footnote omitted)); *id.* at 6 (''the Postal Service operates in a competitive market for inbound international shipping, which includes inbound small packets containing merchandise.'' (footnote omitted)); *id.* at 6 n.13 (''Not only are Inbound Letter Post packets subject to considerable competition, but bulk international letter and flat mail can be subject to competition as well.''); Docket No. ACR2017, United States Postal Service Notice of Filing Nonpublic Folder USPS–FY17–NP40 and Application for Nonpublic Treatment, February 14, 2018, Attachment at 2 (CHIR No. 15 Application for Non-Public Treatment) (''Not only are Inbound Letter Post packets (E Format) subject to considerable competition, but bulk international letter and flat mail (P and G Format) can be subject to competition as well.''); *id.* at 3 (''The Postal Service is just one of the participants operating in the competitive market for inbound international shipping, which includes inbound small packets containing merchandise.''); Docket No. R2018–1, United States Postal Service Answer in Opposition to U.S. Chamber of Commerce Motion to Unseal Library Reference and Motion to Request Issuance of Information Request, October 23, 2017, at 4 (''''inbound letter post . . . face[s] significant competition from private sector competitors and Extraterritorial Offices of Exchange[.]' The competitive nature of the international market, particularly with respect to . . . inbound letter post packets weighing 4.4 pounds or less, is well established.'' (footnote omitted)).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83623; File No. SR–NASDAQ–2018–051]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend The Nasdaq Options Market LLC (''NOM'') Rules and Adopt a Zero Bid Options Rule

July 12, 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 June 29, 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 amend The Nasdaq Options Market LLC (''NOM'') Rules at Chapter V, Section 3, entitled ''Trading Halts'' and Chapter VI, Section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

6, entitled ''Acceptance of Quotes and Orders.''

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 Exchange proposes to amend Chapter V, Section 3, entitled ''Trading Halts'' to remove unnecessary rule text. The Exchange proposes to amend NOM Rules to adopt a zero bid options rule at Chapter VI, Section 6, entitled ''Acceptance of Quotes and Orders.'' The Exchange proposes to adopt a zero bid options rule on NOM within Chapter VI, Section 6, entitled ''Acceptance of Quotes and Orders'' and remove rule text which the Exchange believes is unnecessary. Each proposal is described in more detail below.

Chapter V, Section 3

The Exchange proposes to amend Chapter V, Section 3(b), which currently provides, ''In the event Nasdaq Regulation determines to halt trading, all trading in the effected class or classes of options shall be halted. NOM shall disseminate through its trading facilities and over OPRA a symbol with respect to such class or classes of options indicating that trading has been halted, and a record of the time and duration of the halt shall be made available to vendors.'' The Exchange proposes to remove the words ''such class or'' because the Exchange only disseminates over OPRA a symbol with respect to classes of options to indicate a trading halt. By amending this rule, the Exchange will add more transparency as to how it disseminates information regarding trading halts.

Chapter VI, Section 6

Today, the Exchange does not have a rule for the handling of options with no bid or zero bid options. The Exchange's handling of zero bid options on NOM is identical to the manner in which zero bid is handled on Phlx.[3] The Exchange proposes to add this new rule to Chapter VI, Section 6(a)(3). The new rule would provide, ''In the case where the bid price for any options contract is $0.00, a market order accepted into the System to sell that series shall be considered a limit order to sell at a price equal to the minimum trading increment as defined in Chapter VI, Section 5. Orders will be placed on the limit order book in the order in which they were received by the System. With respect to market orders to sell which are submitted prior to the Opening and persist after the Opening, those orders are posted at a price equal to the minimum trading increment as defined in Chapter VI, Section 5.''

The Exchange intends to accept and convert market orders to sell allowing them an equal opportunity to trade if interest should arrive in the case of a no bid option. The Exchange notes that the orders would rest on the Order Book at the minimum price increment. The Exchange notes market orders ''accepted into the System'' would be converted to account for market orders that may not be accepted into the System due to Limit Up-Limit Down restrictions, which may prevent the market order from being accepted.[4] Only after acceptance into the System will market orders be treated as a sell limit order at a price equal to the minimum trading increment.

Further, the Exchange proposes to add rule text which provides ''Orders will be placed on the limit order book in the order in which they were received by the System.''[5] The Exchange proposes to note that with respect to market orders to sell in zero bid options, which are submitted prior to the Opening Process[6] and persist after the Opening Process, those orders are posted at a price equal to the minimum trading increment as defined in Chapter VI, Section 5.[7] The Exchange's proposed rule will provide market participants with greater insight into the handling of orders where there is a zero bid. The Exchange believes that this proposed amendment will accurately describe the manner in which a zero-bid options series operates within the System both before and after the Opening Process.

The Exchange also proposes to amend Chapter VI, Section 6(b) which currently states, ''All System orders entered by Participants directing or permitting routing to other market centers shall be routed for potential display and/or execution as set forth in Section 11 below. Routing shall be available in System securities as well as Non-System securities listed on other exchanges.'' The Exchange proposes to remove ''Routing shall be available in System securities as well as Non-System securities listed on other exchanges.'' The Exchange defines ''System Securities'' at Chapter VI, Section 1(b) of the NOM Rules and defines ''Non-System Securities'' as all other options. Nasdaq originally programmed the System to differentiate between System Securities and Non-System Securities.[8] Nasdaq stated in that filing it would accept orders in Non-System Securities for routing but will not execute these orders in the System.[9] In 2012, NOM's rule were amended to provide that routing is limited to System Securities. System Securities are all options that are currently trading on NOM pursuant to Chapter IV.[10] Further, the Subsequent Filing provided that only System Securities are traded on NOM pursuant to Chapter IV. All other options are Non-System Securities.[11] The Subsequent filing noted that at one time, NOM offered routing of Non-System Securities but has not offered such routing since November 30, 2011. Finally, the Subsequent Filing noted that this routing feature was rarely used and was discontinued. Currently, NOM only routes securities that are listed on NOM. The Exchange proposes to

[3] *See* Phlx Rule 1035.

[4] The Limit Up-Limit Down requirements must be met first before the proposed rule would apply.

[5] The time of receipt for an order is the time such message is processed by the System.

[6] The Exchange's Opening Process is described in Rule 701.

[7] Chapter VI, Section 5, entitled ''Minimum Increments'' provides for the minimum increments of trading.

[8] Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 208) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (Notice of Filing of Amendment No. 2 to a Proposed Rule Change and Order Granting Accelerated Approval to a Proposed Rule Change, as Amended, To Establish Rules Governing the Trading of Options on the NASDAQ Options Market; Order Approving a Proposed Rule Change Relating to the LLC Agreement Establishing the NASDAQ Options Market LLC and Delegation Agreement Delegating to NOM LLC the Authority To Operate the NASDAQ Options Market; Order Granting an Application of The NASDAQ Stock Market LLC for an Exemption Pursuant to Section 36(a) of the Exchange Act from the Requirements of Section 19(b) of the Exchange Act; and Order Granting an Exemption for the NASDAQ Options Market LLC from Section 11A(b) of the Exchange Act.)

[9] *Id.*

[10] Securities Exchange Act Release No. 67301 (June 28, 2012), 77 FR 39774 (July 5, 2012) (SR–Nasdaq–2012–077) (''Subsequent Filing'').

[11] *Id.*

remove this sentence related to routing which the Exchange believes should have been removed in connection with the Subsequent Filing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

Chapter V, Section 3

The Exchange is providing greater transparency as to the manner in which the Exchange disseminates information over OPRA during a trading halt. The Exchange believes that this rule text is consistent with the Act and the protection of investors and the public interest because it brings greater clarity as to what type of information is provided during a halt.

Chapter VI, Section 6

The Exchange's proposal to adopt a zero bid rule is consistent with the Act and designed to promote just and equitable principles of trade and to protect investors and the public interest by adopting text which describes the handling of zero-bid options. The Exchange is treating all market orders to sell in zero bid options in the same fashion by converting all those orders, provided that the Exchange's disseminated bid price in such option is zero for an option listed only on the Exchange or, for an option listed on multiple exchanges and the disseminated NBBO includes a bid price of zero in the series. Market orders to sell in zero bid options will be placed on the limit order book in the order in which they were received by the System. The Exchange desires to prevent members from submitting market orders to sell in no bid series, which would execute at a price of $0.00. The Exchange believes that the proposed rule will achieve this objective and continue to permit the Exchange to execute orders within its System at prices that reflect some value. Adding rule text regarding market orders to sell in zero bid options submitted prior to the Opening Process and persisting after the Opening Process is consistent with the Act because it provides more transparency as to the operation of this rule and as to how those market orders to sell in zero bid options will be handled by the System. Further, the Exchange believes that memorializing its current practice within the rule text will bring more clarity to the manner in which the zero bid rule operates to the benefits of all market participants.

Finally, the Exchange believes removing language concerning Non-System Securities in Chapter VI, Section 6(b) is consistent with the Act because it avoids confusion by removing language which should have been removed with the 2006 filing which distinguished System and Non-System Securities. The language discusses a distinction which was removed from the rules in 2012.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[15] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Chapter V, Section 3

The Exchange's proposal to amend Chapter V, Section 3(b) to more specifically describe the information disseminated during a trading halt do not impose an undue burden on competition because the amendments add more transparency to the trading halt rule.

Chapter VI, Section 6

The Exchange's proposal to adopt a zero bid options rule does not impose an undue burden on competition because the proposed rule change will continue to apply uniformly for all market participants who enter market orders to sell into the System when there is a zero-bid options.

Finally, the removal of language concerning Non-System Securities in Chapter VI, Section 6(b) does not impose an undue burden on competition because this language references an obsolete functionality in the rulebook that was removed from the rules in 2012.[16]

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.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* note 10 above.

[15] 15 U.S.C. 78f(b)(8).

[16] *See* note 10 above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [19] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [20] 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 requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay would allow the Exchange to update its rules to immediately reflect the operation of zero bid series on NOM. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 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.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2018–051 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–2018–051. 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–2018–051, and should be submitted on or before August 8, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–15289 Filed 7–17–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83624; File No. SR–BOX–2018–18]

Self-Regulatory Organizations; BOX Options Exchange LLC; Order Granting Approval of a Proposed Rule Change To Adopt IM–7130–1 to Rule 7130

July 12, 2018.

I. Introduction

On May 16, 2018, BOX Options Exchange LLC (the ''Exchange'' or ''BOX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt IM–7130–1 to BOX Rule 7130 to provide certain BOX Book[3] information to Participants[4] upon request. The proposed rule change was published for comment in the **Federal Register** on May 31, 2018.[5] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

BOX proposes to adopt new IM–7130–1 to Rule 7130 to provide that, upon request, the Exchange may make available to a Participant the amount of any priority interest on the BOX Book. For purposes of the proposed new rule, the term ''priority interest'' means the number of Public Customer contracts and Non-Public Customer contracts that are ranked ahead of such Public Customer contracts at a given price for a specific option class.[6] The information would be verbally provided to Participants for no fee, on a best efforts basis, and would be for advisory purposes only.[7] All BOX Book information would be provided on an anonymous basis.[8]

Under the proposed rule, Floor Brokers would inquire with an Options Exchange Official or his or her designee, and all other Participants would inquire with BOX's Market Operations Center.[9] Participants would be required to request this information each time and the Exchange would not provide continuous updated information.[10] The Exchange represents that an Options Exchange Official will provide the requested information when doing so does not interfere with their regulatory responsibilities.[11]

The Exchange believes that the proposed rule change will provide Participants greater clarity on the composition and availability of liquidity on the BOX Book.[12] With respect to the BOX Trading Floor, the Exchange believes that the availability of this information will lead to increased interaction with the BOX Book, because Floor Brokers will be aware of the liquidity available on the BOX Book that could interact with their Qualified Open Outcry Order (''QOO Order'')[13] and may choose to use such liquidity when executing orders from the Trading Floor or using a separate order to sweep that interest.[14]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''BOX Book'' means the electronic book of orders on each single option series maintained by the BOX Trading Host. *See* BOX Rule 100(a)(10).

[4] The term ''Participant'' means a firm, or organization that is registered with the Exchange pursuant to the BOX Rule 2000 Series for purposes of participating in options trading on BOX as an ''Order Flow Provider'' or ''Market Maker.'' *See* BOX Rule 100(a)(41).

[5] *See* Securities Exchange Act Release No. 83318 (May 24, 2018), 83 FR 25079 (''Notice'').

[6] *See* proposed BOX Rule IM–7130–1. ''Public Customer'' means a person that is not a broker or dealer in securities. *See* BOX Rule 100(a)(52).

[7] *See* proposed BOX Rule IM–7130–1.

[8] *See id.*

[9] *See id.* The term ''Market Operations Center'' or ''MOC'' means the BOX Market Operations Center, which provides market support for Options Participants during the trading day. *See* BOX Rule 100(a)(32).

[10] *See* proposed BOX Rule IM–7130–1.

[11] *See* Notice, *supra* note 5, at 25080 n.5.

[12] *See* Notice, *supra* note 5, at 25080.

[13] A QOO Order has two sides; the initiating side and the contra-side. The initiating side is the order which must be filled in its entirety. The contra-side must guarantee the full size of the initiating side of the QOO Order and may provide a book sweep size as provided in BOX Rule 7600(h). *See* BOX Rule 7600(a)(1). The initiating side of a QOO Order will execute against Public Customer Orders on the BOX Book and any other orders or quotes ranked ahead of such Public Customer Orders at the execution price first. *See* BOX Rule 7600(d)(2).

[14] *See* Notice, *supra* note 5, at 25080.

securities exchange.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[16] which requires, among other things, that the Exchange's rules be 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 Commission notes that the proposed rule change, which would make priority interest information available upon request for all Participants, will provide increased transparency to Participants, which the Exchange believes has the potential to result in more liquidity on the Exchange and increased interaction with the BOX Book. The Commission also notes that the proposed rule change, with respect to floor trading, is similar to the procedures of another options exchange that operates a trading floor.[17] For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [18] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–BOX–2018–18) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–15290 Filed 7–17–18; 8:45 am]

BILLING CODE 8011–01–P

[15] In approving this proposed rule change the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] *See* NYSE Arca Regulatory Bulletin RB–16–04 (February 19, 2016) (stating that Floor Brokers on NYSE Arca may inquire with the Trading Official at the post to the amount of any priority interest on NYSE Arca's electronic book). In addition, the Commission notes that some other options exchanges provide similar information on a real-time basis to data feed subscribers. *See, e.g.,* Securities Exchange Act Release No. 74759 (April 17, 2018), 82 FR 22749 (April 23, 2015) (SR–MIAX–2015–28) (describing MIAX Order Feed which provides the origin of orders on the MIAX order book).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 10465]

Town Hall Meeting on Modernizing the Columbia River Treaty Regime

AGENCY: Department of State.

ACTION: Notice of meeting.

SUMMARY: The Department of State (Department) will hold a Town Hall meeting in Portland, Oregon, to discuss the modernization of the Columbia River Treaty (CRT) regime.

DATES: The meeting will be held on September 6, 2018, from 5:30 p.m. to approximately 7:00 p.m., Pacific Time.

ADDRESSES: The meeting will be held in the Bonneville Power Administration's Rates Hearing Room, 1201 Lloyd Blvd. Suite 200, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Susan May, *ColumbiaRiverTreaty@state.gov,* 202–647–2170.

SUPPLEMENTARY INFORMATION: This Town Hall is part of the Department's public engagement on the modernization of the CRT regime. The meeting is open to the public, up to the capacity of the room. Requests for reasonable accommodation should be made to the email listed above, on or before August 30, 2018. The Department will consider requests made after that date, but might not be able to accommodate them. Information regarding the proposed agenda, and other information about the meeting, can be found at *https://www.state.gov/p/wha/ci/ca/topics/c78892.htm* or by emailing the email address listed above. If you are unable to attend in person, you can listen to the Town Hall via phone by calling 1–888–330–1716 and entering the passcode 19431467#.

Cynthia A. Kierscht,

Director, Office of Canadian Affairs, Department of State.

[FR Doc. 2018–15306 Filed 7–17–18; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice: 10466]

Privacy Act of 1974; System of Records

AGENCY: Department of State.

ACTION: Rescindment of a System of Records Notice.

SUMMARY: ''Foreign Service Employee Locator/Notification Records, State-12'', which is being rescinded, contains information used to forward employees' mail and for the notification of next of kin in the event of an emergency or death of an employee.

DATES: On March 24, 2018, the Department of State published a notice in the **Federal Register** (83 FR 17873) that records in State-12 were being consolidated with ''Employee Contact Records, State-40'' into a single modified State-40, because the records and system purposes are substantially similar.

ADDRESSES: Questions can be submitted by mail, email, or by calling Mary Avery, the Senior Agency Official for Privacy (SAOP), on (202) 663–2215. If mail, please write to: U.S. Department of State; Office of Global Information Systems, Privacy Staff, A/GIS/PRV; SA–2, Suite 8100; Washington, DC 20522–0208. If email, please address the email to the Senior Agency Official for Privacy (SAOP), Mary R. Avery, at *Privacy@state.gov.* Please write ''Foreign Service Employee Locator/Notification Records, State-12'' on the envelope or the subject line of your email.

FOR FURTHER INFORMATION CONTACT: Mary R. Avery, Senior Agency Official for Privacy (SAOP); U.S. Department of State; Office of Global Information Services, A/GIS/PRV; SA–2, Suite 8100; Washington, DC 20522–0208 or by calling (202) 663–2215.

SUPPLEMENTARY INFORMATION: The records in ''Foreign Service Employee Locator/Notification Records, State-12'' (previously published at 42 FR 49705) were consolidated with ''Employee Contact Records, State-40'' (previously published at 75 FR 67431). The new SORN reflecting the consolidated system of records ''Employee Contact Records, State-40'' was published at 83 FR 17873 on March 24, 2018.

SYSTEM NAME AND NUMBER

Foreign Service Employee Locator/Notification Records, State-12.

HISTORY:

''Foreign Service Employee Locator/Notification Records, State-12'' was previously published at 42 FR 49705 and ''Employee Contact Records, State-40'' was previously published at 75 FR 67431 before being modified and re-published at 83 FR 17873.

Mary R. Avery,

Senior Agency Official for Privacy, Senior Advisor, Office of Global Information Services, Bureau of Administration, Department of State.

[FR Doc. 2018–15308 Filed 7–17–18; 8:45 am]

BILLING CODE 4710–24–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36202]

Buckingham Branch Railroad Company—Change in Operators Exemption—Cassatt Management, LLC d/b/a Bay Coast Railroad

Buckingham Branch Railroad Company (BB), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to assume operations over the following rail lines: (1) A 2.6-mile rail line, owned by Canonie Atlantic Co. (CAC) on behalf of the Accomack-Northampton Transportation District Commission (ANTDC), extending between milepost 95.0 at Little Creek (Virginia Beach), Va., and milepost 97.6 at Camden Heights (Norfolk), Va. (the Little Creek Line); and (2) a 4.2-mile rail line owned by Norfolk Southern Railway Company (NSR), extending between milepost SN 6.7 at Diamond Springs (Virginia Beach), Va., and milepost SN 2.5 at Coleman Place (Norfolk), Va. (the North Beach and Diamond Springs Line) [1] (collectively, the Lines). According to BB, the Lines represent two branches forming a ''Y'' with an overlapping convergence into the stem at Camden Heights, with milepost SN 2.5 at Coleman Place located west of the convergence. BB states that it will also utilize an additional four miles of trackage rights to facilitate interchange with NSR at Portlock Yard.

BB states that it will provide rail common carrier service to shippers on the Lines and that its operations will replace those of Cassatt Management, LLC d/b/a Bay Coast Railroad (BCR), the current operator.[2] BB further states that BCR seeks to imminently cease operations over the Lines and does not object to the proposed change in operators. According to BB, BCR's ability to continue operation of the Lines has recently become uncertain, and recent personnel departures at BCR have prompted BCR to press for terminating its Norfolk-area operations as soon as possible.[3] BB states it is negotiating a lease and operation agreement with CAC for the Little Creek Line and a lease agreement with NSR to operate over the North Beach and Diamond Springs Line.

BB states that the proposed operation of the Lines does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier. BB also certifies that its projected annual revenues from freight operations will not result in the creation of a Class II or Class I rail carrier.

Under 49 CFR 1150.42(b), a change in operators requires that notice be given to shippers. BB states that it has provided notice of the proposed change in operator to the shippers on the Lines.

BB certifies that on June 13, 2018, it posted notice of the transaction at the workplace of BCR employees as required under 49 CFR 1150.42(e). BB states that BCR employees are not represented by any labor union. Concurrently with its notice of exemption, BB filed a petition for partial waiver of the 60-day advance labor notice requirement under 49 CFR 1150.42(e) to allow the transaction to be consummated on August 1, 2018. The petition for waiver will be addressed in a separate decision, which will establish the earliest date this transaction may be consummated.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than July 25, 2018.

An original and 10 copies of all pleadings, referring to Docket No. FD 36202, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on BB's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

According to BB, this action is excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available on our website at *WWW.STB.GOV.*

Decided: July 13, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2018–15331 Filed 7–17–18; 8:45 am]

BILLING CODE 4915–01–P

[1] BB states that NSR formerly leased the North Beach and Diamond Springs Line to another carrier, Eastern Shore Railroad. According to BB, no discontinuance authority is required as this is a change in operators.

[2] *See Cassatt Mgmt. LLC—Lease & Operation Exemption—Canonie Atlantic Co. ex rel. Accomack-Northampton Transp. Dist. Comm'n,* FD 34818 (STB served Feb. 6, 2006).

[3] BB states that the circumstances here are related to those underlying the transaction in *Delmarva Central Railroad—Change in Operator Exemption—Cassatt Management, LLC D/B/A Bay Coast Railroad,* FD 36196 (STB served Jun. 8, 2018).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Fiscal Year 2019 Tariff-Rate Quota Allocations for Raw Cane Sugar, Refined and Specialty Sugar and Sugar-Containing Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of country-by-country allocations of the Fiscal Year 2019 (Oct. 1, 2018 through Sept. 30, 2019) in-quota quantity of the tariff-rate quotas for imported raw cane sugar.

DATES: This notice is applicable on July 18, 2018.

FOR FURTHER INFORMATION CONTACT: Dylan Daniels, Office of Agricultural Affairs, at 202–395–6095.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains tariff-rate quotas (TRQs) for imports of raw cane sugar. Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a TRQ for any agricultural product among supplying countries or customs areas. The President delegated this authority to the U.S. Trade Representative under Presidential Proclamation 6763 (60 FR 1007).

On June 29, 2018, the Secretary of Agriculture (Secretary) announced the sugar program provisions for Fiscal Year 2019. The Secretary announced an in-quota quantity of the TRQ for raw cane sugar for Fiscal Year 2019 of 1,117,195 metric tons (conversion factor: 1 metric ton = 1.10231125 short tons) raw value (MTRV), which is the minimum amount to which the United States is committed under the World Trade Organization (WTO) Uruguay Round Agreements. USTR is allocating this quantity (1,117,195 MTRV) to the following countries in the amounts specified below:

Country	Fiscal year 2019 raw cane sugar allocations (MTRV)
Argentina	45,281
Australia	87,402
Barbados	7,371
Belize	11,584
Bolivia	8,424
Brazil	152,691
Colombia	25,273

Country	Fiscal year 2019 raw cane sugar allocations (MTRV)
Congo	7,258
Costa Rica	15,796
Cote d'Ivoire	7,258
Dominican Republic	185,335
Ecuador	11,584
El Salvador	27,379
Fiji	9,477
Gabon	7,258
Guatemala	50,546
Guyana	12,636
Haiti	7,258
Honduras	10,530
India	8,424
Jamaica	11,584
Madagascar	7,258
Malawi	10,530
Mauritius	12,636
Mexico	7,258
Mozambique	13,690
Nicaragua	22,114
Panama	30,538
Papua New Guinea	7,258
Paraguay	7,258
Peru	43,175
Philippines	142,160
South Africa	24,220
St. Kitts & Nevis	7,258
Swaziland	16,849
Taiwan	12,636
Thailand	14,743
Trinidad & Tobago	7,371
Uruguay	7,258
Zimbabwe	12,636

These allocations are based on the countries' historical shipments to the United States. The allocations of the in-quota quantities of the raw cane sugar TRQ to countries that are net importers of sugar are conditioned on receipt of the appropriate verifications of origin, and certificates for quota eligibility must accompany imports from any country for which an allocation has been provided. Raw cane sugar for Fiscal Year 2019 TRQs may enter the United States as of October 1, 2018.

Robert Lighthizer,

United States Trade Representative.

[FR Doc. 2018–15266 Filed 7–17–18; 8:45 am]

BILLING CODE 3290–F8–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Hays County, Texas

AGENCY: Texas Department of Transportation (TxDOT), Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Federal notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: FHWA, on behalf of TxDOT, is issuing this notice to advise the public that an EIS will be prepared for a proposed transportation project to construct a new location four lane roadway in and near the City of Kyle in Hays County. The roadway would start west of Kyle and run east to Interstate 35 (I–35), and may follow portions of existing Ranch-to-Market (RM) 150, from west of Arroyo Ranch Road, running east to I–35.

FOR FURTHER INFORMATION CONTACT: Carlos Swonke, Division Director, TxDOT Environmental Affairs Division, 125 East 11th Street, Austin, Texas 78701; Phone (512) 416–2734; email: *carlos.swonke@txdot.gov.* TxDOT's normal business hours are 8:00 a.m.–5:00 p.m. (central time), Monday through Friday.

SUPPLEMENTARY INFORMATION: The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 16, 2014, and executed by FHWA and TxDOT.

TxDOT will prepare an EIS for the proposed construction of a new location four lane roadway in and near the City of Kyle in Hays County. The roadway would start west of Kyle and run east to I–35, and may follow portions of existing RM 150, from west of Arroyo Ranch Road, running east to I–35. The proposed project is included in the Capital Area Metropolitan Planning Organization (CAMPO) 2040 Metropolitan Transportation Plan, 2015, as a new location four-lane roadway that may follow portions of the existing RM 150 roadway. The proposed project is approximately 6 miles long.

Proposed improvements to Ranch to Market (RM) 150 are needed because the existing two-lane facility is inadequate to handle existing and future traffic volumes between I–35 and RM 150 west of Kyle, resulting in congestion and safety concerns. In addition, the overall transportation network does not provide sufficient linkage to I–35 to handle existing and future traffic volumes in this growing area of Hays County. The current two-lane facility does not meet current design standards, does not meet the Level of Service to meet increasing travel demand and does not provide a safe and adequate crossing of the Union Pacific Railroad. In addition, regional population growth continues to increase demand for additional capacity and access in this corridor and the region. The purpose of the proposed project is to relieve congestion and improve safety along the existing RM 150 corridor between RM 150 west of Kyle and I–35.

The EIS will develop and evaluate alternatives intended to satisfy the identified purpose and need. The alternatives will include a range of build alternatives and a no-build alternative within the study corridor, which is generally bounded to the north by RM 150 south of Indian Hills Trail, to the east by the existing RM 150 east of Arroyo Ranch Road and through the city of Kyle to I–35, to the south by the intersection of Yarrington Rd. and I–35, and to the west by the Blanco River.

The roadway build alternatives may include limited access and non-limited access (arterial) design. The EIS will evaluate potential impacts from construction and operation of the proposed project, including, but not limited to, the following: Transportation impacts, air quality and noise impacts; water quality impacts including storm water runoff, water recharge zone impacts; impacts to waters of the United States, including wetlands; impacts to floodplains; impacts to historic and archeological resources; socio-economic impacts including environmental justice and limited English proficiency populations; impacts to land use, vegetation and wildlife, including threatened and endangered species and habitat impacts; impacts to or potential displacement of residents and businesses; and impacts to aesthetic and visual resources. TxDOT will issue a single Final EIS and Record of Decision document pursuant to 23 U.S.C. 139(n)(2), unless TxDOT determines statutory criteria or practicability considerations preclude issuance of the combined document.

Anticipated state and federal permits, pending selection of alternatives and field surveys, may include, but are not limited to, the following: United States Army Corps of Engineers (USACE) Section 404 permit, Texas Commission on Environmental Quality (TCEQ) Section 401 Water Quality Certification; TCEQ Texas Pollutant Discharge Elimination System (TPDES) permit, Advisory Council for Historic Preservation (ACHP) Section 106 (National Historic Preservation Act) approval, and United States Fish and Wildlife Service Section 7 (Endangered Species Act) permits and approval.

Public involvement is a critical component of the project development process and will continue throughout the development of the EIS. A draft project coordination plan has been developed in accordance with 23 U.S.C.

139, Efficient Environmental Reviews for Project Decision Making, to identify and document opportunities for project involvement by the public and other agencies.

The project coordination plan will promote involvement from stakeholders, agencies and the public as well as describe the proposed project, the roles of the agencies and the public, the proposed project purpose and need, schedule, level of detail for alternatives analysis, and the proposed process for coordination and communication. The plan will be available for public review, input, and comments at public meetings, including scoping meetings held in accordance with the National Environmental Policy Act (NEPA) and upon request at the TxDOT Austin District Office.

In accordance with 23 U.S.C. 139, cooperating agencies, participating agencies and the public will be given an opportunity for continued input on the proposed project. A public scoping meeting is planned for the summer of 2018. An agency scoping meeting will also be held with participating and cooperating agencies. The purpose of the agency and public scoping meetings is to present the project studies completed to date and identify significant and other relevant issues related to the proposed RM 150 corridor as part of the NEPA process. The scoping meetings will provide an opportunity for participating agencies, cooperating agencies, and the public to review and comment on the draft project coordination plan and schedule, the proposed project purpose and need, the range of alternatives developed to date to be considered and evaluated in the EIS, and methodologies and level of detail for analyzing alternatives.

In addition to the agency and public scoping meetings, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. To ensure that the full range of issues related to the proposed project is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Such comments or questions concerning this proposed action should be directed to TxDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

Issued on: July 10, 2018.

Michael T. Leary,

Director, Planning and Program Development, Federal Highway Administration.

[FR Doc. 2018–15301 Filed 7–17–18; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Hunts Point Interstate Access Improvement Project; Comment Period Extension

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of availability of Draft Environmental Impact Statement (DEIS) for the Hunts Point Access Improvement Project; extension of comment period.

SUMMARY: The FHWA is extending the comment period for a notice of availability for a DEIS for the Hunts Point Access Improvement Project, which was published on June 1, 2018. The original comment period is set to close on July 16, 2018. The extension is based on the FHWA's desire to allow interested parties sufficient time to review and provide comprehensive comments on this DEIS. Therefore, the closing date for comments is changed to July 31, 2018, which will provide those interested in commenting additional time to discuss, evaluate, and submit responses.

DATES: The comment period for the notice of availability for the DEIS for the Hunts Point Access Improvement Project, which was published on June 1, 2018, at 83 FR 25451, is extended. Comments must be received on or before July 31, 2018.

ADDRESSES: Requests for further information or submission of comments regarding the Project may be sent to *huntspoint@dot.ny.gov* or the individuals listed below.

Erik Koester, P.E., Project Director, Region 11, NYS Department of Transportation, 47–40 21st Street, Long Island City, NY 11101, Phone (718) 482–4683

Sara Gross, P.E., Area Engineer, Federal Highway Administration, Leo O'Brien Federal Building, 11A Clinton Avenue, Suite 719, Albany, NY 12207, Phone: (518) 431–4127

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2018, at 83 FR 25451, a notice of availability, including a Draft Environmental Impact Statement for the Hunts Point Access Improvement Project, published in the **Federal Register**. The New York State Department of Transportation (NYSDOT), in cooperation with the FHWA, has prepared a Draft Design Report/Draft Environmental Impact Statement/Draft Section 4(f) Evaluation (DDR/DEIS) for the Hunts Point Interstate Access Improvement Project (Project). The Project has been advanced in accordance with the requirements of the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA) (40 CFR parts 1500 through 1508), the FHWA Environmental Impact and Related Procedures; Final Rule (23 CFR part 771), and the NYSDOT Procedures for Implementation of the State Environmental Quality Review Act at 17 New York Codes, Rules, and Regulations Part 15.

The Project is located on and in the immediate vicinity of the Hunts Point Peninsula in Bronx County, New York. The purpose of the Project is to provide improved access between the Hunts Point Peninsula and Sheridan Boulevard and the Bruckner Expressway for automobiles and trucks traveling to and from the commercial businesses located on the peninsula. In addition, the Project will address structural and operational deficiencies related to the existing infrastructure within the established project limits.

The DDR/DEIS describes the Project; the consideration of social, economic, and environmental effects that would result from implementation of the Project; and measures to mitigate adverse effects.

The DDR/DEIS will be available for review during business hours at the following locations on and after June 1, 2018:

- Hunts Point Public Library, 877 Southern Boulevard, Bronx, NY
- Bronx Library Center, 310 East Kingsbridge Road, Bronx, NY
- West Farms Branch Library, 2085 Honeywell Avenue, Bronx, NY
- Soundview Library, 660 Soundview Avenue, Bronx, NY
- Parkchester Library, 1985 Westchester Avenue, Bronx, NY
- Bronx Community Board 1, 3024 Third Avenue, Bronx, NY
- Bronx Community Board 2, 1029 E 163 Street, Bronx, NY
- Bronx Community Board 3, 1426 Boston Road, Bronx, NY
- Bronx Community Board 6, 1932 Arthur Avenue, Rm. 403–A, Bronx, NY
- Bronx Community Board 9, 1967 Turnbull Avenue #7, Bronx, NY
- Casita Maria, 928 Simpson Street, Bronx, NY
- The Point, 940 Garrison Avenue, Bronx, NY
- Bronx Borough Hall, 851 Grand Concourse, Bronx, NY

The DDR/DEIS may also be accessed at *https://www.dot.ny.gov/SouthBronx.*

Authority: 40 CFR 1506.9 and 10.

Issued on: July 13, 2018.

Christopher Gatchell,

Director, Office of Engineering, Federal Highway Administration, New York Division.

[FR Doc. 2018–15416 Filed 7–16–18; 4:15 pm]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket Number: DOT–OST–2017–0043]

Agency Information Collection Activity; Response to Comments on Notice of Request for Approval To Collect New Information: Oil and Gas Industry Safety Data Program

AGENCY: Office of the Assistant Secretary for Research and Technology (OST–R), Bureau of Transportation Statistics (BTS), U.S. Department of Transportation.

ACTION: 30-day Notice and Response to Comments.

SUMMARY: On May 7, 2019, the Bureau of Transportation Statistics (BTS) announced its intention in a **Federal Register** Notice (83 FR 20139) to request that the Office of Management and Budget (OMB) approve the following information collection: Voluntary Oil and Gas Industry Safety Data Program. The Oil and Gas Industry Safety Data (ISO) program, is a component of BTS's SafeOCS data sharing framework, that provides a trusted, proactive means for the oil and gas industry to report sensitive and proprietary safety information, and to identify early warnings of safety problems and potential safety issues by uncovering hidden, at-risk conditions not previously exposed from analysis of reportable accidents and incidents. The ISD identifies a broader range of data categories to ensure safe performance and appropriate risk management, which adds a learning component to assist the oil and gas industry in achieving improved safety performance. At that time, BTS also encouraged interested parties to submit comments to docket number DOT–OST–2017–0043, allowing for a 60-day comment period. The comment period closed on July 7, 2018. BTS received two non-relevant comments from the anonymous public entities. The purpose of this Notice is to respond to the comments received on the May 7, 2018 announcement and allow 30 days for public comment to OMB on this collection from all interested individuals and organizations.

DATES: Written comments should be submitted by *August 17, 2018.*

ADDRESSES: BTS seeks public comments on its proposed information collection. Comments should address whether the information will have practical utility; the accuracy of the estimated burden hours of the proposed information collection' ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: BTS Desk Officer.

FOR FURTHER INFORMATION CONTACT: Demetra V. Collia, Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology, U.S. Department of Transportation, Office of Statistical and Economic Analysis, RTS–31, E36–302, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; Phone No. (202) 366–1610; Fax No. (202) 366–3383; email: *demetra.collia@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m., EST, Monday through Friday, except Federal holidays.

Data Confidentiality Provisions: The confidentiality of oil and gas industry safety data information submitted to BTS is protected under the BTS confidentiality statute (49 U.S.C. 6307) and the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2002 (Pub. L. 107–347, Title V.) In accordance with these confidentiality statutes, only statistical (aggregated) and non-identifying data will be made publicly available by BTS through its reports. BTS will not release to the Bureau of Safety and Environmental Enforcement (BSEE), or to any other public or private entity, any information that might reveal the identity of individuals or organizations mentioned in failure notices or reports without explicit consent of the respondent and any other affected entities.

SUPPLEMENTARY INFORMATION:

I. The Data Collection

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35; as amended) and 5 CFR part 1320 require each Federal agency to obtain OMB approval to initiate an information collection activity. BTS is seeking OMB approval for the following BTS information collection activity:

Title: Oil and Gas Industry Safety Data (ISD) Program.

OMB Control Number: TBD.

Type of Review: Approval of data collection.

Respondent: Oil and gas industry companies involved in the exploration and/or productions working in the Gulf of Mexico (GOM).

Number of Potential Responses: One hundred.

Estimated Time per Response: 40 hours.

Frequency: Annual.

Total Annual Burden: 400 hours.

II. Public Participation and Request for Public Comments

On May 7, 2018, BTS published a Notice (83 FR 20139) encouraging interested parties to submit comments to docket number DOT–OST–2017–0043 and allowing for a 60-day comment period. The comment period closed on July 6, 2018. There were two comments non-relevant to the topic of the Notice. To view comments, go to *http://www.regulations.gov* and insert the docket number, ''DOT–OST–2017–0043'' in the ''search'' box and click ''Search.'' Next click ''Open Docket Folder'' button and choose document listed to review. If you do not have access to the internet, you may view the docket by visiting the Docket Management Facility in Room W 12–140 on the ground floor of the DOT West Building, 1200 New Jersey Ave SE, Washington, DC 20590, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Privacy Act

All comments the BTS received were posted without change to *http://www.regulations.gov.* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review DOT' s complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf*).

III. Discussion of Public Comments and BTS Responses

BTS announced on May 7, 2018 in a **Federal Register** Notice (83 FR 20139) its intention to request that OMB approve the new collection of: Oil and Gas Industry Safety Data Program. BTS received no relevant comment during the 60-day public comment period. The May 7th notice stated that the BTS was seeking approval to collect Industry Safety Data information.

Dated: July 11, 2018.

Patricia Hu,

Director, Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology U.S. Department of Transportation.

[FR Doc. 2018–15316 Filed 7–17–18; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

[Docket No. TTB–2018–0001]

Proposed Information Collection; Comment Request (No. 70) for Chemist Certification Program

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, the Alcohol and Tobacco Tax and Trade Bureau (TTB) invites comments on the proposed information collection associated with its chemist certification program.

DATES: Comments are due on or before September 17, 2018.

ADDRESSES: As described below, you may send comments on the proposed information collection using the ''*Regulations.gov*'' online comment form for this document, or you may send written comments via U.S. mail or hand delivery. TTB no longer accepts public comments via email or fax.

- *https://www.regulations.gov:* Use the comment form for this document posted within Docket No. TTB–2018–0001 on ''*Regulations.gov*,'' the Federal e-rulemaking portal, to submit comments via the internet;
- *U.S. Mail:* Michael Hoover, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.
- *Hand Delivery/Courier in Lieu of Mail:* Michael Hoover, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

Please reference the proposed information collection's title in your comment. You may view copies of this document and all comments received in response to this document within Docket No. TTB–2018–0001 at *https://www.regulations.gov.* A link to that docket is posted on the TTB website at *https://www.ttb.gov/forms/comment-on-form.shtml.* You may also obtain paper copies of this document and any comments received in response to this document by contacting Michael Hoover at the addresses or telephone number shown below.

FOR FURTHER INFORMATION CONTACT: Michael Hoover, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; telephone (202) 453–1039, ext. 135; or email *informationcollections@ttb.gov* (please *do not* submit comments on the proposed information collection to this email address).

SUPPLEMENTARY INFORMATION:

Request for Comments

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of a continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed information collection associated with TTB's chemist certification program.

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the proposed information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in comments.

In particular, we invite comments on: (a) Whether the information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Chemist Certification Information Collection

Currently, we are seeking comments on the following information collection:

Title: Applications, Notices, and Record Related to the Voluntary Chemist Certification Program for the Analysis of Wine, Distilled Spirits, and Beer for Export.

OMB Number: 1513–NEW.

Abstract: The TTB chemist certification program, established under the authority of section 105(e) of the Federal Alcohol Administration Act (FAA Act; 27 U.S.C. 205(e)), is a voluntary program that certifies private industry chemists to analyze alcohol beverages and report the results of specific chemical analyses on alcohol beverages to the governments of importing countries. As a condition of importation, some countries require that their own government laboratories (or laboratories certified by their government) perform these analyses, while other countries allow a person certified by the government of the exporting country to perform the analyses. TTB conducts its chemist certification program as a service to the alcohol beverage industry to facilitate the export of domestic alcohol beverage products. This certification program helps ensure that chemists, enologists, brewers, and technicians (referred to in this document collectively as ''chemists'') generate quality data and have the required proficiencies to conduct chemical analyses associated with exportation of alcohol beverages from the United States.

The information collected under TTB's chemist certification program includes: Letterhead applications for chemist certification and supporting documentation such as copies of diplomas, transcripts, accreditation certificates, and laboratory verification statements; results of qualifying analyses of TTB-supplied alcohol beverage samples made by applicants; and miscellaneous letterhead applications and notices to TTB such as applications and supporting documents related to requests for certification in additional types of analysis, requests for TTB-affirmed reports of analysis, and notices of changes in employment place or status. TTB believes the burden associated with the application portion of this information collection is minimal and is the minimum necessary to ensure that certified chemists are professionally qualified to conduct analyses of alcohol beverages for export purposes.

Certified chemists also must retain, and allow TTB inspection of, records of all analysis results conducted under the authority of a TTB certificate, for a period of up to two years. In addition, the laboratories of certified chemists must retain for a similar period, and allow TTB inspection of, records related to laboratory equipment, laboratory quality control policies, procedures and systems, analyst training and competence, and analysis records pertaining to certified tests. TTB believes that the required records are

usual and customary records that chemists and laboratories keep during the normal course of business, regardless of any TTB requirement to do so, and, as such, the keeping of such records imposes no additional burden on respondents.

Current Actions: TTB is submitting this new information collection for approval by the Office of Management and Budget.

Type of Review: Approval of new collection.

Affected Public: Individuals; businesses and other for-profits.

Estimated Number of Respondents: 310.

Estimated Total Annual Burden Hours: 495.

Dated: July 12, 2018.

Amy R. Greenberg,

Director, Regulations and Rulings Division.

[FR Doc. 2018–15287 Filed 7–17–18; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, 110(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue NW, Washington, DC on July 31, 2018 at 9:30 a.m. of the following debt management advisory committee: Treasury Borrowing Advisory Committee of The Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, 10(d) and Public Law 103–202, § 202(c)(1)(B)(31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, § 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions and financing estimates. This briefing will give the press an opportunity to ask questions about financing projections. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Director for Office of Debt Management (202) 622–1876.

Dated: July 6, 2018.

Fred Pietrangeli,

Director, Office of Debt Management.

[FR Doc. 2018–14869 Filed 7–17–18; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nominations for Appointment to the Veterans and Community Oversight and Engagement Board

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is seeking nominations of qualified candidates to be considered for appointment as a member of the Veterans and Community Oversight and Engagement Board (herein-after referred in this section to as ''the Board'') for the VA West Los Angeles Campus in Los Angeles, CA (''Campus''). The Board is established to coordinate locally with the Department of Veterans Affairs to identify the goals of the community and Veteran partnership; provide advice and recommendations to the Secretary to improve services and outcomes for Veterans, members of the Armed Forces, and the families of such Veterans and members; and provide advice and recommendations on the implementation of the Draft Master Plan approved by the Secretary on January 28, 2016, and on the creation and implementation of any other successor master plans.

DATES: Nominations for membership on the Board must be received no later than 5:00 p.m. EST on August 10, 2018.

ADDRESSES: All nominations should be mailed to the Veterans Experience Office,

Department of Veterans Affairs, 810 Vermont Avenue NW, (30), Washington, DC 20420; or sent electronically to the Advisory Committee Management Office mailbox at *vaadvisorycmte@va.gov.*

FOR FURTHER INFORMATION CONTACT: Eugene W. Skinner, Jr., Designated Federal Officer, Veterans Experience Office, Department of Veterans Affairs, 810 Vermont Avenue NW (30), Washington, DC 20420, telephone 202–631–7645 or via email at *Eugene.Skinner@va.gov.*

SUPPLEMENTARY INFORMATION: In carrying out the duties set forth in the West LA Leasing Act, the Board shall:

(1) Provide the community with opportunities to collaborate and communicate by conducting public forums; and

(2) Focus on local issues regarding the Department that are identified by the community with respect to health care, implementation of the Master Plan, and any subsequent plans, benefits, and memorial services at the Campus. Information on the Master Plan can be

found at *https://www.losangeles.va.gov/masterplan/.*

Authority: The Board is a statutory committee established as required by Section 2(i) of the West Los Angeles Leasing Act of 2016, Public Law 114–226 (the West LA Leasing Act). The Board operates in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2.

Membership Criteria and Qualifications: VA is seeking nominations for Board membership. The Board is composed of thirteen members and several ex-officio members. The Board meets up to four times annually; and it is important that Board members attend meetings to achieve a quorum so that Board can effectively carry out its duties. The members of the Board are appointed by the Secretary of Veterans Affairs from the general public, from various sectors and organizations, and shall meet the following qualifications, as set forth in the West LA Leasing Act:

(1) Not less than 50% of members shall be Veterans; and

(2) Non-Veteran members shall be:

a. Family members of Veterans,

b. Veteran advocates,

c. Service providers,

d. Real estate professionals familiar with housing development projects, or

e. Stakeholders.

In addition, the Board members may also serve as Subcommittee members.

In accordance with the Board Charter, the Secretary shall determine the number, terms of service, and pay and allowances of Board members, except that a term of service of any such member may not exceed two years. The Secretary may reappoint any Board member for additional terms of service.

To the extent possible, the Secretary seeks members who have diverse professional and personal qualifications including but not limited to subject matter experts in the areas described above. We ask that nominations include any relevant experience and information so that VA can ensure diverse Board membership.

Requirements for Nomination Submission: Nominations should be typed written (one nomination per nominator). Nomination package should include:

(1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.* specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating a willingness to serve as a member of the Board;

(2) The nominee's contact information, including name, mailing address, telephone numbers, and email address;

(3) The nominee's curriculum vitae, not to exceed three pages and a one page cover letter; and

(4) A summary of the nominee's experience and qualifications relative to the membership criteria and professional qualifications criteria listed above.

The Department makes every effort to ensure that the membership of VA Federal advisory committees is diverse in terms of points of view represented and the committee's capabilities. Appointments to this Board shall be made without discrimination because of a person's race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of the Board and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Dated: July 13, 2018.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–15333 Filed 7–17–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the National Research Advisory Council will hold a meeting on Wednesday, September 5, 2018, at 1100 First Street NE, Room 104, Washington, DC 20002. The meeting will convene at 9:00 a.m. and end at 3:30 p.m. This meeting is open to the public.

The agenda will include information technology challenges, career development and merit awards, roadmaps overview, clinical trials, and cooperative research and development agreements (CRADAs). No time will be allocated at this meeting for receiving oral presentations from the public. Members of the public wanting to attend may contact Rashelle Robinson, Designated Federal Officer, Office of Research and Development (10P9), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at (202) 443–5678, or by email at *Rashelle.Robinson@va.gov* no later than close of business on August 29, 2018. Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. Any member of the public seeking additional information should contact Rashelle Robinson at the phone number or email address noted above.

Dated: July 12, 2018.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–15271 Filed 7–17–18; 8:45 am]

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FEDERAL REGISTER

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Part II

Office of Government Ethics

5 CFR Part 2634

Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture; Final Rule

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209–AA00

Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: The U.S. Office of Government Ethics is issuing a final rule amending the Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture regulations. Pursuant to section 402(b) of the Ethics in Government Act, the U.S. Office of Government Ethics (OGE) is revising the regulations governing financial disclosure to incorporate the new reporting requirements imposed by the Stop Trading on Congressional Knowledge Act (STOCK Act), which was enacted on April 4, 2012. As a part of the revision, OGE also is modernizing language, making changes to the confidential filing requirements, adding and updating examples, and conforming the language of the regulation more closely to that of the Ethics in Government Act (EIGA). In addition, OGE is updating definition of ''widely diversified'' for Excepted Investment Fund purposes that brings the definition in line with the definition of ''diversified'' found in the exemptions to the conflicts of interest law governing personal financial interests.

DATES: The final rule is effective on January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Heather A. Jones, Senior Counsel for Financial Disclosure, Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005–3917; Telephone: 202–482–9300; TTY: 800–877–8339; FAX: 202–482–9237.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Office of Government Ethics (OGE) published a proposed rule in the **Federal Register**, 81 FR 69204, October 5, 2016, proposing to amend 5 CFR part 2634, Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture. Part 2634 sets forth the rules governing public financial disclosure reporting for the Executive Branch set forth in the EIGA and the STOCK Act. It also establishes the rules governing confidential financial reporting authorized by the EIGA. Part 2634 institutes procedures for the creation and approval of a qualified trust as required by the EIGA. Finally, it establishes rules for requesting and approval of a certificate of divestiture as set forth in 26 U.S.C. 1043.

The amendments to part 2634, which are described in the preamble to the proposed rule, were proposed following OGE's retrospective review of the regulation and draw upon the collective experience of agency ethics officials across the executive branch. The amendments reflect extensive input from the executive branch ethics community, as well as OGE's consultation with the Department of Justice (DOJ) and the Office of Personnel Management pursuant to 5 U.S.C. app. 402(b)(1).

The proposed rule provided a 60-day comment period, which ended on December 5, 2016. OGE received one set of timely and responsive comments, which were submitted by an individual. OGE also received a comment from Senator Ron Wyden on April 27, 2017. After carefully considering both comments and for the reasons set forth in the preamble to the proposed rule, OGE is publishing this final rule. The rationale for the proposed rule can be found in the preamble at: *https://www.gpo.gov/fdsys/pkg/FR-2016-10-05/pdf/2016-22958.pdf.*

II. Comments

As noted above, OGE received two sets of comments on the proposed rule. The individual who commented suggested that the President and the Vice President be subject to the financial disclosure regulations in part 2634, that the President report compensation other than his Federal salary, and that the President report any emolument received. The President and Vice President already are subject to all public financial disclosure rules under section 2634.202. Specifically, section 2634.302 requires disclosure investment and non-investment income (including emoluments, but excluding any federal salary) over $200 and section 2634.304 captures any gift or emolument with a value of more than $390 (this amount will increase in 2020). The commenter also suggests the disclosure of a number of other items that are not the subject of this regulation.

Senator Wyden commented that OGE had removed the requirement that the appropriate designated agency ethics official notify the Senate confirmation committee that the nominee has taken the steps necessary to comply with the nominee's ethics agreement. Based on this comment, OGE has reinserted that requirement in section 2634.804(a).

OGE made three technical changes to the final rule. OGE deleted the inoperative reference to 5 CFR part 2638 in the note to section 2634.605(c)(2). OGE changed the gift threshold amounts and civil monetary penalty amounts, which had been updated by regulations since the publication of the proposed rule.

In all other respects, the final rule follows the proposed rule of October 5, 2016.

III. Matters of Regulatory Procedure

Regulatory Flexibility Act

As Acting Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final rule will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

No review is needed under the Paperwork Reduction Act (44 U.S.C. chapter 35) for the final rule, because it adds no new or additional information collection requirements in the regulation, which are currently approved under OMB paperwork control numbers 3209–001, 3209–002, 3209–004, 3209–006, and 3209–0007.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Executive Order 12866, Executive Order 13563 and Executive Order 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule is not subject to the

requirements of E.O. 13771 because this rule results in no more than de minimis costs.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

Approved: July 10, 2018.

David Apol,

Acting Director and General Counsel, Office of Government Ethics.

■ Accordingly, the Office of Government Ethics revises 5 CFR part 2634 to read as follows:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

Subpart A—General Provisions

Subpart B—Persons Required To File Public Financial Disclosure Reports

Subpart C—Contents of Public Reports

Subpart D—Qualified Trusts

Subpart E—Revocation of Trust Certificates and Trustee Approvals

Subpart F—Procedure

Subpart G—Penalties

Subpart H—Ethics Agreements

Subpart I—Confidential Financial Disclosure Reports

Subpart J—Certificates of Divestiture

Authority: 5 U.S.C. app.; 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 and Sec. 701, Pub. L. 114–74; Pub. L. 112–105, 126 Stat. 291; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—General Provisions

§ 2634.101 Authority.

The regulation in this part is issued pursuant to the authority of the Ethics in Government Act of 1978, as amended; 26 U.S.C. 1043; the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015; the Stop Trading on Congressional Knowledge Act (STOCK Act), as amended; and Executive Order 12674 of April 12, 1989, as modified by Executive Order 12731 of October 17, 1990.

§ 2634.102 Purpose and overview.

(a) The regulation in this part supplements and implements title I of the Act, sections 8(a)–(b) and 11 of the STOCK Act, and section 201(d) of Executive Order 12674 (as modified by Executive Order 12731) with respect to executive branch employees, by setting forth more specifically the uniform procedures and requirements for financial disclosure and for the certification and use of qualified blind and diversified trusts. Additionally, this part implements section 502 of the Reform Act by establishing procedures for executive branch personnel to obtain Certificates of Divestiture, which permit deferred recognition of capital gain in certain instances.

(b) The rules in this part govern both public and confidential (nonpublic) financial disclosure systems. Subpart I of this part contains the rules applicable to the confidential disclosure system.

§ 2634.103 Executive agency supplemental regulations.

(a) The regulation in this part is intended to provide uniformity for executive branch financial disclosure systems. However, an agency may, subject to the prior written approval of the Office of Government Ethics (OGE), issue supplemental regulations implementing this part, if necessary to address special or unique agency circumstances. Such regulations:

(1) Must be consistent with the Act, the STOCK Act, Executive Orders 12674 and 12731, and this part; and

(2) Must not impose additional reporting requirements on either public or confidential filers, unless specifically authorized by the Office of Government

Ethics as supplemental confidential reporting.

Note to paragraph (a): Supplemental regulations will not be used to satisfy the separate requirement of 5 U.S.C. app. (Ethics in Government Act of 1978, section 402(d)(1)) that each agency have established written procedures on how to collect, review, evaluate, and, where appropriate, make publicly available, financial disclosure statements filed with it.

(b) Requests for approval of supplemental regulations under paragraph (a) of this section must be submitted in writing to the Office of Government Ethics, and must set forth the agency's need for any proposed supplemental reporting requirements. See § 2634.901(b) and (c).

(c) Agencies should review all of their existing financial disclosure regulations to determine which of those regulations must be modified or revoked in order to conform with the requirements of this part. Any amendatory agency regulations will be processed in accordance with paragraphs (a) and (b) of this section.

§ 2634.104 Policies.

(a) Title I of the Act requires that high-level Federal officials disclose publicly their personal financial interests, to ensure confidence in the integrity of the Federal Government by demonstrating that they are able to carry out their duties without compromising the public trust. Title I also authorizes the Office of Government Ethics to establish a confidential (nonpublic) financial disclosure system for less senior executive branch personnel in certain designated positions, to facilitate internal agency conflict-of-interest review.

(b) Public and confidential financial disclosure serves to prevent conflicts of interest and to identify potential conflicts, by providing for a systematic review of the financial interests of both current and prospective officers and employees. These reports assist agencies in administering their ethics programs and providing counseling to employees.

(c) Financial disclosure reports are not net worth statements. Financial disclosure systems seek only the information that the President, Congress, or OGE as the supervising ethics office for the executive branch has deemed relevant to the administration and application of the criminal conflict of interest laws, other statutes on ethical conduct or financial interests, and Executive orders or regulations on standards of ethical conduct.

(d) Nothing in the Act, the STOCK Act, or this part requiring reporting of information or the filing of any report will be deemed to authorize receipt of income, honoraria, gifts, or reimbursements; holding of assets, liabilities, or positions; or involvement in transactions that are prohibited by law, Executive order, or regulation.

(e) The provisions of title I of the Act, the STOCK Act, and this part requiring the reporting of information supersede any general requirement under any other provision of law or regulation on the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. However, the provisions of title I and this part do not supersede the requirements of 5 U.S.C. 7342 (the Foreign Gifts and Decorations Act).

(f) This part is intended to be gender-neutral; therefore, use of the terms he, his, and him include she, hers, and her, and vice versa.

§ 2634.105 Definitions.

For purposes of this part:

(a) *Act* means the Ethics in Government Act of 1978 (Pub. L. 95–521), as amended, as modified by the Ethics Reform Act of 1989 (Pub. L. 101–194), as amended.

(b) *Agency* means any executive agency as defined in 5 U.S.C. 105 (any executive department, Government corporation, or independent establishment in the executive branch), any military department as defined in 5 U.S.C. 102, and the Postal Service and the Postal Regulatory Commission. It does not include the Government Accountability Office.

(c) *Confidential filer.* For the definition of ''confidential filer,'' see § 2634.904.

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

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

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

(e) *Designated agency ethics official* means the primary officer or employee who is designated by the head of an agency to administer the provisions of title I of the Act and this part within an agency, and in the designated agency ethics official's absence the alternate who is designated by the head of the agency. The term also includes a delegate of such an official, unless otherwise indicated. See part 2638 of this chapter on the appointment and additional responsibilities of a designated agency ethics official and alternate.

(f) *Executive branch* means any agency as defined in paragraph (b) of this section and any other entity or administrative unit in the executive branch.

(g) *Filer* is used interchangeably with ''reporting individual,'' and may refer to a ''confidential filer'' as defined in paragraph (c) of this section, a ''public filer'' as defined in paragraph (m) of this section, or a nominee or candidate as described in § 2634.201.

(h) *Gift* means a payment, advance, forbearance, rendering, free attendance at an event, deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor, but does not include:

(1) Bequests and other forms of inheritance;

(2) Suitable mementos of a function honoring the reporting individual;

(3) Food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(4) Food and beverages, unless they are consumed in connection with a gift of overnight lodging;

(5) Communications to the offices of a reporting individual, including subscriptions to newspapers and periodicals;

(6) Consumable products provided by home-state businesses to the offices of the President or Vice President, if those products are intended for consumption by persons other than the President or Vice President; or

(7) Exclusions and exceptions as described at § 2634.304(c) and (d).

(i) *Honorarium* means a payment of money or anything of value for an appearance, speech, or article.

(j) *Income* means all income from whatever source derived. It includes but is not limited to the following items: Earned income such as compensation for services, fees, commissions, salaries, wages, and similar items; gross income derived from business (and net income if the individual elects to include it); gains derived from dealings in property including capital gains; interest; rents; royalties; dividends; annuities; income from the investment portion of life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust. The term includes all income items, regardless of whether they are taxable for Federal income tax purposes, such as interest on

municipal bonds. Generally, income means ''gross income'' as determined in conformity with the Internal Revenue Service principles at 26 CFR 1.61–1 through 1.61–15 and 1.61–21.

(k) *Personal hospitality of any individual* means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of or on property or facilities owned by that individual or the individual's family.

(l) *Personal residence* means any property used exclusively as a private dwelling by the reporting individual or his spouse, which is not rented out during any portion of the reporting period. The term is not limited to one's domicile; there may be more than one personal residence, including a vacation home.

(m) *Public filer.* For the definition of ''public filer,'' see § 2634.202.

(n) *Reimbursement* means any payment or other thing of value received by the reporting individual (other than gifts, as defined in paragraph (h) of this section) to cover travel-related expenses of such individual, other than those which are:

(1) Provided by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(2) Required to be reported by the reporting individual under 5 U.S.C. 7342 (the Foreign Gifts and Decorations Act); or

(3) Required to be reported under section 304 of the Federal Election Campaign Act of 1971 (52 U.S.C. 30104) (relating to reports of campaign contributions).

Note to paragraph (n): Payments which are not made to the individual are not reimbursements for purposes of this part. Thus, payments made to the filer's employing agency to cover official travel-related expenses do not fit this definition of reimbursement. For example, payments being accepted by the agency pursuant to statutory authority such as 31 U.S.C. 1353, as implemented by 41 CFR part 304–1, are not considered reimbursements under this part, because they are not payments received by the reporting individual. On the other hand, travel payments made to the employee by an outside entity for private travel are considered reimbursements for purposes of this part. Likewise, travel payments received from certain nonprofit entities under authority of 5 U.S.C. 4111 are considered reimbursements, even though for official travel, since that statute specifies that such payments must be made to the individual directly (with prior approval from the individual's agency).

(o) *Relative* means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great uncle, great aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and will be deemed to include the fiancé or fiancée of the reporting individual.

(p) *Reporting individual* is used interchangeably with ''filer,'' and may refer to a ''confidential filer'' as defined in § 2634.904, a ''public filer'' as defined in § 2634.202, or a nominee or candidate as described in § 2634.201(c) and (d).

(q) *Reviewing official* means the designated agency ethics official or the delegate, the Secretary concerned, the head of the agency, or the Director of the Office of Government Ethics.

(r) *Secretary concerned* has the meaning set forth in 10 U.S.C. 101(a)(9) (relating to the Secretaries of the Army, Navy, Air Force, and for certain Coast Guard matters, the Secretary of Homeland Security); and, in addition, means:

(1) The Secretary of Commerce, in matters concerning the National Oceanic and Atmospheric Administration;

(2) The Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and

(3) The Secretary of State with respect to matters concerning the Foreign Service.

(s) *Special Government employee* has the meaning given to that term by the first sentence of 18 U.S.C. 202(a): An officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis.

(t) *STOCK Act* means the Stop Trading on Congressional Knowledge Act (Pub. L. 112–105), as amended.

(u) *Value* means a good faith estimate of the fair market value if the exact value is neither known nor easily obtainable by the reporting individual without undue hardship or expense. In the case of any interest in property, see the alternative valuation options in § 2634.301(e). For gifts and reimbursements, see § 2634.304(e).

Subpart B—Persons Required To File Public Financial Disclosure Reports

§ 2634.201 General requirements, filing dates, and extensions.

(a) *Incumbents.* A public filer as defined in § 2634.202 who, during any calendar year, performs the duties of the position or office, as described in that section, for a period in excess of 60 days must file a public financial disclosure report containing the information prescribed in subpart C of this part, on or before May 15 of the succeeding year.

Example 1: An SES official commences performing the duties of his position on November 15. He will not be required to file an incumbent report for that calendar year.

Example 2: An employee, who is classified at GS–15, is formally detailed to fill an SES position or is temporarily promoted to fill an SES position in an acting capacity, from October 15 through December 31. Having performed the duties of a covered position for more than 60 days during the calendar year, he will be required to file an incumbent report. In addition, he must file a new entrant report the first time he serves more than 60 days in a calendar year in the position, in accordance with § 2634.201(b) and § 2634.204(c)(1).

Example 3: An SES employee terminates her employment with an agency on March 7, 2015. The employee will file a termination report by April 6, 2015, in accordance with § 2634.201(e), but will not file an incumbent report on May 15.

(b) *New entrants.* (1) Within 30 days of assuming a public filer position or office described in § 2634.202, an individual must file a public financial disclosure report containing the information prescribed in subpart C of this part.

(2) However, no report will be required if the individual:

(i) Has, within 30 days prior to assuming such position, left another position or office for which a public financial disclosure report under the Act was required to be filed; or

(ii) Has already filed such a report as a nominee or candidate for the position.

Example: Y, an employee of the Treasury Department who has previously filed reports in accordance with the rules of this section, terminates employment with that Department on January 10, 2015, and begins employment with the Commerce Department on January 11, 2015, in a Senior Executive Service position. Y is not a new entrant because he has assumed a position described in § 2634.202 within thirty days of leaving another position so described. Accordingly, he need not file a new report with the Commerce Department.

Note to example: While Y did not have to file a new entrant report with the Commerce Department, that Department should request a copy of the last report which he filed with the Treasury Department, so that Commerce

could determine whether or not there would be any conflicts or potential conflicts in connection with Y's new employment. Additionally, Y will have to file an incumbent report covering the 2014 calendar year, in accordance with paragraph (a) of this section, due not later than May 15, 2015, with Commerce, which should provide a copy to Treasury so that both may review it.

(c) *Nominees.* (1) At any time after a public announcement by the President or President-elect of the intention to nominate an individual to an executive branch position, appointment to which requires the advice and consent of the Senate, such individual may, and in any event within five days after the transmittal of the nomination to the Senate must, file a public financial disclosure report containing the information prescribed in subpart C of this part.

(2) This requirement will not apply to any individual who is nominated to a position as:

(i) An officer of the uniformed services; or

(ii) A Foreign Service Officer.

Note to paragraph (c)(2): Although the statute, 5 U.S.C. app. (Ethics in Government Act of 1978, section 101(b)(1)), exempts uniformed service officers only if they are nominated for appointment to a grade or rank for which the pay grade is 0–6 or below, the Senate confirmation committees have adopted a practice of exempting all uniformed service officers, unless otherwise specified by the committee assigned.

(3) Section 2634.605(c) provides expedited procedures in the case of individuals described in paragraph (c)(1) of this section. Those individuals referred to in paragraph (c)(2) of this section as being exempt from filing nominee reports must file new entrant reports, if required by paragraph (b) of this section.

(d) *Candidates.* A candidate (as defined in section 301 of the Federal Election Campaign Act of 1971, 52 U.S.C. 30101) for nomination or election to the office of President or Vice President (other than an incumbent) must file a public financial disclosure report containing the information prescribed in subpart C of this part, in accordance with the following:

(1) Within 30 days of becoming a candidate or on or before May 15 of the calendar year in which the individual becomes a candidate, whichever is later, but in no event later than 30 days before the election; and

(2) On or before May 15 of each successive year an individual continues to be a candidate. However, in any calendar year in which an individual continues to be a candidate but all elections relating to such candidacy were held in prior calendar years, the individual need not file a report unless the individual becomes a candidate for a vacancy during that year.

Example: P became a candidate for President in January 2015. P will be required to file a public financial disclosure report on or before May 15, 2015. If P had become a candidate on June 1, 2015, P would have been required to file a disclosure report within 30 days of that date.

(e) *Termination of employment.* (1) On or before the thirtieth day after termination of employment from a public filer position or office described in § 2634.202 but no more than 15 days prior to termination, an individual must file a public financial disclosure report containing the information prescribed in subpart C of this part. If the individual files prior to the termination date and there are any changes between the filing date and the termination date, the individual must update the report.

(2) However, if within 30 days of such termination the individual assumes employment in another position or office for which a public report under the Act is required to be filed, no report will be required by the provisions of this paragraph. See the related *Example* in paragraph (b) of this section.

(f) *Transactions occurring throughout the calendar year.* (1) A public filer as defined in § 2634.202 who, during any calendar year, performs, or is reasonably expected to perform, the duties of his position or office, as described in that section, for a period in excess of 60 days must file a transaction report within 30 days of receiving notification of a covered transaction, but not later than 45 days after such transaction. The report must contain the information prescribed in subpart C of this part.

(2) A covered transaction is any purchase, sale, or exchange required to be reported according to the provisions of § 2634.309.

Example: A filer receives a statement on October 10 notifying her of all of the covered transactions executed by her broker on her behalf in September. Although each transaction may have a different due date, if the filer reports all the covered transactions from September on a report filed on or before October 15, the filer will ensure that all transactions have been timely reported.

(g) *Extensions generally.* The reviewing official may, for good cause shown, grant to any public filer or class thereof an extension of time for filing which must not exceed 45 days. The reviewing official may, for good cause shown, grant an additional extension of time which must not exceed 45 days. The employee must set forth in writing specific reasons why such additional extension of time is necessary. The reviewing official must approve or deny such requests in writing. Such records must be maintained as part of the official report file. For extensions on confidential financial disclosure reports, see § 2634.903(d).

(h) *Exceptions for individuals in combat zones.* In the case of an individual who is serving in the Armed Forces, or serving in support of the Armed Forces, in an area while that area is designated by the President by Executive order as a combat zone for purposes of section 112 of the Internal Revenue Code of 1986:

(1) The date for the filing of any report will be extended so that the date is 180 days after the later of:

(i) The last day of the individual's service in such area during such designated period; or

(ii) The last day of the individual's hospitalization as a result of injury received or disease contracted while serving in such area; and

(2) The exception described in this paragraph will apply automatically to any individual who qualifies for the exception, unless the Secretary of Defense establishes written guidelines for determining eligibility or for requesting an extension under this paragraph.

§ 2634.202 Public filer defined.

The term *public filer* includes:

(a) The President;

(b) The Vice President;

(c) Each officer or employee in the executive branch, including a special Government employee as defined in 18 U.S.C. 202(a), whose position is classified above GS–15 of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate equal to or greater than 120% of the minimum rate of basic pay for GS–15 of the General Schedule; each member of a uniformed service whose pay grade is at or in excess of O–7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification;

(d) Each employee who is an administrative law judge appointed pursuant to 5 U.S.C. 3105;

(e) Any employee not otherwise described in paragraph (c) of this section who is in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policy-making character, unless excluded by virtue of a determination under § 2634.203;

(f) The Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service or Postal Regulatory Commission whose basic rate of pay is equal to or greater than 120% of the minimum rate of basic pay for GS–15 of the General Schedule;

(g) The Director of the Office of Government Ethics and each agency's designated agency ethics official;

(h) Any civilian employee not otherwise described in paragraph (c) of this section who is employed in the Executive Office of the President (other than a special Government employee, as defined in 18 U.S.C. 202(a)) and holds a commission of appointment from the President; and

(i) Anyone whose employment in a position or office described in paragraphs (a) through (h) of this section has terminated, but who has not yet satisfied the filing requirements of § 2634.201(e).

§ 2634.203 Persons excluded by rule.

(a) *In general.* Any individual or group of individuals described in § 2634.202(e) (relating to positions of a confidential or policy-making character) may be excluded by rule from the public reporting requirements of this subpart when the Director of the Office of Government Ethics determines, in his sole discretion, that such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government.

(b) *Exclusion determination for employees at or below the GS–13 grade level.* (1) The determination required by paragraph (a) of this section has been made for any individual who, as a factual matter, serves in a position that meets the criteria set forth in this paragraph. The exclusion applies to a position upon a written determination by the designated agency ethics official that the position meets the following criteria:

(i) The position is paid at the GS–13 grade level or below or, in the case of a position not under the General Schedule, both the level of pay and the nature of responsibilities of the position are commensurate with the GS–13 grade level or below; and

(ii) The incumbent in the position does not have a substantial policy-making role with respect to agency programs.

(2) The designated agency ethics official must consider whether the position meets the standards for filing a confidential financial disclosure report enumerated in § 2634.904(a)(4).

(c) *Exclusion determination for employees at or below the GS–15 grade level, but above the GS–13 grade level.* The exclusion determination required by paragraph (a) of this section may also be made on a case-by-case basis by the Office of Government Ethics. To receive an exclusion determination, an agency must follow the procedures set forth in paragraph (d) of this section and must demonstrate that the employee:

(1) Has a position that has been established at the GS–14 or GS–15 grade level or, in the case of a position not under the General Schedule, both the level of pay and the nature of responsibilities of the position are commensurate with the GS–14 or GS–15 grade level; and

(2) Has no policy-making role with respect to agency programs. In the event that the Office of Government Ethics permits the requested exclusion, the designated agency ethics official must consider whether the position meets the standards for filing a confidential financial disclosure report enumerated in § 2634.904(a)(4).

(d) *Procedure.* (1) The exclusion of any individual from reporting requirements pursuant to paragraph (c) of this section will be effective as of the time the employing agency files with the Office of Government Ethics the name of the employee, the name of any incumbent in the position, and a position description. Exclusions should be requested prior to due dates for the reports which such employees would otherwise have to file. If the position description changes in a substantive way, the employing agency must provide the Office of Government Ethics with a revised position description.

(2) If the Office of Government Ethics finds that one or more positions has been improperly excluded, it will advise the agency and set a date for the filing of any report that is due.

Example: An agency requests an exclusion for a special assistant, who is a Schedule C appointee whose position description is classified at the GS–14 level. The position description indicates that the employee's duties involve the analysis of policy options and the presentation of findings and recommendations to superiors. On the basis of this position description, the requested exception is denied.

§ 2634.204 Employment of sixty days or less.

(a) *In general.* Any public filer or nominee who, as determined by the official specified in this paragraph, is not reasonably expected to perform the duties of an office or position described in § 2634.201(c) or § 2634.202 for more than 60 days in any calendar year will not be subject to the reporting requirements of § 2634.201(b), (c), or (e). This determination will be made by:

(1) The designated agency ethics official or Secretary concerned, in a case to which the provisions of § 2634.201(b) or (e) (relating to new entrant and termination reports) would otherwise apply; or

(2) The Director of the Office of Government Ethics, in a case to which the provisions of § 2634.201(c) (relating to nominee reports) would otherwise apply.

(b) *Alternative reporting.* Any new entrant who is exempted from filing a public financial report under paragraph (a) of this section and who is a special Government employee is subject to confidential reporting under § 2634.903(b). See § 2634.904(a)(2).

(c) *Exception.* If the public filer or nominee actually performs the duties of an office or position referred to in paragraph (a) of this section for more than 60 days in a calendar year, the public report otherwise required by:

(1) Section 2634.201(b) or (c) (relating to new entrant and nominee reports) must be filed within 15 calendar days after the sixtieth day of duty; and

(2) Section 2634.201(e) (relating to termination reports) must be filed as provided in that paragraph.

§ 2634.205 Special waiver of public reporting requirements.

(a) *General rule.* In unusual circumstances, the Director of the Office of Government Ethics may grant a request for a waiver of the public reporting requirements under this subpart for an individual who is reasonably expected to perform, or has performed, the duties of an office or position for fewer than 130 days in a calendar year, but only if the Director determines that:

(1) The individual is a special Government employee, as defined in 18 U.S.C. 202(a), who performs temporary duties either on a full-time or intermittent basis;

(2) The individual is able to provide services specially needed by the Government;

(3) It is unlikely that the individual's outside employment or financial interests will create a conflict of interest; and

(4) Public financial disclosure by the individual is not necessary under the circumstances.

(b) *Procedure.* (1) Requests for waivers must be submitted to the Office of Government Ethics, via the requester's agency, within 10 days after an

employee learns that the employee will hold a position which requires reporting and that the employee will serve in that position for more than 60 days in any calendar year, or upon serving in such a position for more than 60 days, whichever is earlier.

(2) The request must consist of:

(i) A cover letter which identifies the individual and the position, states the approximate number of days in a calendar year which the employee expects to serve in that position, and requests a waiver of public reporting requirements under this section;

(ii) An enclosure which states the reasons for the individual's belief that the conditions of paragraphs (a)(1) through (4) of this section are met in the particular case; and

(iii) The report otherwise required by this subpart, as a factual basis for the determination required by this section. The report must bear the legend: ''CONFIDENTIAL: WAIVER REQUEST PENDING PURSUANT TO 5 CFR 2634.205.''

(3) The agency in which the individual serves must advise the Office of Government Ethics as to the justification for a waiver.

(4) In the event a waiver is granted, the report will not be subject to the public disclosure requirements of § 2634.603; however, the waiver request cover letter will be subject to those requirements. In the event that a waiver is not granted, the confidential legend will be removed from the report, and the report will be subject to public disclosure; however, the waiver request cover letter will not then be subject to public disclosure.

Subpart C—Contents of Public Reports

§ 2634.301 Interests in property.

(a) *In general.* Except reports required under § 2634.201(f), each financial disclosure report filed pursuant to this subpart must include a brief description of any interest in property held by the filer at the end of the reporting period in a trade or business, or for investment or the production of income, having a fair market value in excess of $1,000. The report must designate the category of value of the property in accordance with paragraph (d) of this section. Each item of real and personal property must be disclosed separately. Note that for Individual Retirement Accounts (IRAs), defined contribution plans, brokerage accounts, trusts, mutual or pooled investment funds and other entities with portfolio holdings, each underlying asset must be separately disclosed, unless the entity qualifies for special treatment under § 2634.312.

(b) *Types of property reportable.* Subject to the exceptions in paragraph (c) of this section, examples of the types of property required to be reported include, but are not limited to:

(1) Real estate;

(2) Stocks, bonds, securities, and futures contracts;

(3) Mutual funds, exchange-traded funds, and other pooled investment funds;

(4) Pensions and annuities;

(5) Vested beneficial interests in trusts;

(6) Ownership interests in businesses or partnerships;

(7) Deposits in banks or other financial institutions; and

(8) Accounts receivable.

(c) *Exceptions.* The following property interests are exempt from the reporting requirements under paragraphs (a) and (b) of this section:

(1) Any personal liability owed to the filer, spouse, or dependent child by a spouse, or by a parent, brother, sister, or child of the filer, spouse, or dependent child;

(2) Personal savings accounts (defined as any form of deposit in a bank, savings and loan association, credit union, or similar financial institution) in a single financial institution or holdings in a single money market mutual fund, aggregating $5,000 or less in that institution or fund;

(3) A personal residence of the filer or spouse, as defined in § 2634.105(l); and

(4) Financial interests in any retirement system of the United States (including the Thrift Savings Plan) or under the Social Security Act.

(d) *Valuation categories.* The valuation categories specified for property items are as follows:

(1) None (or less than $1,001);

(2) $1,001 but not more than $15,000;

(3) Greater than $15,000 but not more than $50,000;

(4) Greater than $50,000 but not more than $100,000;

(5) Greater than $100,000 but not more than $250,000;

(6) Greater than $250,000 but not more than $500,000;

(7) Greater than $500,000 but not more than $1,000,000; and

(8) Greater than $1,000,000;

(9) Provided that, with respect to items held by the filer alone or held jointly by the filer with the filer's spouse and/or dependent children, the following additional categories over $1,000,000 will apply:

(i) Greater than $1,000,000 but not more than $5,000,000;

(ii) Greater than $5,000,000 but not more than $25,000,000;

(iii) Greater than $25,000,000 but not more than $50,000,000; and

(iv) Greater than $50,000,000.

(e) *Valuation of interests in property.* A good faith estimate of the fair market value of interests in property may be made in any case in which the exact value cannot be obtained without undue hardship or expense to the filer. If a filer is unable to make a good faith estimate of the value of an asset, the filer may indicate on the report that the ''value is not readily ascertainable.'' Value may also be determined by:

(1) The purchase price (in which case, the filer should indicate date of purchase);

(2) Recent appraisal;

(3) The assessed value for tax purposes (adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of that market value);

(4) The year-end book value of nonpublicly traded stock, the year-end exchange value of corporate stock, or the face value of corporate bonds or comparable securities;

(5) The net worth of a business partnership;

(6) The equity value of an individually owned business; or

(7) Any other recognized indication of value (such as the last sale on a stock exchange).

Example 1: An official has a $4,000 savings account in Bank A. The filer's spouse has a $2,500 certificate of deposit issued by Bank B and his dependent daughter has a $200 savings account in Bank C. The official does not have to disclose the deposits, as the total value of the deposits in any one bank does not exceed $5,000.

Example 2: Public filer R has a collection of post-impressionist paintings which have been carefully selected over the years. From time to time, as new paintings have been acquired to add to the collection, R has made sales of both less desirable works from his collection and paintings of various schools which he acquired through inheritance. Under these circumstances, R must report the value of all the paintings he retains as interests in property pursuant to this section, as well as income from the sales of paintings pursuant to § 2634.302(b). Recurrent sales from a collection indicate that the collection is being held for investment or the production of income.

Example 3: A reporting individual has investments which her broker holds as an IRA and invests in stocks, bonds, and mutual funds. Each such asset having a value in excess of $1,000 at the close of the reporting period must be separately listed, and the value must be shown.

§ 2634.302 Income.

(a) *Noninvestment income.* Except reports required under § 2634.201(f), each financial disclosure report filed pursuant to this subpart must disclose the source, type, and the actual amount

or value, of earned or other noninvestment income in excess of $200 from any one source which is received by the filer during the reporting period, including:

(1) Salaries, fees, commissions, wages and any other compensation for personal services (other than from United States Government employment);

(2) Retirement benefits (other than from United States Government employment, including the Thrift Savings Plan, or from Social Security);

(3) Any honoraria, and the date services were provided, including payments made or to be made to charitable organizations on behalf of the filer in lieu of honoraria; and

(4) Any other noninvestment income, such as prizes, awards, or discharge of indebtedness.

Note to paragraph (a)(3): In calculating the amount of an honorarium, subtract any actual and necessary travel expenses incurred by the recipient and one relative. If such expenses are paid or reimbursed by the honorarium source, they shall not be counted as part of the honorarium payment.

Example 1: An official is a participant in the defined benefit retirement plan of Coastal Airlines. Since his retirement from Coastal Airlines, the filer receives a $5,000 pension payment each month. The pension income must be disclosed as employment-related income.

Example 2: An official serves on the board of directors at a bank, for which he receives a $5,000 fee each calendar quarter. He also receives an annual fee of $15,000 for service as trustee of a private trust. In both instances, such fees received or earned during the reporting period must be disclosed, and the actual amount must be shown.

(b) *Investment income.* Except as indicated in § 2634.309, each financial disclosure report filed pursuant to this subpart must disclose:

(1) The source and type of investment income, characterized as dividends, rent, interest, capital gains, or income from qualified or excepted trusts or excepted investment funds (see § 2634.312), which is received by the filer during the reporting period, and which exceeds $200 in amount or value from any one source. Examples include, but are not limited to, income derived from real estate, collectible items, stocks, bonds, notes, copyrights, pensions, mutual funds, the investment portion of life insurance contracts, loans, and personal savings accounts (as defined in § 2634.301(c)(2)). Note that for entities with portfolio holdings, such as brokerage accounts or trusts, each underlying source of income must be separately disclosed, unless the entity qualifies for special treatment under § 2634.312. The amount or value of income from each reported source must also be disclosed and categorized in accordance with the following table:

(i) None (or less than $201);

(ii) $201 but not more than $1,000;

(iii) Greater than $1,000 but not more than $2,500;

(iv) Greater than $2,500 but not more than $5,000;

(v) Greater than $5,000 but not more than $15,000;

(vi) Greater than $15,000 but not more than $50,000;

(vii) Greater than $50,000 but not more than $100,000;

(viii) Greater than $100,000 but not more than $1,000,000; and

(ix) Greater than $1,000,000;

(x) Provided that, with respect to investment income of the filer alone or joint investment income of the filer with the filer's spouse and/or dependent children, the following additional categories over $1,000,000 will apply:

(A) Greater than $1,000,000 but not more than $5,000,000; and

(B) Greater than $5,000,000.

(2) The source, type, and the actual amount or value of gross income from a business, distributive share of a partnership, joint business venture income, payments from an estate or an annuity or endowment contract, or any other items of income not otherwise covered by paragraphs (a) or (b)(1) of this section which are received by the filer during the reporting period and which exceed $200 from any one source.

Example 1: An official rents out a portion of his residence. He receives rental income of $6,000 from one individual for four months and $12,000 from another individual for the remaining eight months of the year covered by his incumbent financial disclosure report. He must identify the property, specify the type of income (rent), and indicate the category of the total amount of rent received. (He must also disclose the asset information required by § 2634.301.)

Example 2: An official has an ownership interest in a fast-food restaurant, from which she receives $25,000 in annual income. She must specify on her financial disclosure report the type of income, such as partnership distributive share or gross business income, and indicate the actual amount of such income. (Additionally, she must describe the business and categorize its asset value, pursuant to § 2634.301.)

Example 3: A reporting individual owned stock in XYZ, a publicly-traded corporation. During the reporting period, she received $85 in dividends and, when she sold her shares, $175 in capital gains. The individual must disclose XYZ Corporation because the stock generated more than $200 in income. She also must specify the type of income (dividends and capital gains), and indicate the category of the total amount of income received. (She must also disclose the asset information required by § 2634.301.)

§ 2634.303 Purchases, sales, and exchanges.

(a) *In general.* Except for reports required under § 2634.201(f) and as indicated in § 2634.310(b), each financial disclosure report filed pursuant to this subpart must include a brief description, the date, and value (using the categories of value in § 2634.301(d)(2) through (9)) of any purchase, sale, or exchange by the filer during the reporting period, in which the amount involved in the transaction exceeds $1,000. The acquisition of an asset through inheritance is not considered a transaction for purposes of this section. Reportable transactions include:

(1) Of real property, other than a personal residence of the filer or spouse, as defined in § 2634.105(l); and

(2) Of stocks, bonds, commodity futures, mutual fund shares, and other forms of securities.

(b) *Exceptions.* The following transactions need not be reported under paragraph (a) of this section:

(1) Transactions solely by and between the reporting individual, the reporting individual's spouse, or the reporting individual's dependent children;

(2) Transactions involving Treasury bills, notes, and bonds; money market mutual funds or accounts; and bank accounts (as defined in § 2634.301(c)(2)), provided they occur at rates, terms, and conditions available generally to members of the public;

(3) Transactions involving holdings of trusts and investment funds described in § 2634.312(b) and (c);

(4) Transactions which occurred at a time when the reporting individual was not a public financial disclosure filer or was not a Federal Government officer or employee; and

(5) Transactions fully disclosed in any public financial disclosure report filed during the calendar year pursuant to § 2634.309.

Example 1: An employee sells her personal residence in Virginia for $650,000 and purchases a personal residence in the District of Columbia for $800,000. She did not rent out any portion of the Virginia property and does not intend to rent out the property in DC. She need not report the sale of the Virginia residence or the purchase of the DC residence.

Example 2: An official sells his beach home in Maryland for $350,000. Because he has rented it out for one month every summer, it does not qualify as a personal residence. He must disclose the sale under this section and any capital gain over $200 realized on the sale under § 2634.302.

Example 3: An official sells a ranch to his dependent daughter. The official need not report the sale because it is a transaction

between the reporting individual and a dependent child; however, any capital gain, except for that portion attributable to a personal residence, is required to be reported under § 2634.302.

Example 4: An official sells an apartment building and realizes a loss of $100,000. He must report the sale of the building if the sale price of the property exceeds $1,000; however, he need not report anything under § 2634.302, as the sale did not result in a capital gain.

Example 5: An official buys shares in an S&P 500 mutual fund worth $12,000 in the 401(k) account that he has with a previous employer. He must disclose the purchase under this section. To make the purchase, he sold $12,000 worth of shares in a money market fund also held in the 401(k). He does not need to disclose the sale of the money market fund shares.

Example 6: An official sells her interest in a private business for $75,000. She must disclose the sale under this section, and she must disclose any capital gain over $200 realized on the sale under § 2634.302.

§ 2634.304 Gifts and reimbursements.

(a) *Gifts.* Except reports required under § 2634.201(f) and as indicated in § 2634.310(b), each financial disclosure report filed pursuant to this subpart must contain the identity of the source, a brief description, and the value of all gifts aggregating more than $390 in value which are received by the filer during the reporting period from any one source. For in-kind travel-related gifts, include a travel itinerary, dates, and nature of expenses provided.

Note to paragraph (a): Under sections 102(a)(2)(A) and (B) of the Ethics in Government Act, the reporting thresholds for gifts, reimbursements, and travel expenses are tied to the dollar amount for the ''minimal value'' threshold for foreign gifts established by the Foreign Gifts and Decoration Act, 5 U.S.C. 7342(a)(5). The General Services Administration (GSA), in consultation with the Secretary of State, redefines the value every 3 years. In 2017, the amount was set at $390. In subsection (d) the Office of Government Ethics sets the aggregation exception amount and redefines the value every 3 years. In 2017, the amount was set at $156. The Office of Government Ethics will update this part in 2020 and every three years thereafter to reflect the new amounts.

(b) *Reimbursements.* Except as indicated in §§ 2634.309 and 2634.310(b), each financial disclosure report filed pursuant to this subpart must contain the identity of the source, a brief description (including a travel itinerary, dates, and the nature of expenses provided), and the value of any travel-related reimbursements aggregating more than $390 in value, which are received by the filer during the reporting period from any one source. The filer is not required to report travel reimbursements received from the filer's non-Federal employer.

(c) *Exclusions.* Reports need not contain any information about gifts and reimbursements to which the provisions of this section would otherwise apply which are received from relatives (see § 2634.105(o)) or during a period in which the filer was not an officer or employee of the Federal Government. Additionally, any food, lodging, or entertainment received as ''personal hospitality of any individual,'' as defined in § 2634.105(k), need not be reported. See also exclusions specified in the definitions of gift and reimbursement, at § 2634.105(h) and (n).

(d) *Aggregation exception.* Any gift or reimbursement with a fair market value of $156 or less need not be aggregated for purposes of the reporting rules of this section. However, the acceptance of gifts, whether or not reportable, is subject to the restrictions imposed by Executive Order 12674, as modified by Executive Order 12731, and the implementing regulations on standards of ethical conduct.

Example 1: An official accepts a print, a pen and pencil set, and a letter opener from a community service organization he has worked with solely in his private capacity. He determines, in accordance with paragraph (e) of this section, that these gifts are valued as follows:
Gift 1—Print: $220
Gift 2—Pen and pencil set: $185
Gift 3—Letter opener: $20

The official must disclose Gifts 1 and 2, since together they aggregate more than $390 in value from the same source. Gift 3 need not be aggregated, because its value does not exceed $156.

Example 2: An official receives the following gifts from a single source:

1. Dinner for two at a local restaurant—$200.
2. Round-trip taxi fare to meet donor at the restaurant—$25.
3. Dinner at donor's city residence—(value uncertain).
4. Round-trip airline transportation and hotel accommodations to visit Epcot Center in Florida—$600.
5. Weekend at donor's country home, including duck hunting and tennis match—(value uncertain).

Based on the minimal value threshold established in 2017, the official need only disclose Gift 4. Gift 1 falls within the exclusion in § 2634.105(h)(4) for food and beverages not consumed in connection with a gift of overnight lodging. Gifts 3 and 5 need not be disclosed because they fall within the exception for personal hospitality of an individual. Gift 2 need not be aggregated and reported, because its value does not exceed $156.

Example 3: A non-Federal organization asks an official to speak at an out-of-town meeting on a matter that is unrelated to her official duties and her agency. She accepts the invitation and travels on her own time to the event. The round-trip airfare costs $500. Based on the minimal value threshold established in 2017, the official must disclose the value of the plane ticket whether the organization pays for the ticket directly or reimburses her for her purchase of the ticket.

(e) *Valuation of gifts and reimbursements.* The value to be assigned to a gift or reimbursement is its fair market value in the United States. For most reimbursements, this will be the amount actually received. For gifts, the value should be determined in one of the following manners:

(1) Except as provided in paragraph (e)(4) of this section, if the gift is readily available in the market, the value is its retail price. The filer need not contact the donor, but may contact a retail establishment selling similar items to determine the present cost in the market.

(2) If the item is not readily available in the market, such as a piece of art, a handmade item, or an antique, the filer may make a good faith estimate of the value of the item.

(3) The term ''readily available in the market'' means that an item generally is available for retail purchase.

(4) The market value of a ticket entitling the holder to attend an event which includes food, refreshments, entertainment, or other benefits is the face value of the ticket, which may exceed the actual cost of the food and other benefits.

Example: Items such as a pen and pencil set, letter opener, leather case, or engraved pen are generally available in the market and can be determined by researching the retail price for each item online.

(f) *Waiver rule in the case of certain gifts.* In unusual cases, the value of a gift as defined in § 2634.105(h) need not be aggregated for reporting threshold purposes under this section, and therefore the gift need not be reported on a public financial disclosure report, if the Director of the Office of Government Ethics grants a publicly available waiver to a public filer.

(1) *Standard.* If the Director receives a written request for a waiver, the Director will issue a waiver upon determining that:

(i) Both the basis of the relationship between the grantor and the grantee and the motivation behind the gift are personal; and

(ii) No countervailing public purpose requires public disclosure of the nature, source, and value of the gift.

Example The Secretary of Education and her spouse receive the following two wedding gifts: (A) A crystal decanter valued at $450 from the Secretary's former college roommate and lifelong friend, who is a real estate broker in Wyoming; and (B) A gift of

a print valued at $500 from a business partner of the spouse, who owns a catering company. Under these circumstances, the Director of OGE may grant a request for a waiver of the requirement to report on a public financial disclosure report each of these gifts.

(2) *Public disclosure of waiver request.* If approved in whole or in part, the cover letter requesting the waiver and the waiver will be subject to the public disclosure requirements in § 2634.603. Enclosures to the cover letter, required by paragraph (3)(ii) of this section, are not covered by § 2634.603.

(3) *Procedure.* (i) A public filer seeking a waiver under this section must submit a request to the designated agency ethics official for the employee's agency. The designated agency ethics official must sign a cover letter that identifies the filer and the filer's position and states that a waiver is requested under this section. To the extent practicable, the designated agency ethics official should avoid including other personal identifying information about the employee in the cover letter.

(ii) In an enclosure to the cover letter, the filer must set forth:

(A) The identity and occupation of the donor;

(B) A statement that the relationship between the donor and the filer is personal in nature;

(C) An explanation of all relevant circumstances surrounding the gift, including whether any donor is a prohibited source, as defined in § 2635.203(d), or represents a prohibited source and whether the gift was given because of the employee's official position; and

(D) A brief description of the gift and the value of the gift.

(iii) With respect to the information required in paragraph (f)(3)(ii) of this section, if a gift has more than one donor, the filer shall provide the necessary information for each donor.

(iv) The Director will approve or disapprove any request for a waiver in writing. In the event that a waiver is granted, the Director will avoid including personal information about the filer to the extent practicable.

§ 2634.305 Liabilities.

(a) *In general.* Except reports required under § 2634.201(f), each financial disclosure report filed pursuant to this subpart must identify and include a brief description of the filer's liabilities exceeding $10,000 owed to any creditor at any time during the reporting period, and the name of the creditors to whom such liabilities are owed. The report also must designate the category of value of the liabilities in accordance with § 2634.301(d) based on the greatest amount owed to the creditor during the period, except that the amount of a revolving charge account is based on the balance at the end of the reporting period.

(b) *Exceptions.* The following are not required to be reported under paragraph (a) of this section:

(1) Personal liabilities owed to a spouse or to the parent, brother, sister, or child of the filer, spouse, or dependent child; and

(2) Any loan secured by a personal motor vehicle, household furniture, or appliances, provided that the loan does not exceed the purchase price of the item which secures it; and

(c) *Limited exception for mortgages on personal residences.* (1) The President, the Vice President, and a filer nominated for or appointed by the President to a position that requires the advice and consent of the Senate, other than those identified in paragraph (c)(2) of this section, must disclose a mortgage on a personal residence.

(2) Other public filers are not required to disclose a mortgage on a personal residence. Such filers include individuals who are nominated or appointed by the President to a Senate-confirmed position as a Foreign Service Officer below the rank of ambassador or a special Government employee.

Example 1: A career official in the Senior Executive Service has the following debts outstanding during the reporting period:

1. Mortgage on personal residence—$200,000.
2. Mortgage on rental property—$150,000.
3. VISA Card—$1,000.
4. Loan balance of $15,000, secured by family automobile purchased for $16,200.
5. Loan balance of $10,500, secured by antique furniture purchased for $8,000.
6. Loan from parents—$20,000.
7. A personal line of credit up to $20,000 on which no draws have been made.

The loans indicated in items 2 and 5 must be disclosed in the official's annual financial disclosure report. Loan 1 is exempt from disclosure under paragraph (c) of this section because it is secured by the personal residence and the filer is not covered by the STOCK Act provision requiring reporting. Loan 3 need not be disclosed under paragraph (a) of this section because it is considered to be a revolving charge account with an outstanding liability that does not exceed $10,000 at the end of the reporting period. Loan 4 need not be disclosed under paragraph (b)(2) of this section because it is secured by a personal motor vehicle which was purchased for more than the value of the loan. Loan 6 need not be disclosed because the creditors are persons specified in paragraph (b)(1) of this section. Loan 7 need not be disclosed because the filer has not drawn on the line of credit and, as a result, had no outstanding liability associated with the line of credit during the reporting period.

Example 2: An incumbent official has $15,000 of outstanding debt in an American Express account in July. On December 31, the outstanding liability is $7,000. The liability does not need to be disclosed in the official's annual financial disclosure report because it does not exceed $10,000 at the end of the reporting period.

Example 3: A Secretary of a Department has an outstanding home improvement loan in the amount of $25,000, which is secured by her home. This liability must be disclosed on the annual financial disclosure report.

§ 2634.306 Agreements and arrangements.

Except reports required under § 2634.201(f), each financial disclosure report filed pursuant to this subpart must identify the parties to and the date of, and must briefly describe the terms of, any agreement or arrangement of the filer in existence at any time during the reporting period with respect to:

(a) Future employment;

(b) A leave of absence from employment during the period of the reporting individual's Government service;

(c) Continuation of payments by a former employer other than the United States Government; and

(d) Continuing participation in an employee welfare or benefit plan maintained by a former employer, other than the United States Government.

§ 2634.307 Outside positions.

(a) *In general.* Except reports required under § 2634.201(f), each financial disclosure report filed pursuant to this subpart must identify all positions held at any time by the filer during the reporting period, as an officer, director, trustee, general partner, proprietor, representative, executor, employee, or consultant of any corporation, company, firm, partnership, trust, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States.

(b) *Exceptions.* The following need not be reported under paragraph (a) of this section:

(1) Positions held in any religious, social, fraternal, or political entity; and

(2) Positions solely of an honorary nature, such as those with an emeritus designation.

Example 1: An official recently terminated her role as the managing member of a limited liability corporation upon appointment to a position in the executive branch. The managing member position must be disclosed in the official's new entrant financial disclosure report pursuant to this section.

Example 2: An official is a member of the board of his church. The official does not need to disclose the position in his financial disclosure report.

Example 3: An official is an officer in a fraternal organization that exists for the purpose of performing service work in the community. The official does not need to disclose this position in her financial disclosure report.

Example 4: An official is the ceremonial Parade Marshal for a local town's annual Founders' Day event and, in that capacity, leads a parade and serves as Master of Ceremonies for an awards ceremony at the town hall. The official does not need to disclose this position in her financial disclosure report.

Example 5: An official recently terminated his role as a campaign manager for a candidate for the Office of the President of the United States upon appointment to a noncareer position in the executive branch. The official does not need to disclose the campaign manager position in his financial disclosure report.

Example 6: Immediately prior to her recent appointment to a position in an agency, an official terminated her employment as a corporate officer. In connection with her employment, she served for several years as the corporation's representative to an association that represents members of the industry in which the corporation operates. She does not need to disclose her role as her employer's representative to the association because she performed her representative duties in her capacity as a corporate officer.

Example 7: An official holds a position on the board of directors of the local food bank. The official must disclose the position in his financial disclosure report.

§ 2634.308 Filer's sources of compensation exceeding $5,000 in a year

(a) *In general.* A public filer required to file a report as a New Entrant or a Nominee, pursuant to § 2634.201(b) or (c), must identify the filer's sources of compensation which exceed $5,000 in any one calendar year. This requirement includes compensation paid to another person, such as an employer, in exchange for the filer's services (*e.g.,* payments to a law firm exceeding $5,000 in any one calendar year in exchange for the services of a partner or associate attorney). The filer must also briefly describe the nature of the duties performed or services rendered (*e.g.,* ''legal services'').

(b) *Exceptions.* (1) The name of a source of compensation may be excluded only if that information is specifically determined to be confidential as a result of a privileged relationship established by law and if the disclosure is specifically prohibited by law or regulation, by a rule of a professional licensing organization, or by a client agreement that at the time of engagement of the filer's services expressly provided that the client's name would not be disclosed publicly to any person. If the filer excludes the name of any source, the filer must indicate in the report that such information has been excluded, the number of sources excluded, and, if applicable, a citation to the statute, regulation, rule of professional conduct, or other authority pursuant to which disclosure of the information is specifically prohibited.

(2) The report need not contain any information with respect to any person for whom services were provided by any firm or association of which the filer was a member, partner, or employee, unless the filer was directly involved in the provision of such services.

(3) The President, the Vice President, and a candidate referred to in § 2634.201(d) are not required to report this information.

Example: A nominee who is a partner or employee of a law firm and who has worked on a matter involving a client from which the firm received over $5,000 in fees during a calendar year must report the name of the client only if the value of the services rendered by the nominee exceeded $5,000. The name of the client would not normally be considered confidential, unless the matter potentially involved an investigation or enforcement action involving the client by the government and the client's name has never been disclosed publicly in connection with the representation. As a result, the nominee must disclose the client's identity unless it is protected by statute, a court order, is under seal, or is considered confidential because: (1) The client is the subject of a non-public proceeding or investigation and the client has not been identified in a public filing, statement, appearance, or official report; (2) disclosure of the client's name is specifically prohibited by a rule of professional conduct that can be enforced by a professional licensing body; or (3) a privileged relationship was established by a written confidentiality agreement, entered into at the time that the filer's services were retained, that expressly prohibits disclosure of the client's identity.

§ 2634.309 Periodic reporting of transactions.

(a) *In general.* Each financial disclosure report filed pursuant to § 2634.201(f) must include a brief description, the date, and value (using the categories of value in § 2634.301(d)(2) through (9)) of any purchase, sale, or exchange of stocks, bonds, commodity futures, and other forms of securities by the filer during the reporting period, in which the amount involved in the transaction exceeds $1,000.

(b) *Exceptions.* The following transactions need not be reported under paragraph (a) of this section:

(1) Transactions solely by and between the reporting individual, the reporting individual's spouse, or the reporting individual's dependent children;

(2) Transactions of excepted investment funds as defined in § 2634.312(c);

(3) Transactions involving Treasury bills, notes, and bonds; money market mutual funds or accounts; and bank accounts (as defined in § 2634.301(c)(2)), provided they occur at rates, terms, and conditions available generally to members of the public;

(4) Transactions involving holdings of trusts and investment funds described in § 2634.312(b) and (c); and

(5) Transactions which occurred at a time when the reporting individual was not a public financial disclosure filer or was not a Federal Government officer or employee.

§ 2634.310 Reporting periods.

(a) *Incumbents.* Each financial disclosure report filed pursuant to § 2634.201(a) must include a full and complete statement of the information required to be reported under this subpart, for the preceding calendar year (except for §§ 2634.303 and 2634.304, relating to transactions and gifts/reimbursements, for which the reporting period does not include any portion of the previous calendar year during which the filer was not a Federal employee). In the case of §§ 2634.306 and 2634.307, the reporting period also includes the current calendar year up to the date of filing.

(b) *New entrants, nominees, and candidates.* Each financial disclosure report filed pursuant to § 2634.201(b) through (d) must include a full and complete statement of the information required to be reported under this subpart, except for § 2634.303 (relating to purchases, sales, and exchanges of certain property) and § 2634.304 (relating to gifts and reimbursements). The following special rules apply:

(1) *Interests in property.* For purposes of § 2634.301, the report must include all interests in property specified by that section which are held on or after a date which is fewer than 31 days before the date on which the report is filed.

(2) *Income.* For purposes of § 2634.302, the report must include all income items specified by that section which are received during the period beginning on January 1 of the preceding calendar year and ending on the date on which the report is filed, except as otherwise provided by § 2634.606 relating to updated disclosure for nominees.

(3) *Liabilities.* For purposes of § 2634.305, the report must include all liabilities specified by that section which are owed during the period beginning on January 1 of the preceding calendar year and ending fewer than 31

days before the date on which the report is filed.

(4) *Agreements and arrangements.* For purposes of § 2634.306, the report will include only those agreements and arrangements which still exist at the time of filing.

(5) *Outside positions.* For purposes of § 2634.307, the report must include all such positions held during the preceding two calendar years and the current calendar year up to the date of filing.

(6) *Certain sources of compensation.* For purposes of § 2634.308, the report must also identify the filer's sources of compensation which exceed $5,000 during either of the preceding two calendar years or during the current calendar year up to the date of filing.

(c) *Termination reports.* Each financial disclosure report filed under § 2634.201(e) must include a full and complete statement of the information required to be reported under this subpart, covering the preceding calendar year if an incumbent report required by § 2634.201(a) has not been filed and covering the portion of the calendar year in which such termination occurs up to the date the individual left such office or position.

(d) *Periodic reporting of transactions.* Each financial disclosure report filed under § 2634.201(f) must include a full and complete statement of the information required to be reported according to the provisions of § 2634.309. The report must be filed within 30 days of receiving notification of a covered transaction, but not later than 45 days after the date such transaction was executed.

Example: A filer receives a statement on October 10 notifying her of all of the covered transactions executed by her broker on her behalf in September. Although each transaction may have a different due date, if the filer reports all the covered transactions from September on a report filed on or before October 15, the filer will ensure that all transactions have been timely reported.

§ 2634.311 Spouses and dependent children.

(a) *Special disclosure rules.* Each report required by the provisions of subpart B of this part must also include the following information with respect to the spouse or dependent children of the reporting individual:

(1) *Income.* For purposes of § 2634.302:

(i) With respect to a spouse, the source but not the amount of earned income (other than honoraria) which exceeds $1,000 from any one source; and if earned income is derived from a spouse's self-employment in a business or profession, the nature of the business or profession but not the amount of the earned income;

(ii) With respect to a spouse, the source and the actual amount or value of any honoraria received by the spouse (or payments made or to be made to charity on the spouse's behalf in lieu of honoraria) which exceed $200 from any one source, and the date on which the services were provided; and

(iii) With respect to a spouse or dependent child, the type and source, and the amount or value (category or actual amount, in accordance with § 2634.302), of all other income exceeding $200 from any one source, such as investment income from interests in property (if the property itself is reportable according to § 2634.301).

Example 1: The spouse of a filer is employed as a teller at Bank X and earns $50,000 per year. The report must disclose that the spouse is employed by Bank X. The amount of the spouse's earnings need not be disclosed.

Example 2: The spouse of a reporting individual is self-employed as a pediatrician. The report must disclose her self-employment as a physician, but need not disclose the amount of income.

(2) *Gifts and reimbursements.* For purposes of § 2634.304, gifts and reimbursements received by a spouse or dependent child, unless the gift was given to the spouse or dependent child totally independent of their relationship to the filer.

(3) *Interests in property, transactions, and liabilities.* For purposes of §§ 2634.301, 2634.303, 2634.305, and 2634.309, all information concerning property interests, transactions, or liabilities referred to by those sections of a spouse or dependent child.

(b) *Exception.* For reports filed as a new entrant, nominee, or candidate under § 2634.201(b) through (d), no information regarding gifts and reimbursements or transactions is required for a spouse or dependent child.

(c) *Divorce and separation.* A reporting individual need not report any information about:

(1) A spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation;

(2) A former spouse or a spouse from whom the reporting individual is permanently separated; or

(3) Any income or obligations of the reporting individual arising from dissolution of the reporting individual's marriage or permanent separation from a spouse.

(d) *Unusual circumstances.* In very rare cases, certain interests in property, transactions, and liabilities of a spouse or a dependent child are excluded from reporting requirements, provided that each requirement of this paragraph is strictly met.

(1) The filer must certify without qualification that the item represents the spouse's or dependent child's sole financial interest or responsibility, and that the filer has no knowledge regarding that item;

(2) The item must not be in any way, past or present, derived from the income, assets or activities of the filer; and

(3) The filer must not derive, or expect to derive, any financial or economic benefit from the item.

Note to paragraph (d): The exception described in paragraph (d) is not available to most filers. A filer who files a joint tax return with a spouse will normally be deemed to derive a financial or economic benefit from every financial interest of the spouse, and the filer will not be able to rely on this exception. If a filer and the filer's spouse cohabitate, share any expenses, or are jointly responsible for the care of children, the filer will be deemed to derive an economic benefit from every financial interest of the spouse.

Example: The spouse of a filer shares in paying expenses or taxes of the marriage or family (for example, any such item as: A household item, food, clothing, vacation, automobile maintenance or fuel, any child-related expense, income tax, or real estate tax, etc.). The spouse of a filer has a brokerage account. The spouse does not share any information about the holdings and does not want the information disclosed on a financial disclosure statement. The filer must disclose the holdings in the spouse's brokerage account because the filer is deemed to derive a financial or economic benefit from any asset of the filer's spouse who shares in paying expenses or taxes of the marriage or family.

§ 2634.312 Trusts, estates, and investment funds.

(a) *In general.* (1) Except as otherwise provided in this section, each financial disclosure report must include the information required by this subpart about the holdings of and income from the holdings of any trust, estate, investment fund or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, the filer, the filer's spouse, or dependent child.

(2) Information about the underlying holdings of a trust is required if the filer, filer's spouse, or dependent child currently is entitled to receive income from the trust or is entitled to access the principal of the trust. If a filer, filer's spouse, or dependent child has a beneficial interest in a trust that either will provide income or the ability to

access the principal in the future, the filer should determine whether there is a vested interest in the trust under controlling state law. However, no information about the underlying holdings of the trust is required for a nonvested beneficial interest in the principal or income of a trust.

Note to paragraph (a): Nothing in this section requires the reporting of the holdings or income of a revocable inter vivos trust (also known as a ''living trust'') with respect to which the filer, the filer's spouse, or dependent child has only a remainder interest, whether or not vested, provided that the grantor of the trust is neither the filer, the filer's spouse, nor the filer's dependent child. Furthermore, nothing in this section requires the reporting of the holdings or income of a revocable inter vivos trust from which the filer, the filer's spouse, or dependent child receives any discretionary distribution, provided that the grantor of the trust is neither the filer, the filer's spouse, nor the filer's dependent child.

(b) *Qualified trusts and excepted trusts.* (1) A filer should not report information about the holdings of or income from holdings of, any qualified blind trust (as defined in § 2634.402) or any qualified diversified trust (as defined in § 2634.402). For a qualified blind trust, a public financial disclosure report must disclose the category of the aggregate amount of the trust's income attributable to the beneficial interest of the filer, the filer's spouse, or dependent child in the trust. For a qualified diversified trust, a public financial disclosure report must disclose the category of the aggregate amount of income with respect to such a trust which is actually received by the filer, the filer's spouse, or dependent child, or applied for the benefit of any of them.

(2) In the case of an excepted trust, a filer should indicate the general nature of its holdings, to the extent known, but will not otherwise need to report information about the trust's holdings or income from holdings. The category of the aggregate amount of income from an excepted trust which is received by the filer, the filer's spouse, or dependent child must be reported on public financial disclosure reports. For purposes of this part, the term ''excepted trust'' means a trust:

(i) Which was not created directly by the filer, spouse, or dependent child; and

(ii) The holdings or sources of income of which the filer, spouse, or dependent child have no specific knowledge through a report, disclosure, or constructive receipt, whether intended or inadvertent.

(c) *Excepted investment funds.* (1) No information is required under paragraph (a) of this section about the underlying holdings of or income from underlying holdings of an *excepted investment fund* as defined in paragraph (c)(2) of this section, except that the fund itself must be identified as an interest in property and/or a source of income. Filers must also disclose the category of value of the fund interest held; aggregate amount of income from the fund which is received by the filer, the filer's spouse, or dependent child; and value of any transactions involving shares or units of the fund.

(2) For purposes of financial disclosure reports filed under the provisions of this part, an ''excepted investment fund'' means a widely held investment fund (whether a mutual fund, regulated investment company, common trust fund maintained by a bank or similar financial institution, pension or deferred compensation plan, or any other pooled investment fund), if:

(i)(A) The fund is publicly traded or available; or

(B) The assets of the fund are widely diversified; and

(ii) The filer neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

(3) A fund is widely diversified if it does not have a stated policy of concentrating its investments in any industry, business, or single country other than the United States or bonds of a single state within the United States.

Note to paragraph (c): The fact that an investment fund qualifies as an excepted investment fund is not relevant to a determination as to whether the investment qualifies for an exemption to the criminal conflict of interest statute at 18 U.S.C. 208(a), pursuant to part 2640 of this chapter. Some excepted investment funds qualify for exemptions pursuant to part 2640, while other excepted investment funds do not qualify for such exemptions. If an employee holds an excepted investment fund that is not exempt from 18 U.S.C. 208(a), the ethics official may need additional information from the filer to determine if the holdings of the fund create a conflict of interest and should advise the employee to monitor the fund's holdings for potential conflicts of interest.

§ 2634.313 Special rules.

(a) *Political campaign funds.* Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed under this part. However, if the individual has authority to exercise control over the fund's assets for personal use rather than campaign or political purposes, that portion of the fund over which such authority exists must be reported.

(b) *Reporting standards.* (1) A filer may attach to the financial disclosure report, a copy of a statement which, in a clear and concise fashion, readily discloses all information that the filer would otherwise have been required to enter, but only if authorized by the designated agency ethics official or for reports that are reviewed by the Office of Government Ethics, the Director. The filer must annotate the report clearly to the extent necessary to identify information required by this part, including, when required, the identification of assets as excepted investment funds and the identification of income types. In addition, the statement must identify all income required to be disclosed for the entire reporting period. Any statement attached to a financial disclosure report and its contents may be subject to public release. A filer who attaches a statement to a reporting form is solely responsible for redacting personal information not otherwise subject to disclosure prior to filing the financial disclosure report (*e.g.,* account numbers, addresses, etc.).

(2) In lieu of reporting the category of amount or value of any item listed in any report filed pursuant to this subpart, a filer may report the actual dollar amount of such item.

Subpart D—Qualified Trusts

§ 2634.401 Overview.

(a) *Purpose.* The Ethics in Government Act of 1978 created two types of qualified trusts, the qualified blind trust and the qualified diversified trust, that may be used by employees to reduce real or apparent conflicts of interest. The primary purpose of an executive branch qualified trust is to confer on an independent trustee and any other designated fiduciary the sole responsibility to administer the trust and to manage trust assets without participation by, or the knowledge of, any interested party or any representative of an interested party. This responsibility includes the duty to decide when and to what extent the original assets of the trust are to be sold or disposed of, and in what investments the proceeds of sale are to be reinvested. Because the requirements set forth in the Ethics in Government Act and this part assure true ''blindness,'' employees who have a qualified trust cannot be influenced in the performance of their official duties by their financial interests in the trust assets. Their official actions, under these circumstances, should be free from collateral attack arising out of real or apparent conflicts of interest.

(b) *Scope.* Two characteristics of the qualified trust assure that true ''blindness'' exists: The independence of the trustee and the restriction on communications between the independent trustee and the interested parties. In order to serve as a trustee for an executive branch qualified trust, an entity must meet the strict requirements for independence set forth in the Ethics in Government Act and this part. Restrictions on communications also reinforce the independence of the trustee from the interested parties. During both the establishment of the trust and the administration of the trust, communications are limited to certain reports that are required by the Act and to written communications that are pre-screened by the Office of Government Ethics. No other communications, even about matters not connected to the trust, are permitted between the independent trustee and the interested parties.

§ 2634.402 Definitions.

As used in this subpart:

(a) *Director* means the Director of the Office of Government Ethics.

(b) *Employee* means an officer or employee of the executive branch of the United States.

(c) *Independent trustee* means a trustee who meets the requirements of § 2634.405 and who is approved by the Director under this subpart.

(d) *Interested party* means the President, the Vice President, an employee, a nominee or candidate as described in § 2634.201, and the spouse and any minor or dependent child of the President, Vice President, employee, or a nominee or candidate as described in § 2634.201, in any case in which the employee, spouse, or minor or dependent child has a beneficial interest in the principal or income of a trust proposed for certification under this subpart or certified under this subpart.

(e) *Qualified blind trust* means a trust in which the interested party has a beneficial interest and which:

(1) Is certified pursuant to § 2634.407 by the Director;

(2) Has a portfolio as specified in § 2634.406(a);

(3) Follows the model trust document prepared by the Office of Government Ethics; and

(4) Has an independent trustee as defined in § 2634.405.

(f) *Qualified diversified trust* means a trust in which the interested party has a beneficial interest and which:

(1) Is certified pursuant to § 2634.407 by the Director;

(2) Has a portfolio as specified in § 2634.406(b);

(3) Follows the model trust document prepared by the Office of Government Ethics; and

(4) Has an independent trustee as defined in § 2634.405.

(g) *Qualified trust* means a trust described in the Ethics in Government Act of 1978 and this part and certified by the Director under this subpart. There are two types of qualified trusts, the qualified blind trust and the qualified diversified trust.

§ 2634.403 General description of trusts.

(a) *Qualified blind trust.* (1) The qualified blind trust is the most universally adaptable qualified trust. An interested party may put most types of assets (such as cash, stocks, bonds, mutual funds, or real estate) into a qualified blind trust.

(2) In the case of a qualified blind trust, 18 U.S.C. 208 and other Federal conflict of interest statutes and regulations apply to the assets that an interested party transfers to the trust until such time as he or she is notified by the independent trustee that such asset has been disposed of or has a value of less than $1,000. Because the interested party knows what assets he or she placed in the trust and there is no requirement that these assets be diversified, the possibility still exists that the interested party could be influenced in the performance of official duties by those interests.

(b) *Qualified diversified trust.* (1) An interested party may put only readily marketable securities into a qualified diversified trust. In addition, the portfolio must meet the diversification requirements of § 2634.406(b)(2).

(2) In the case of a qualified diversified trust, the conflict of interest laws do not apply to the assets that an interested party transfers to the trust. Because the assets that an interested party puts into this trust must meet the diversification requirements set forth in this part, the diversification achieves ''blindness'' with regard to the initial assets.

(3) *Special notice for Presidential appointees*—(i) *In general.* In any case in which the establishment of a qualified diversified trust is contemplated with respect to an individual whose nomination is being considered by a Senate committee, that individual must inform the committee of the intention to establish a qualified diversified trust at the time of filing a financial disclosure report with the committee.

(ii) *Applicability.* Paragraph (b)(3)(i) of this section is not applicable to members of the uniformed services or Foreign Service officers. The special notice requirement of this section will not preclude an individual from seeking the certification of a qualified blind trust or qualified diversified trust after the Senate has given its advice and consent to a nomination.

(c) *Conflict of interest laws.* In the case of each type of trust, the conflict of interest laws do not apply to the assets that the independent trustee or any other designated fiduciary adds to the trust.

§ 2634.404 Summary of procedures for creation of a qualified trust.

(a) *Consultation with the Office of Government Ethics.* Any interested party (or that party's representative) who is considering setting up a qualified blind or qualified diversified trust must contact the Office of Government Ethics prior to beginning the process of creating the trust. The Office of Government Ethics is the only entity that has the authority to certify a qualified trust. Because an interested party must propose, for the approval of the Office of Government Ethics, an entity to serve as the independent trustee, the Office of Government Ethics will explain the requirements that an entity must meet in order to qualify as an independent trustee. Such information is essential in order for the interested party to interview entities for the position of independent trustee. The Office of Government Ethics will also explain the restrictions on the communications between the interested parties and the proposed trustee.

(b) *Selecting an independent trustee.* After consulting with the Office of Government Ethics, the interested party may interview entities who meet the requirements of § 2634.405(a) in order to find one to serve as an independent trustee. At an interview, the interested party may ask general questions about the institution, such as how long it has been in business, its policies and philosophy in managing assets, the types of clients it serves, its prior performance record, and the qualifications of the personnel who would be handling the trust. Because the purpose of a qualified trust is to give an independent trustee the sole responsibility to manage the trust assets without the interested party having any knowledge of the identity of the assets in the trust, the interested party may communicate his or her general financial interests and needs to any institution which he or she interviews. For example, the interested party may communicate a preference for maximizing income or long-term capital gain or for balancing safety of capital with growth. The interested party may

not give more specific instructions to the proposed trustee, such as instructing it to maintain a specific allocation between stocks and bonds, or choosing stocks in a particular industry.

(c) *The proposed independent trustee.* (1) The entity selected by an interested party as a possible trustee must contact the Office of Government Ethics to receive guidance on the qualified trust program. The Office of Government Ethics will ask the proposed trustee to submit a letter describing its past and current contacts, including banking and client relationships, with the interested party, spouse, and minor or dependent children. The extent of these contacts will determine whether the proposed trustee is independent under the Act and this part.

(2) In addition, an interested party may select an investment manager or other fiduciary. Other proposed fiduciaries selected by an interested party, such as an investment manager, must meet the independence requirements.

(d) *Approval of the independent trustee.* If the Director determines that the proposed trustee meets the requirements of independence, the Director will approve, in writing, that entity as the trustee for the qualified trust.

(e) *Confidentiality agreement.* If any person other than the independent trustee or designated fiduciary has access to information that may not be shared with an interested party or that party's representative, that person must file a Confidentiality Agreement with the Office of Government Ethics. Persons filing a Confidentiality Agreement must certify that they will not make prohibited contacts with an interested party or that party's representative.

(f) *Drafting the trust instrument.* The representative of the interested party will use the model documents provided by the Office of Government Ethics to draft the trust instrument. There are two annexes to the model trust document: An annex describing any current, permissible banking or client relationships between any interested parties and the independent trustee or other fiduciaries and an annex listing the initial assets that the interested party transfers to the trust. Any deviations from the model trust documents must be approved by the Director.

(g) *Certification of the trust.* The representative then presents the unexecuted trust instrument to the Office of Government Ethics for review. If the Director finds that the instrument conforms to one of the model documents, the Director will certify the qualified trust. After certification, the interested party and the independent trustee will sign the trust instrument. They will submit a copy of the executed instrument to the Office of Government Ethics within 30 days of execution. The interested party will then transfer the assets to the trust.

Note to paragraph (g): Existing qualified trusts approved under any State law or by the legislative or judicial branches of the Federal Government of the United States will not be recertified by the Director. Individuals with existing qualified trusts who are required to file a financial disclosure report upon entering the executive branch, becoming a nominee for a position appointed by the President and subject to confirmation by the Senate, or becoming a candidate for President or Vice President must file a complete financial disclosure form that includes a full disclosure of items in the trust. After filing a complete form, the individual may establish a qualified trust under the policies and provisions of this rule.

§ 2634.405 Standards for becoming an independent trustee or other fiduciary.

(a) *Eligible entities.* An interested party must select an entity that meets the requirements of this part to serve as an independent trustee or other fiduciary. The type of entity that is allowed to serve as an independent trustee is a financial institution, not more than 10 percent of which is owned or controlled by a single individual, which is:

(1) A bank, as defined in 12 U.S.C. 1841(c); or

(2) An investment adviser, as defined in 15 U.S.C. 80b–2(a)(11).

Note to paragraph (a): By the terms of paragraph (3)(A)(i) of section 102(f) of the Act, an individual who is an attorney, a certified public accountant, a broker, or an investment advisor is also eligible to serve as an independent trustee. However, experience of the Office of Government Ethics over the years dictates the necessity of limiting service as a trustee or other fiduciary to the financial institutions referred to in this paragraph, to maintain effective administration of trust arrangements and preserve confidence in the Federal qualified trust program. Accordingly, under its authority pursuant to paragraph (3)(D) of section 102(f) of the Act, the Office of Government Ethics will not approve proposed trustees or other fiduciaries who are not financial institutions, except in unusual cases where compelling necessity is demonstrated to the Director, in his or her sole discretion.

(b) *Orientation.* After the interested party selects a proposed trustee, that proposed trustee should contact the Office of Government Ethics for an orientation about the qualified trust program.

(c) *Independence requirements.* The Director will determine that a proposed trustee is independent if:

(1) The entity is independent of and unassociated with any interested party so that it cannot be controlled or influenced in the administration of the trust by any interested party;

(2) The entity is not and has not been affiliated with any interested party, and is not a partner of, or involved in any joint venture or other investment or business with, any interested party; and

(3) Any director, officer, or employee of such entity:

(i) Is independent of and unassociated with any interested party so that such director, officer, or employee cannot be controlled or influenced in the administration of the trust by any interested party;

(ii) Is not and has not been employed by any interested party, not served as a director, officer, or employee of any organization affiliated with any interested party, and is not and has not been a partner of, or involved in any joint venture or other investment with, any interested party; and

(iii) Is not a relative of any interested party.

(d) *Required documents.* In order to make this determination, the proposed trustee must submit the following documentation to the Director:

(1) A letter describing its past and current contacts, including banking and client relationships, with the interested party, spouse, or minor or dependent child; and

(2) A Certificate of Independence, which follows the model Certificate of Independence prepared by the Office of Government Ethics. Any variation from the model document must be approved by the Director.

(e) *Determination.* If the Director determines that the current relationships, if any, between the interested party and the independent trustee do not violate the independence requirements, these relationships will be disclosed in an annex to the trust instrument. No additional relationships with the independent trustee may be established unless they are approved by the Director.

(f) *Approval of the trustee.* If the Director determines that the proposed trustee meets applicable requirements, the Office of Government Ethics will send the interested parties and their representatives a letter indicating its approval of a proposed trustee.

(g) *Revocation.* The Director may revoke the approval of a trustee or any other designated fiduciary pursuant to the rules of subpart E of this part.

(h) *Adding fiduciaries.* An independent trustee may employ or consult other entities, such as investment counsel, investment advisers, accountants, and tax preparers, to assist in any capacity to administer the trust or to manage and control the trust assets, if all of the following conditions are met:

(1) When any interested party or any representative of an interested party learns about such employment or consultation, the person must sign the trust instrument as a party, subject to the prior approval of the Director;

(2) Under all the facts and circumstances, the person is determined pursuant to the requirements for eligible entities under paragraphs (a) through (f) of this section to be independent of an interested party with respect to the trust arrangement;

(3) The person is instructed by the independent trustee or other designated fiduciary not to disclose publicly or to any interested party information which might specifically identify current trust assets or those assets which have been sold or disposed of from trust holdings, other than information relating to the sale or disposition of original trust assets in the case of the blind trust; and

(4) The person is instructed by the independent trustee or other designated fiduciary to have no direct communication with respect to the trust with any interested party or any representative of an interested party, and to make all indirect communications with respect to the trust only through the independent trustee, pursuant to § 2634.408(a).

§ 2634.406 Initial portfolio.

(a) *Qualified blind trust.* (1) An interested party may not place any asset in the blind trust that any interested party would be prohibited from holding by the Act, by the implementing regulations, or by any other applicable Federal law, Executive order, or regulation.

(2) Except as described in paragraph (a)(1) of this section, an interested party may put most types of assets (such as cash, stocks, bonds, mutual funds, or real estate) into a qualified blind trust.

(b) *Qualified diversified trust.* (1) The initial portfolio may not contain securities of entities having substantial activities in an employee's primary area of Federal responsibility. If requested by the Director, the designated agency ethics official for the employee's agency must certify whether the proposed portfolio meets this standard.

(2) The initial assets of a diversified trust must comprise a well-diversified portfolio of readily marketable securities.

(i) A portfolio will be well diversified if:

(A) The value of the securities concentrated in any particular or limited economic or geographic sector is no more than 20 percent of the total; and

(B) The value of the securities of any single entity (other than the United States Government) is no more than five percent of the total.

(ii) A security will be readily marketable if:

(A) Daily price quotations for the security appear regularly in media, including websites, that publish the information; and

(B) The trust holds the security in a quantity that does not unduly impair liquidity.

(iii) The interested party or the party's representative must provide the Director with a detailed list of the securities proposed for inclusion in the portfolio, specifying their fair market value and demonstrating that these securities meet the requirements of this paragraph. The Director will determine whether the initial assets of the trust proposed for certification comprise a widely diversified portfolio of readily marketable securities.

(c) *Hybrid qualified trust.* A qualified trust may contain both a blind portfolio of assets and a diversified portfolio of assets. The Office of Government Ethics refers to this arrangement as a hybrid qualified trust.

§ 2634.407 Certification of qualified trust by the Office of Government Ethics.

(a) *General.* After the Director approves the independent trustee, the interested party or a representative will prepare the trust instrument for review by the Director. The representative of the interested party will use the model documents provided by the Office of Government Ethics to draft the trust instrument. Any deviations from the model trust documents must be approved by the Director. No trust will be considered qualified for purposes of the Act until the Office of Government Ethics certifies the trust prior to execution.

(b) *Certification procedures.* (1) After the Director has approved the trustee, the interested party or the party's representative must submit the following documents to the Office of Government Ethics for review:

(i) A copy of the proposed, unexecuted trust instrument;

(ii) A list of the assets which the interested party proposes to place in the trust; and

(iii) In the case of a pre-existing trust as described in § 2634.409 which the interested party asks the Office of Government Ethics to certify, a copy of the pre-existing trust instrument and a list of that trust's assets categorized as to value in accordance with § 2634.301(d).

(2) In order to assure timely trust certification, the interested parties and their representatives will be responsible for the expeditious submission to the Office of Government Ethics of all required documents and responses to requests for information.

(3) The Director will indicate that he or she has certified the trust in a letter to the interested parties or their representatives. The interested party and the independent trustee may then execute the trust instrument.

(4) Within 30 days after the trust is certified under this section by the Director, the interested party or that party's representative must file with the Director a copy of the executed trust instrument and all annexed schedules (other than those provisions which relate to the testamentary disposition of the trust assets), including a list of the assets which were transferred to the trust, categorized as to value of each asset in accordance with § 2634.301(d).

(5) Once a trust is classified as a qualified blind or qualified diversified trust in the manner discussed in this section, § 2634.312(b) applies less inclusive financial disclosure requirements to the trust assets.

(c) *Certification standard.* A trust will be certified for purposes of this subpart only if:

(1) It is established to the Director's satisfaction that the requirements of section 102(f) of the Act and this subpart have been met; and

(2) The Director determines that approval of the trust arrangement as a qualified trust is appropriate to assure compliance with applicable laws and regulations.

(d) *Revocation.* The Director may revoke certification of a trust pursuant to the rules of subpart E of this part.

§ 2634.408 Administration of a qualified trust.

(a) *General rules on communications between the independent fiduciaries and the interested parties.* (1) There must be no direct or indirect communications with respect to the qualified trust between an interested party or the party's representative and the independent trustee or any other designated fiduciary with respect to the trust unless:

(i) In the case of the blind trust, the proposed communication is approved in advance by the Director and it relates to:

(A) A distribution of cash or other unspecified assets of the trust;

(B) The general financial interest and needs of the interested party including, but not limited to, a preference for maximizing income or long-term capital gain;

(C) Notification to the independent trustee by the employee that the employee is prohibited by a subsequently applicable statute, Executive order, or regulation from holding an asset, and to direction to the independent trustee that the trust may not hold that asset; or

(D) Instructions to the independent trustee to sell all of an asset which was initially placed in the trust by an interested party, and which in the determination of the employee creates a real or apparent conflict due to duties the employee subsequently assumed (but nothing herein requires such instructions); or

(ii) In the case of the diversified trust, the proposed communication is approved in advance by the Director and it relates to:

(A) A distribution of cash or other unspecified assets of the trust;

(B) The general financial interest and needs of the interested party including, but not limited to, a preference for maximizing income or long-term capital gain; or

(C) Information, documents, and funds concerning income tax obligations arising from sources other than the property held in trust that are required by the independent trustee to enable him to file, on behalf of an interested party, the personal income tax returns and similar tax documents which may contain information relating to the trust.

(2) The person initiating a communication approved under paragraphs (a)(1)(i) or (a)(1)(ii) of this section must file a copy of the communication with the Director within five days of the date of its transmission.

Note to paragraph (a): By the terms of paragraph (3)(C)(vi) of section 102(f) of the Act, communications which solely consist of requests for distributions of cash or other unspecified assets of the trust are not required to be in writing. Further, there is no statutory mechanism for pre-screening of proposed communications. However, experience of the Office of Government Ethics over the years dictates the necessity of prohibiting any oral communications between the trustee and an interested party with respect to the trust and pre-screening all proposed written communications, to prevent inadvertent prohibited communications and preserve confidence in the Federal qualified trust program. Accordingly, under its authority pursuant to paragraph (3)(D) of section 102(f) of the Act, the Office of Government Ethics will not approve proposed trust instruments that do not contain language conforming to this policy, except in unusual cases where compelling necessity is demonstrated to the Director, in his or her sole discretion.

(b) *Required reports from the independent trustee to the interested parties*—(1) *Quarterly reports.* The independent trustee must, without identifying specifically an asset or holding, report quarterly to the interested parties and their representatives the aggregate market value of the assets representing the interested party's interest in the trust. The independent trustee must follow the model document for this report and must file a copy of the report, within five days of the date of its transmission, with the Director.

(2) *Annual report.* In the case of a qualified blind trust, the independent trustee must, without identifying specifically an asset or holding, report annually to the interested parties and their representatives the aggregate amount of the trust's income attributable to the interested party's beneficial interest in the trust, categorized in accordance with § 2634.302(b) to enable the employee to complete the public financial disclosure form. In the case of a qualified diversified trust, the independent trustee must, without identifying specifically an asset or holding, report annually to the interested parties and their representatives the aggregate amount actually distributed from the trust to the interested party or applied for the party's benefit. Additionally, in the case of the blind trust, the independent trustee must report on Schedule K–1 the net income or loss of the trust and any other information necessary to enable the interested party to complete an individual tax return. The independent trustee must follow the model document for each report and must file a copy of the report, within five days of the date of its transmission, with the Director.

(3) *Report of sale of asset.* In the case of the qualified blind trust, the independent trustee must promptly notify the employee and the Director when any particular asset transferred to the trust by an interested party has been completely disposed of or when the value of that asset is reduced to less than $1,000. The independent trustee must file a copy of the report, within five days of the date of its transmission, with the Director.

(c) *Communications regarding trust and beneficiary taxes.* The Act establishes special tax filing procedures to be used by the independent trustee and the trust beneficiaries in order to maintain the substantive separation between trust beneficiaries and trust administrators.

(1) *Trust taxes.* Because a trust is a separate entity distinct from its beneficiaries, an independent trustee must file an annual fiduciary tax return for the trust (IRS Form 1041). The independent trustee is prohibited from providing the interested parties and their representatives with a copy of the trust tax return.

(2) *Beneficiary taxes.* The trust beneficiaries must report income received from the trust on their individual tax returns.

(i) For beneficiaries of qualified blind trusts, the independent trustee sends a modified K–1 summarizing trust income in appropriate categories to enable the beneficiaries to file individual tax returns. The independent trustee is prohibited from providing the interested parties or their representatives with the identity of the assets.

(ii) For beneficiaries of qualified diversified trusts, the Act requires the independent trustee to file the individual tax returns on behalf of the trust beneficiaries. The interested parties must give the independent trustee a power of attorney to prepare and file, on their behalf, the personal income tax returns and similar tax documents which may contain information relating to the trust. Appropriate Internal Revenue Service power of attorney forms will be used for this purpose. The beneficiaries must transmit to the trustee materials concerning taxable transactions and occurrences outside of the trust, pursuant to the requirements in each trust instrument which detail this procedure. This communication must be approved in advance by the Director in accordance with paragraph (a) of this section.

(iii) Some qualified trust beneficiaries may pay estimated income taxes.

(A) In order to pay the proper amount of estimated taxes each quarter, the beneficiaries of a qualified blind trust will need to receive information about the amount of income, if any, generated by the trust each quarter. To assist the beneficiaries, the independent trustee is permitted to send, on a quarterly basis, information about the amount of income generated by the trust in that quarter. This communication must be approved in advance by the Director in accordance with paragraph (a) of this section.

(B) In order to pay the proper amount of estimated taxes each quarter, the

independent trustee of a qualified diversified trust will need to receive information about the amount of income, if any, earned by the beneficiaries on assets that are not in the trust. To assist the independent trustee, the beneficiaries are permitted to send, on a quarterly basis, information about the amount of income they earned in that quarter on assets that are outside of the trust. This communication must be approved in advance by the Director in accordance with paragraph (a) of this section.

(d) *Responsibilities of the independent trustee and other fiduciaries.* (1) Any independent trustee or any other designated fiduciary of a qualified trust may not knowingly and willfully, or negligently:

(i) Disclose any information to an interested party or that party's representative with respect to the trust that may not be disclosed under title I of the Act, the implementing regulations, or the trust instrument;

(ii) Acquire any holding:

(A) Directly from an interested party or that party's representative without the prior written approval of the Director; or

(B) The ownership of which is prohibited by, or not in accordance with, title I of the Act, the implementing regulations, the trust instrument, or with other applicable statutes and regulations;

(iii) Solicit advice from any interested party or any representative of that party with respect to such trust, which solicitation is prohibited by title I of the Act, the implementing regulations, or the trust instrument; or

(iv) Fail to file any document required by the implementing regulations or the trust instrument.

(2) The independent trustee and any other designated fiduciary, in the exercise of their authority and discretion to manage and control the assets of the trust, may not consult or notify any interested party or that party's representative.

(3) The independent trustee may not acquire by purchase, grant, gift, exercise of option, or otherwise, without the prior written approval of the Director, securities, cash, or other property from any interested party or any representative of an interested party.

(4) *Certificate of Compliance.* An independent trustee and any other designated fiduciary must file, with the Director by May 15 following any calendar year during which the trust was in existence, a properly executed Certificate of Compliance that follows the model Certificate of Compliance prepared by the Office of Government Ethics. Any variation from the model must be approved by the Director.

(5) In addition, the independent trustee and such fiduciary must maintain and make available for inspection by the Office of Government Ethics, as it may from time to time direct, the trust's books of account and other records and copies of the trust's tax returns for each taxable year of the trust.

(e) *Responsibilities of the interested parties and their representatives.* (1) Interested parties to a qualified trust and their representatives may not knowingly and willfully, or negligently:

(i) Solicit or receive any information about the trust that may not be disclosed under title I of the Act, the implementing regulations or the trust instrument; or

(ii) Fail to file any document required by this subpart or the trust instrument.

(2) The interested parties and their representatives may not take any action to obtain, and must take reasonable action to avoid receiving, information with respect to the holdings and the sources of income of the trust, including a copy of any trust tax return filed by the independent trustee, or any information relating to that return, except for the reports and information specified in paragraphs (b) and (c) of this section.

(3) In the case of any qualified trust, the interested party must, within 30 days of transferring an asset, other than cash, to a previously established qualified trust, file a report with the Director, which identifies each asset, categorized as to value in accordance with § 2634.301(d).

(4) Any portfolio asset transferred to the trust by an interested party must be free of any restriction with respect to its transfer or sale, except as fully described in schedules attached to the trust instrument, and as approved by the Director.

(5) During the term of the trust, the interested parties may not pledge, mortgage, or otherwise encumber their interests in the property held by the trust.

(f) *Amendment of the trust.* The independent trustee and the interested parties may amend the terms of a qualified trust only with the prior written approval of the Director and upon a showing of necessity and appropriateness.

§ 2634.409 Pre-existing trusts.

An interested party may place a pre-existing irrevocable trust into a qualified trust, which may then be certified by the Office of Government Ethics. This arrangement should be considered in the case of a pre-existing trust whose terms do not permit amendments that are necessary to satisfy the rules of this subpart. All of the relevant parties (including the employee, any other interested parties, the trustee of the pre-existing trust, and all of the other parties and beneficiaries of the pre-existing trust) will be required pursuant to section 102(f)(7) of the Act to enter into an umbrella trust agreement. The umbrella trust agreement will specify that the pre-existing trust will be administered in accordance with the provisions of this subpart. A parent or guardian may execute the umbrella trust agreement on behalf of a required participant who is a minor child. The Office of Government Ethics has prepared model umbrella trust agreements that the interested party can use in this circumstance. The umbrella trust agreement will be certified as a qualified trust if all of the requirements of this subpart are fulfilled under conditions where required confidentiality with respect to the trust can be assured.

§ 2634.410 Dissolution.

Within 30 days of dissolution of a qualified trust, the interested party must file a report of the dissolution with the Director and a list of assets of the trust at the time of the dissolution, categorized as to value in accordance with § 2634.301(d).

§ 2634.411 Reporting on financial disclosure reports.

An employee who files a public or confidential financial disclosure report must report the trust on the financial disclosure report.

(a) *Public financial disclosure report.* If the employee files a public financial disclosure report, the employee must report the trust as an asset, including the overall category of value of the trust. Additionally, in the case of a qualified blind trust, the employee must disclose the category of value of income earned by the trust. In the case of a qualified diversified trust, the employee must report the category of value of income received from the trust by the employee, the employee's spouse, or dependent child, or applied for the benefit of any of them.

(b) *Confidential financial disclosure report.* In the case of a confidential financial disclosure report, the employee must report the trust as an asset.

§ 2634.412 Sanctions and enforcement.

Section 2634.702 sets forth civil sanctions, as provided by sections 102(f)(6)(C)(i) and (ii) of the Act and as

adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act, which apply to any interested party, independent trustee, or other trust fiduciary who violates the obligations under the Act, its implementing regulations, or the trust instrument. Subpart E of this part delineates the procedure which must be followed with respect to the revocation of trust certificates and trustee approvals.

§ 2634.413 Public access.

(a) *Documents subject to public disclosure requirements.* The following qualified trust documents filed by a public filer, nominee, or candidate are subject to the public disclosure requirements of § 2634.603:

(1) The executed trust instrument and any amendments (other than those provisions which relate to the testamentary disposition of the trust assets), and a list of the assets which were transferred to the trust, categorized as to the value of each asset;

(2) The identity of each additional asset (other than cash) transferred to a qualified trust by an interested party during the life of the trust, categorized as to the value of each asset;

(3) The report of the dissolution of the trust and a list of the assets of the trust at the time of the dissolution, categorized as to the value of each asset;

(4) In the case of a blind trust, the lists provided by the independent trustee of initial assets placed in the trust by an interested party which have been sold or whose value is reduced to less than $1,000; and

(5) The Certificates of Independence and Compliance.

(b) *Documents exempt from public disclosure requirements.* The following documents are exempt from the public disclosure requirements of § 2634.603 and also may not be disclosed to any interested party:

(1) Any document (and the information contained therein) filed under the requirements of § 2634.408(a) and (c); and

(2) Any document (and the information contained therein) inspected under the requirements of § 2634.408(d)(4) (other than a Certificate of Compliance).

§ 2634.414 OMB control number.

The various model trust documents and Certificates of Independence and Compliance referenced in this subpart, together with the underlying regulatory provisions, are all approved by the Office of Management and Budget under control number 3209–0007.

Subpart E—Revocation of Trust Certificates and Trustee Approvals

§ 2634.501 Purpose and scope.

(a) *Purpose.* This subpart establishes the procedures of the Office of Government Ethics for enforcement of the qualified blind trust, qualified diversified trust, and independent trustee provisions of title I of the Ethics in Government Act of 1978, as amended, and the regulation issued thereunder (subpart D of this part).

(b) *Scope.* This subpart applies to all trustee approvals and trust certifications pursuant to §§ 2634.405 and 2634.407, respectively.

§ 2634.502 Definitions.

For purposes of this subpart (unless otherwise indicated), the term ''trust restrictions'' means the applicable provisions of title I of the Ethics in Government Act of 1978, subpart D of this part, and the trust instrument.

§ 2634.503 Determinations.

(a) *Violations.* If the Office of Government Ethics learns that violations or apparent violations of the trust restrictions exist that may warrant revocations of trust certification or trustee approval previously granted under § 2634.407 or § 2634.405, the Director may, pursuant to the procedure specified in paragraph (b) of this section, appoint an attorney on the staff of the Office of Government Ethics to review the matter. After completing the review, the attorney will submit findings and recommendations to the Director.

(b) *Review procedure.* (1) In the review of the matter, the attorney will perform such examination and analysis of violations or apparent violations as the attorney deems reasonable.

(2) The attorney will provide an independent trustee and, if appropriate, the interested parties, with:

(i) Notice that revocation of trust certification or trustee approval is under consideration pursuant to the procedures in this subpart;

(ii) A summary of the violation or apparent violations that will state the preliminary facts and circumstances of the transactions or occurrences involved with sufficient particularity to permit the recipients to determine the nature of the allegations; and

(iii) Notice that the recipients may present evidence and submit statements on any matter in issue within 10 business days of the recipient's actual receipt of the notice and summary.

(c) *Determination.* (1) In making determinations with respect to the violations or apparent violations under this section, the Director will consider the findings and recommendations submitted by the attorney, as well as any written statements submitted by the independent trustee or interested parties.

(2) The Director may take one of the following actions upon finding a violation or violations of the trust restrictions:

(i) Issue an order revoking trust certification or trustee approval;

(ii) Resolve the matter through any other remedial action within the Director's authority;

(iii) Order further examination and analysis of the violation or apparent violation; or

(iv) Decline to take further action.

(3) If the Director issues an order of revocation, parties to the trust instrument will receive prompt written notification. The notice will state the basis for the revocation and will inform the parties of the consequence of the revocation, which will be either of the following:

(i) The trust is no longer a qualified blind or qualified diversified trust for any purpose under Federal law; or

(ii) The independent trustee may no longer serve the trust in any capacity and must be replaced by a successor, who is subject to the prior written approval of the Director.

Subpart F—Procedure

§ 2634.601 Report forms.

(a) This section prescribes the required forms for financial disclosure made pursuant to this part.

(1) *New entrant, annual, and termination public financial disclosure reports.* The Office of Government Ethics provides a form for publicly disclosing the information described in subpart B of this part in connection with new entrant, nominee, incumbent, and termination reports filed pursuant to § 2634.201(a) through (e). That form is the OGE Form 278e (Executive Branch Personnel Public Financial Disclosure Report) or any successor form.

(2) *Periodic transaction public financial disclosure reports.* The Office of Government Ethics provides a form for publicly disclosing the information described in subpart B of this part in connection with periodic transaction public financial disclosure reports filed pursuant to § 2634.201(f). That form is the OGE Form 278–T (Periodic Transaction Report), or any successor form.

(3) *Confidential financial disclosure reports.* The Office of Government Ethics also provides a form for confidentially disclosing information

described in subpart I of this part in connection with confidential financial disclosure reports filed pursuant to § 2634.903. That form is the OGE Form 450 (Confidential Financial Disclosure Report), or any successor form.

(b) Supplies of the OGE Form 278e, OGE Form 278–T, and OGE Form 450 are to be reproduced locally by each agency. The Office of Government Ethics has published copies on its official website.

(c) Subject to the prior written approval of the Director of the Office of Government Ethics, an agency may require employees to file additional confidential financial disclosure forms which supplement the standard form referred to in paragraph (a)(3) of this section, if necessary because of special or unique agency circumstances. The Director may approve such agency forms when, in his opinion, the supplementation is shown to be necessary for a comprehensive and effective agency ethics program to identify and resolve conflicts of interest. See §§ 2634.103 and 2634.901.

(d) The information collection and recordkeeping requirements have been approved by the Office of Management and Budget under control number 3209–0001 for the OGE Form 278e, and control number 3209–0006 for OGE Form 450. OGE Form 278–T has been determined not to require an OMB paperwork control number, as the form is used exclusively by current Government employees.

§ 2634.602 Filing of reports.

(a) Except as otherwise provided in this section, the reporting individual will file financial disclosure reports required under this part with the designated agency ethics official or the delegate at the agency where the individual is employed, or was employed immediately prior to termination of employment, or in which the individual will serve, unless otherwise directed by the employee's home agency. Detailees will file with their home agency. Reports are due at the times indicated in § 2634.201 (public disclosure) or § 2634.903 (confidential disclosure), unless an extension is granted pursuant to the provisions of subparts B or I of this part. Filers must certify that the information contained in the report is true, correct, and complete to their best knowledge.

(b) The President, the Vice President, any independent counsel, and persons appointed by independent counsel under 28 U.S.C. chapter 40, will file the public financial disclosure reports required under this part with the Director of the Office of Government Ethics.

(c)(1) Each agency receiving the public financial disclosure reports required to be filed under this part by the following individuals must transmit copies to the Director of the Office of Government Ethics:

(i) The Postmaster General;

(ii) The Deputy Postmaster General;

(iii) The Governors of the Board of Governors of the United States Postal Service;

(iv) The designated agency ethics official;

(v) Employees of the Executive Office of the President who are appointed under 3 U.S.C. 105(a)(2)(A) or (B) or 3 U.S.C. 107(a)(1)(A) or (b)(1)(A)(i), and employees of the Office of Vice President who are appointed under 3 U.S.C. 106(a)(1)(A) or (B); and

(vi) Officers and employees in, and nominees to, offices or positions which require confirmation by the Senate, other than members of the uniformed services.

(2) Prior to transmitting a copy of a report to the Director of the Office of Government Ethics, the designated agency ethics official or the delegate must review that report in accordance with § 2634.605, except for the designated agency ethics official's own report, which must be reviewed by the agency head or by a delegate of the agency head.

(3) For nominee reports, the Director of the Office of Government Ethics must forward a copy to the Senate committee that is considering the nomination. See § 2634.605(c) for special procedures regarding the review of such reports.

(d) The Director of the Office of Government Ethics must file the Director's financial disclosure report with the Office of Government Ethics, which will make it immediately available to the public in accordance with this part.

(e) Candidates for President and Vice President identified in § 2634.201(d), other than an incumbent President or Vice President, must file their financial disclosure reports with the Federal Election Commission, which will review and send copies of such reports to the Director of the Office of Government Ethics.

(f) Members of the uniformed services identified in § 2634.202(c) must file their financial disclosure reports with the Secretary concerned, or the Secretary's delegate.

§ 2634.603 Custody of and access to public reports.

(a) Each agency must make available to the public in accordance with the provisions of this section those public reports filed with the agency by reporting individuals described under subpart B of this part.

(b) This section does not require public availability of those reports filed by:

(1) Any individual in the Office of the Director of National Intelligence, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, or the National Security Agency, or any individual engaged in intelligence activities in any agency of the United States, if the President finds or has found that, due to the nature of the office or position occupied by that individual, public disclosure of the report would, by revealing the identity of the individual or other sensitive information, compromise the national interest of the United States. Individuals referred to in this paragraph who are exempt from the public availability requirement may also be authorized, notwithstanding § 2634.701, to file any additional reports necessary to protect their identity from public disclosure, if the President finds or has found that such filings are necessary in the national interest; or

(2) An independent counsel whose identity has not been disclosed by the Court under 28 U.S.C chapter 40, or any person appointed by that independent counsel under such chapter.

(c) Each agency will, within 30 days after any public report is received by the agency, permit inspection of the report by, or furnish a copy of the report to, any person who makes written application as provided by agency procedure. Agency reviewing officials and the support staffs who maintain the files, the staff of the Office of Government Ethics, and Special Agents of the Federal Bureau of Investigation who are conducting a criminal inquiry into possible conflict of interest violations need not submit an application. The agency may utilize Office of Government Ethics Form 201 for such applications. An application must state:

(1) The requesting person's name, occupation, and address;

(2) The name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(3) That the requesting person is aware of the prohibitions on obtaining or using the report set forth in paragraph (f) of this section.

(d) Applications for the inspection of or copies of public reports will also be made available to the public throughout the period during which the report itself is made available, utilizing the

procedures in paragraph (c) of this section.

(e) The agency may require a reasonable fee, established by agency regulation, to recover the direct cost of reproduction or mailing of a public report, excluding the salary of any employee involved. A copy of the report may be furnished without charge or at a reduced charge if the agency determines that waiver or reduction of the fee is in the public interest. The criteria used by an agency to determine when a fee will be reduced or waived will be established by regulation. Agency regulations contemplated by paragraph (e) of this section do not require approval pursuant to § 2634.103.

(f) It is unlawful for any person to obtain or use a public report:

(1) For any unlawful purpose;

(2) For any commercial purpose, other than by news and communications media for dissemination to the general public;

(3) For determining or establishing the credit rating of any individual; or

(4) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

Example 1: The deputy general counsel of Agency X is responsible for reviewing the public financial disclosure reports filed by persons within that agency. The agency personnel director, who does not exercise functions within the ethics program, wishes to review the disclosure report of an individual within the agency. The personnel director must file an application to review the report. However, the supervisor of an official with whom the deputy general counsel consults concerning matters arising in the review process need not file such an application.

Example 2: A state law enforcement agent is conducting an investigation which involves the private financial dealings of an individual who has filed a public financial disclosure report. The agent must complete a written application in order to inspect or obtain a copy.

Example 3: A financial institution has received an application for a loan from an official which indicates her present financial status. The official has filed a public financial disclosure statement with her agency. The financial institution cannot be given access to the disclosure form for purposes of verifying the information contained on the application.

(g)(1) Any public report filed with an agency or transmitted to the Director of the Office of Government Ethics under this section will be retained by the agency, and by the Office of Government Ethics when it receives a copy. The report will be made available to the public for a period of six years after receipt. After the six-year period, the report must be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to § 2634.201(c) as a nominee and was not subsequently confirmed by the Senate, or who filed the report pursuant to § 2634.201(d) as a candidate and was not subsequently elected, the report, unless needed in an ongoing investigation, must be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President or Vice President. See also the OGE/GOVT–1 Governmentwide executive branch Privacy Act system of records (available for inspection at the Office of Government Ethics or on OGE's website, *www.oge.gov*), as well as any applicable agency system of records.

(2) For purposes of paragraph (g)(1) of this section, in the case of a reporting individual with respect to whom a trust has been certified under subpart D of this part, a copy of the qualified trust agreement, the list of assets initially placed in the trust, and all other publicly available documents relating to the trust will be retained and made available to the public until the periods for retention of all other reports of the individual have lapsed under paragraph (g)(1) of this section.

(Approved by the Office of Management and Budget under control numbers 3209–0001 and 3209–0002)

§ 2634.604 Custody of and denial of public access to confidential reports.

(a) Any report filed with an agency under subpart I of this part will be retained by the agency for a period of six years after receipt. After the six-year period, the report must be destroyed unless needed in an ongoing investigation. See also the OGE/GOVT–2 Governmentwide executive branch Privacy Act system of records (available for inspection at the Office of Government Ethics or on OGE's website, *www.oge.gov*), as well as any applicable agency system of records.

(b) The reports filed pursuant to subpart I of this part are confidential. No member of the public will have access to such reports, except pursuant to the order of a Federal court or as otherwise provided under the Privacy Act. See 5 U.S.C. 552a and the OGE/GOVT–2 Privacy Act system of records (and any applicable agency system); 5 U.S.C. app. (Ethics in Government Act of 1978, section 107(a)); sections 201(d) and 502(b) of Executive Order 12674, as modified by Executive Order 12731; and § 2634.901(d).

§ 2634.605 Review of reports.

(a) *In general.* The designated agency ethics official will normally serve as the reviewing official for reports submitted to the official's agency. That responsibility may be delegated, except in the case of certification of nominee reports required by paragraph (c) of this section. See also § 2634.105(q). The designated agency ethics official will note on any report or supplemental report the date on which it is received. Except as indicated in paragraph (c) of this section, all reports must be reviewed within 60 days after the date of filing. Reports that are reviewed by the Director of the Office of Government Ethics must be forwarded promptly by the designated agency ethics official to the Director. The Director will review the reports within 60 days from the date on which they are received by the Office of Government Ethics. If additional information is needed, the Director will notify the agency. In the event that additional information must be obtained from the filer, the agency will require that the filer provide that information as promptly as is practical but not more than 30 days after the request. Final certification in accordance with paragraph (b)(3) of this section may, of necessity, occur later, when additional information is being sought or remedial action is being taken under this section.

(b) *Responsibilities of reviewing official*—(1) *Initial review.* As a part of the initial review, the reviewing official may request an intermediate review by the filer's supervisor or another reviewer. In the case of a filer who is detailed to another agency for more than 60 days during the reporting period, the reviewing official will coordinate with the ethics official at the agency at which the employee is serving the detail if the report reveals a potential conflict of interest.

(2) *Standards of Review.* The reviewing official must examine the report to determine, to the reviewing official's satisfaction, that:

(i) Each required part of the report is completed; and

(ii) No interest or position disclosed on the report violates or appears to violate:

(A) Any applicable provision of chapter 11 of title 18, United States Code;

(B) The Act, as amended, and the implementing regulations;

(C) Executive Order 12674, as modified by Executive Order 12731, and the implementing regulations;

(D) Any other applicable Executive Order in force at the time of the review; or

(E) Any other agency-specific statute or regulation which governs the filer.

(3) *Signature by reviewing official.* If the reviewing official is of the opinion that the report meets the requirements of paragraph (b)(2) of this section, the reviewing official will certify it by signature and date. The reviewing official need not audit the report to ascertain whether the disclosures are correct. Disclosures will be taken at ''face value'' as correct, unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. However, a report which is signed by a reviewing official certifies that the filer's agency has reviewed the report, that the reviewing official is of the opinion that each required part of the report has been completed, and that on the basis of information contained in such report the filer is in compliance with applicable laws and regulations noted in paragraph (b)(2)(ii) of this section.

(4) *Requests for, and review based on, additional information.* If the reviewing official believes that additional information is required to be reported, the reviewing official will request that any additional information be submitted within 30 days from the date of the request, unless the reviewing official grants an extension in writing. This additional information will be incorporated into the report. If the reviewing official concludes, on the basis of the information disclosed in the report and any additional information submitted, that the report fulfills the requirements of paragraph (b)(2) of this section, the reviewing official will sign and date the report.

(5) *Compliance with applicable laws and regulations.* If the reviewing official concludes that information disclosed in the report may reveal a violation of applicable laws and regulations as specified in paragraph (b)(2)(ii) of this section, the official must:

(i) Notify the filer of that conclusion;

(ii) Afford the filer a reasonable opportunity for an oral or written response; and

(iii) Determine, after considering any response, whether or not the filer is then in compliance with applicable laws and regulations specified in paragraph (b)(2)(ii) of this section. If the reviewing official concludes that the report does fulfill the requirements, the reviewing official will sign and date the report. If the reviewing official determines that it does not and additional remedial actions are required, the reviewing official must:

(A) Notify the filer of the conclusion;

(B) Afford the filer an opportunity for personal consultation if practicable;

(C) Determine what remedial action under paragraph (b)(6) of this section should be taken to bring the report into compliance with the requirements of paragraph (b)(2)(ii) of this section; and

(D) Notify the filer in writing of the remedial action which is needed, and the date by which such action should be taken.

(6) *Remedial action.* (i) Except in unusual circumstances, which must be fully documented to the satisfaction of the reviewing official, remedial action must be completed not later than three months from the date on which the filer received notice that the action is required.

(ii) Remedial action may include, as appropriate:

(A) Divestiture of a conflicting interest (see subpart J of this part);

(B) Resignation from a position with a non-Federal business or other entity;

(C) Restitution;

(D) Establishment of a qualified blind or diversified trust under the Act and subpart D of this part;

(E) Procurement of a waiver under 18 U.S.C. 208(b)(1) or (b)(3);

(F) Recusal; or

(G) Voluntary request by the filer for transfer, reassignment, limitation of duties, or resignation.

(7) *Compliance or referral.* (i) If the filer complies with a written request for remedial action under paragraph (b)(6) of this section, the reviewing official will memorialize what remedial action has been taken. The official will also sign and date the report.

(ii) If the filer does not comply by the designated date with the written request for remedial action transmitted under paragraph (b)(6) of this section, the reviewing official must, in the case of a public filer under subpart B of this part, notify the head of the agency and the Office of Government Ethics for appropriate action. Where the filer is in a position in the executive branch (other than in the uniformed services or the Foreign Service), appointment to which requires the advice and consent of the Senate, the Director of the Office of Government Ethics shall refer the matter to the President. In the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken. For confidential filers, the reviewing official will follow agency procedures.

(c) *Expedited procedure in the case of individuals appointed by the President and subject to confirmation by the Senate.* In the case of a report filed by an individual described in § 2634.201(c) who is nominated by the President for appointment to a position that requires the advice and consent of the Senate:

(1) In most cases, the Executive Office of the President will furnish the applicable financial disclosure report form to the nominee. It will forward the completed report to the designated agency ethics official at the agency where the nominee is serving or will serve, or it may direct the nominee to file the completed report directly with the designated agency ethics official.

(2) The designated agency ethics official will complete an accelerated review of the report, in accordance with the standards and procedures in paragraph (b) of this section. If that official concludes that the report reveals no unresolved conflict of interest under applicable laws and regulations, the official will:

(i) Personally certify the report by signature, and date the certification;

(ii) Write an opinion letter to the Director of the Office of Government Ethics, personally certifying that there is no unresolved conflict of interest under applicable laws and regulations;

(iii) Provide a copy of any commitment, agreement, or other undertaking which is reduced to writing in accordance with subpart H of this part; and

(iv) Transmit the letter and the report to the Director of the Office of Government Ethics, within three working days after the designated agency ethics official receives the report.

Note to paragraph (c)(2): The designated agency ethics official's certification responsibilities in § 2634.605(c) are nondelegable and must be accomplished by him personally, or by the agency's alternate designated agency ethics official, in his absence.

(3) The Director of the Office of Government Ethics will review the report and the letter from the designated agency ethics official. If the Director is satisfied that no unresolved conflicts of interest exist, then the Director will sign and date the report form. The Director will then submit the report with a letter to the appropriate Senate committee, expressing the Director's opinion whether, on the basis of information contained in the report, the nominee has complied with all applicable conflict laws and regulations.

(4) If, in the case of any nominee or class of nominees, the expedited procedure specified in this paragraph cannot be completed within the time set forth in paragraph (c)(2)(iv) of this section, the designated agency ethics official must inform the Director. When necessary and appropriate, the Director

may modify the rule of that paragraph for a nominee or a class of nominees with respect to a particular department or agency.

§ 2634.606 Updated disclosure of advice-and-consent nominees.

(a) *General rule.* Each individual described in § 2634.201(c) who is nominated by the President for appointment to a position that requires advice and consent of the Senate must submit a letter updating the information in the report previously filed under § 2634.201(c) through the period ending no more than five days prior to the commencement of the first hearing of a Senate Committee considering the nomination to all Senate Committees considering the nomination. The letter must update the information required with respect to receipt of:

(1) Outside earned income; and

(2) Honoraria, as defined in § 2634.105(i).

(b) *Timing.* The nominee's letter must be submitted to the Senate committees considering the nomination by the agency at or before the commencement of the first committee hearing to consider the nomination. The agency must also transmit copies of the nominee's letter to the designated agency ethics official referred to in § 2634.605(c)(1) and to the Office of Government Ethics.

(c) *Additional certification.* In each case to which this section applies, the Director of the Office of Government Ethics will, at the request of the committee considering the nomination, submit to the committee an opinion letter of the nature described in § 2634.605(c)(3) concerning the updated disclosure. If the committee requests such a letter, the expedited procedure provided by § 2634.605(c) will govern review of the updated disclosure, which will be deemed a report filed for purposes of that paragraph.

§ 2634.607 Advice and opinions.

To assist employees in avoiding situations in which they might violate applicable financial disclosure laws and regulations:

(a) The Director of the Office of Government Ethics will render formal advisory opinions and informal advisory letters on generally applicable matters, or on important matters of first impression. See also part 2638 of this chapter. The Director will ensure that these advisory opinions and letters are compiled, published, and made available to agency ethics officials and the public.

(b) Designated agency ethics officials will offer advice and guidance to employees as needed, to assist them in complying with the requirements of the Act and this part on financial disclosure.

(c) Employees who have questions about the application of this part or any supplemental agency regulations to particular situations should seek advice from an agency ethics official. Disciplinary action for violating this part will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances. Where the employee's conduct violates a criminal statute, reliance on the advice of an agency ethics official cannot ensure that the employee will not be prosecuted under that statute. However, good faith reliance on the advice of an agency ethics official is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. Disclosures made by an employee to an agency ethics official are not protected by an attorney-client privilege. An agency ethics official is required by 28 U.S.C. 535 to report any information he receives relating to a violation of the criminal code, title 18 of the United States Code.

Subpart G—Penalties

§ 2634.701 Failure to file or falsifying reports.

(a) *Referral of cases.* The head of each agency, each Secretary concerned, or the Director of the Office of Government Ethics, as appropriate, must refer to the Attorney General the name of any individual when there is reasonable cause to believe that such individual has willfully failed to file a public report or information required on such report, or has willfully falsified any information (public or confidential) required to be reported under this part.

(b) *Civil action.* The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information required by filers of public reports under subpart B of this part. The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth in Table 1 to this section, as provided by section 104(a) of the Act, as amended, and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended:

TABLE 1 TO § 2634.701

Date of violation or assessment	Penalty
Violation occurring between Sept. 14, 2007 and Nov. 2, 2015	$50,000
Violation occurring after Nov. 2, 2015	59,028

(c) *Criminal action.* An individual may also be prosecuted under criminal statutes for supplying false information on any financial disclosure report.

(d) *Administrative remedies.* The President, the Vice President, the Director of the Office of Government Ethics, the Secretary concerned, the head of each agency, and the Office of Personnel Management may take appropriate personnel or other action in accordance with applicable law or regulation against any individual for failing to file public or confidential reports required by this part, for filing such reports late, or for falsifying or failing to report required information. This may include adverse action under 5 CFR part 752, if applicable.

§ 2634.702 Breaches by trust fiduciaries and interested parties.

(a) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully violates the provisions of § 2634.407. The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth in Table 1 to this section, as provided by section 102(f)(6)(C)(i) of the Act and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

TABLE 1 TO § 2634.702

Date of violation or assessment	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	$11,000
Violation occurring after Nov. 2, 2015	19,639

(b) The Attorney General may bring a civil action in any appropriate United States district court against any individual who negligently violates the provisions of § 2634.407. The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed

the amounts set forth in Table 2 to this section, as provided by section 102(f)(6)(C)(ii) of the Act and as adjusted in accordance with the inflation adjustment procedures of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

TABLE 2 TO § 2634.702

Date of violation or assessment	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	$5,500
Violation occurring after Nov. 2, 2015 and penalty assessed after Aug. 1, 2016	9,819

§ 2634.703 Misuse of public reports.

(a) The Attorney General may bring a civil action against any person who obtains or uses a report filed under this part for any purpose prohibited by section 105(c)(1) of the Act, as incorporated in § 2634.603(f). The court in which the action is brought may assess against the person a civil monetary penalty in any amount, not to exceed the amounts set forth in Table 1 to this section, as provided by section 105(c)(2) of the Act and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

TABLE 1 TO § 2634.703

Date of violation or assessment	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	$11,000
Violation occurring after Nov. 2, 2015	19,639

(b) This remedy will be in addition to any other remedy available under statutory or common law.

§ 2634.704 Late filing fee.

(a) *In general.* In accordance with section 104(d) of the Act, any reporting individual who is required to file a public financial disclosure report by the provisions of this part must remit a late filing fee of $200 to the appropriate agency, payable to the U.S. Treasury, if such report is filed more than 30 days after the later of:

(1) The date such report is required to be filed pursuant to the provisions of this part; or

(2) The last day of any filing extension period granted pursuant to § 2634.201(g).

(b) *Exceptions.* (1) The designated agency ethics official may waive the late filing fee if the designated agency ethics official determines that the delay in filing was caused by extraordinary circumstances. These circumstances include, but are not limited to, the agency's failure to notify a filer of the requirement to file the public financial disclosure report, which made the delay reasonably necessary.

(2) Employees requesting a waiver of the late filing fee from the designated agency ethics official must request the waiver in writing. The designated agency ethics official's determination must be made in writing to the employee with a copy maintained by the agency. The designated agency ethics official may consult with the Office of Government Ethics prior to approving any waiver of the late filing fee.

(c) *Procedure.* (1) Each report received by the agency must be marked with the date of receipt. For any report which has not been received by the end of the period specified in paragraph (a) of this section, the agency will advise the delinquent filer, in writing, that:

(i) Because the financial disclosure report is more than 30 days overdue, a $200 late filing fee will become due at the time of filing, by reason of section 104(d) of the Act and § 2634.704;

(ii) The filer is directed to remit to the agency, with the completed report, the $200 fee, payable to the United States Treasury;

(iii) If the filer fails to remit the $200 fee when filing a late report, it will be subject to agency debt collection procedures; and

(iv) If extraordinary circumstances exist that would justify a request for a fee waiver, pursuant to paragraph (b) of this section, such request and any supporting documentation must be submitted immediately.

(2) Upon receipt from the reporting individual of the $200 late filing fee, the collecting agency will note the payment in its records, and will then forward the money to the U.S. Treasury for deposit as miscellaneous receipts, in accordance with 31 U.S.C. 3302 and Part 5 of Volume 1 of the Treasury Financial Manual. If payment is not forthcoming, agency debt collection procedures may be utilized, which may include salary or administrative offset, initiation of a tax refund offset, or other authorized action.

(d) *Late filing fee not exclusive remedy.* The late filing fee is in addition to other sanctions which may be imposed for late filing. See § 2634.701.

(e) *Confidential filers.* The late filing fee does not apply to confidential filers. Late filing of confidential reports will be handled administratively under § 2634.701(d).

(f) *Date of filing.* The date of filing for purposes of determining whether a public financial disclosure report is filed more than 30 days late under this section will be the date of receipt by the agency, which should be noted on the report in accordance with § 2634.605(a). The 30-day grace period on imposing a late filing fee is adequate allowance for administrative delays in the receipt of reports by an agency.

Subpart H—Ethics Agreements

§ 2634.801 Scope.

This subpart applies to ethics agreements made by any reporting individual under either subpart B or I of this part, to resolve potential or actual conflicts of interest.

§ 2634.802 Requirements.

(a) *Ethics agreement defined.* The term *ethics agreement* will include, for the purposes of this subpart, any oral or written promise by a reporting individual to undertake specific actions in order to alleviate an actual or apparent conflict of interest, such as:

(1) Recusal;

(2) Divestiture of a financial interest;

(3) Resignation from a position with a non-Federal business or other entity;

(4) Procurement of a waiver pursuant to 18 U.S.C. 208(b)(1) or (b)(3); or

(5) Establishment of a qualified blind or diversified trust under the Act and subpart D of this part.

(b) *Time limit.* The ethics agreement will specify that the individual must complete the action which he or she has agreed to undertake within a period not to exceed three months from the date of the agreement (or of Senate confirmation, if applicable). Exceptions to the three-month deadline can be made in cases of unusual hardship, as determined by the Office of Government Ethics, for those ethics agreements which are submitted to it (see § 2634.803), or by the designated agency ethics official for all other ethics agreements.

Example: An official of the ABC Aircraft Company is nominated to a Department of Defense position requiring the advice and consent of the Senate. As a condition of assuming the position, the individual has agreed to divest himself of his ABC Aircraft stock which he recently acquired while he was an officer with the company. However, the Securities and Exchange Commission prohibits officers of public corporations from deriving a profit from the sale of stock in the corporation in which they hold office within six months of acquiring the stock, and directs that any such profit must be returned to the issuing corporation or its stock holders. Since meeting the usual three-month time limit specified in this subpart for satisfying an ethics agreement might entail losing any

profit that could be realized on the sale of this stock, the nominee requests that the limit be extended beyond the six-month period imposed by the Commission. Written approval must be obtained from the Office of Government Ethics to extend the three-month period.

§ 2634.803 Notification of ethics agreements.

(a) *Nominees to positions requiring the advice and consent of the Senate.* (1) In the case of a nominee referred to in § 2634.201(c), the designated agency ethics official will include with the report submitted to the Office of Government Ethics any ethics agreement which the nominee has made.

(2) A designated agency ethics official must immediately notify the Office of Government Ethics of any ethics agreement of a nominee which is made or becomes known to the designated agency ethics official after the submission of the nominee's report to the Office of Government Ethics. This requirement includes an ethics agreement made between a nominee and the Senate confirmation committee. The nominee must immediately report to the designated agency ethics official any ethics agreement made with the committee.

(3) The Office of Government Ethics must immediately apprise the designated agency ethics official and the Senate confirmation committee of any ethics agreements made directly between the nominee and the Office of Government Ethics.

(4) Any ethics agreement approved by the Office of Government Ethics during its review of a nominee's financial disclosure report may not be modified without prior approval from the Office of Government Ethics.

(b) *Incumbents and other reporting individuals.* Incumbents and other reporting individuals may be required to enter into an ethics agreement with the designated agency ethics official for the employee's agency. Where an ethics agreement has been made with someone other than the designated agency ethics official, the officer or employee involved must promptly apprise the designated agency ethics official of the agreement.

§ 2634.804 Evidence of compliance.

(a) *Requisite evidence of action taken.* (1) For ethics agreements of nominees to positions requiring the advice and consent of the Senate, evidence of any action taken to comply with the terms of such ethics agreements must be submitted to the designated agency ethics official. The designated agency ethics official will promptly notify the Office of Government Ethics and the Senate confirmation committee of actions taken to comply with the ethics agreement.

(2) In the case of incumbents and all other reporting individuals, evidence of any action taken to comply with the terms of an ethics agreement must be sent promptly to the designated agency ethics official.

(b) The following materials and any other appropriate information constitute evidence of the action taken:

(1) *Recusal.* A copy of a recusal statement listing and describing the specific matters or subjects to which the recusal applies, a statement of the method by which the agency will enforce the recusal. A recusal statement is not required for a general affirmation that the filer will comply with ethics laws.

Example: A new employee of a Federal safety board owns stock in Nationwide Airlines. She has entered into an ethics agreement to recuse herself from participating in any accident investigations involving that company's aircraft until such time as she can complete a divestiture of the asset. She sends an email to the designated agency ethics official recusing herself from Nationwide Airline matters. She sends an email to her supervisor and subordinates to notify them of the recusal and to request that they do not refer matters involving Nationwide Airlines to her. She also sends a copy of that email to the designated agency ethics official.

(2) *Divestiture or resignation.* Written notification that the divestiture or resignation has occurred.

(3) *Waivers.* A copy of any waivers issued pursuant to 18 U.S.C. 208(b)(1) or (b)(3) and signed by the appropriate supervisory official.

(4) *Blind or diversified trusts.* Information required by subpart D of this part to be submitted to the Office of Government Ethics for its certification of any qualified trust instrument. If the Office of Government Ethics does not certify the trust, the designated agency ethics official and, as appropriate, the Senate confirmation committee should be informed immediately.

§ 2634.805 Retention.

Records of ethics agreements and actions described in this subpart will be maintained by the agency. In addition, copies of such record will be maintained by the Office of Government Ethics with respect to filers whose reports are certified by the Office of Government Ethics.

Subpart I—Confidential Financial Disclosure Reports

§ 2634.901 Policies of confidential financial disclosure reporting.

(a) The confidential financial reporting system set forth in this subpart is designed to complement the public reporting system established by title I of the Act. High-level officials in the executive branch are required to report certain financial interests publicly to ensure that every citizen can have confidence in the integrity of the Federal Government. It is equally important in order to guarantee the efficient and honest operation of the Government that other, less senior, executive branch employees, whose Government duties involve the exercise of significant discretion in certain sensitive areas, report their financial interests and outside business activities to their employing agencies, to facilitate the review of possible conflicts of interest. These reports assist an agency in administering its ethics program and counseling its employees. Such reports are filed on a confidential basis.

(b) The confidential reporting system seeks from employees only that information which is relevant to the administration and application of criminal conflict of interest laws, administrative standards of conduct, and agency-specific statutory and program-related restrictions. The basic content of the reports required by § 2634.907 reflects that certain information is generally relevant to all agencies. However, depending upon an agency's authorized activities and any special or unique circumstances, additional information may be necessary. In these situations, and subject to the prior written approval of the Director of the Office of Government Ethics, agencies may formulate supplemental reporting requirements by following the procedures of §§ 2634.103 and 2634.601(b).

(c) This subpart also allows an agency to request, on a confidential basis, additional information from persons who are already subject to the public reporting requirements of this part. The public reporting requirements of the Act address Governmentwide concerns. The reporting requirements of this subpart allow agencies to confront special or unique agency concerns. If those concerns prompt an agency to seek more extensive reporting from employees who file public reports, it may proceed on a confidential, nonpublic basis, with prior written approval from the Director of the Office of Government Ethics, under the procedures of §§ 2634.103 and 2634.601(b).

(d) The reports filed pursuant to this subpart are specifically characterized as ''confidential,'' and are required to be withheld from the public, pursuant to section 107(a) of the Act. Section 107(a) leaves no discretion on this issue with the agencies. See also § 2634.604. Further, Executive Order 12674 as modified by Executive Order 12731 provides, in section 201(d), for a system of nonpublic (confidential) executive branch financial disclosure to complement the Act's system of public disclosure. The confidential reports provided for by this subpart contain sensitive commercial and financial information, as well as personal privacy-protected information. These reports and the information which they contain are, accordingly, exempt from being released to the public, under exemptions 3(A) and (B), 4, and 6 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(3)(A) and (B), (b)(4), and (b)(6). Additional FOIA exemptions may apply to particular reports or portions of reports. Agency personnel will not publicly release the reports or the information which these reports contain, except pursuant to an order issued by a Federal court, or as otherwise provided under applicable provisions of the Privacy Act (5 U.S.C. 552a), and in the OGE/GOVT–2 Governmentwide executive branch Privacy Act system of records, as well as any applicable agency records system. If an agency statute requires the public reporting of certain information and, for purposes of convenience, an agency chooses to collect that information on the confidential report form filed under this subpart, only the special statutory information may be released to the public, pursuant to the terms of the statute under which it was collected.

(e) Executive branch agencies hire or use the paid and unpaid services of many individuals on an advisory or other less than full-time basis as special Government employees. These employees may include experts and consultants to the Government, as well as members of Government advisory committees. It is important for those agencies that utilize such services, and for the individuals who provide the services, to anticipate and avoid real or apparent conflicts of interest. The confidential financial disclosure system promotes that goal, with special Government employees among those required to file confidential reports.

(f) For additional policies and definitions of terms applicable to both the public and confidential reporting systems, see §§ 2634.104 and 2634.105.

§ 2634.902 [Reserved]

§ 2634.903 General requirements, filing dates, and extensions.

(a) *Incumbents.* A confidential filer who holds a position or office described in § 2634.904(a) and who performs the duties of that position or office for a period in excess of 60 days during the calendar year (including more than 60 days in an acting capacity) must file a confidential report as an incumbent, containing the information prescribed in §§ 2634.907 and 2634.908 on or before February 15 of the following year. This requirement does not apply if the employee has left Government service or has left a covered position prior to the due date for the report. No incumbent reports are required of special Government employees described in § 2634.904(a)(2), but who must file new entrant reports under paragraph (b) of this section upon each appointment or reappointment. For confidential filers under § 2634.904(a)(3), consult agency supplemental regulations.

(b) *New entrants.* (1) Not later than 30 days after assuming a new position or office described in § 2634.904(a) (which also encompasses the reappointment or redesignation of a special Government employee, including one who is serving on an advisory committee), a confidential filer must file a confidential report containing the information prescribed in §§ 2634.907 and 2634.908. For confidential filers under § 2634.904(a)(3), consult agency supplemental regulations.

(2) However, no report will be required if the individual:

(i) Has, within 30 days prior to assuming the position, left another position or office referred to in § 2634.904(a) or in § 2634.202, and has previously satisfied the reporting requirements applicable to that former position, but a copy of the report filed by the individual while in that position should be made available to the appointing agency, and the individual must comply with any agency requirement for a supplementary report for the new position;

(ii) Has already filed such a report in connection with consideration for appointment to the position. The agency may request that the individual update such a report if more than six months has expired since it was filed; or

(iii) Is not reasonably expected to perform the duties of an office or position referred to in § 2634.904(a) for more than 60 days in the following 12-month period, as determined by the designated agency ethics official or delegate. That may occur most commonly in the case of an employee who temporarily serves in an acting capacity in a position described by § 2634.904(a)(1). If the individual actually performs the duties of such position for more than 60 days in the 12-month period, then a confidential financial disclosure report must be filed within 15 calendar days after the sixtieth day of such service in the position. Paragraph (b)(2)(iii) of this section does not apply to new entrants filing as special Government employees under § 2634.904(a)(2).

(3) Notwithstanding the filing deadline prescribed in paragraph (b)(1) of this section, agencies may at their discretion, require that prospective entrants into positions described in § 2634.904(a) file their new entrant confidential financial disclosure reports prior to serving in such positions, to ensure that there are no insurmountable ethics concerns. Additionally, a special Government employee who has been appointed to serve on an advisory committee must file the required report before any advice is rendered by the employee to the agency, or in no event, later than the first committee meeting.

(c) *Advisory committee definition.* For purposes of this subpart, the term *advisory committee* will have the meaning given to that term under section 3 of the Federal Advisory Committee Act (5 U.S.C. app). Specifically, it means any committee, board, commission, council, conference, panel, task force, or other similar group which is established by statute or reorganization plan, or established or utilized by the President or one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government. Such term includes any subcommittee or other subgroup of any advisory committee, but does not include the Advisory Commission on Intergovernmental Relations, the Commission on Government Procurement, or any committee composed wholly of full-time officers or employees of the Federal Government.

(d) *Extensions—(1) Agency extensions.* The agency reviewing official may, for good cause shown, grant to any employee or class of employees a filing extension or several extensions totaling not more than 90 days.

(2) *Certain service during period of national emergency.* In the case of an active duty military officer or enlisted member of the Armed Forces, a Reserve or National Guard member on active duty under orders issued pursuant to title 10 or title 32 of the United States

Code, a commissioned officer of the Uniformed Services (as defined in 10 U.S.C. 101), or any other employee, who is deployed or sent to a combat zone or required to perform services away from the employee's permanent duty station in support of the Armed Forces or other governmental entities following a declaration by the President of a national emergency, the date of filing will be extended to 90 days after the last day of:

(i) The employee's service in the combat zone or away from the employee's permanent duty station; or

(ii) The employee's hospitalization as a result of injury received or disease contracted while serving during the national emergency.

(3) *Agency procedures.* Each agency may prescribe procedures to provide for the implementation of the extensions provided for by this paragraph.

(e) *Termination reports not required.* An employee who is required to file a confidential financial disclosure report is not required to file a termination report upon leaving the filing position.

§ 2634.904 Confidential filer defined.

(a) The term *confidential filer* includes:

(1) Each officer or employee in the executive branch whose position is classified at GS–15 or below of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate which is less than 120% of the minimum rate of basic pay for GS–15 of the General Schedule; each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is less than 120% of the minimum rate of basic pay for GS–15 of the General Schedule; each member of a uniformed service whose pay grade is less than 0–7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the designated agency ethics official to be of equal classification; if:

(i) The agency concludes that the duties and responsibilities of the employee's position require that employee to participate personally and substantially (as defined in §§ 2635.402(b)(4) and 2640.103(a)(2) of this chapter) through decision or the exercise of significant judgment, and without substantial supervision and review, in taking a Government action regarding:

(A) Contracting or procurement;

(B) Administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits;

(C) Regulating or auditing any non-Federal entity; or

(D) Other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity; or

(ii) The agency concludes that the duties and responsibilities of the employee's position require the employee to file such a report to avoid involvement in a real or apparent conflict of interest, or to carry out the purposes behind any statute, Executive order, rule, or regulation applicable to or administered by the employee. Positions which might be subject to a reporting requirement under this subparagraph include those with duties which involve investigating or prosecuting violations of criminal or civil law.

Example 1: A contracting officer develops the requests for proposals for data processing equipment of significant value which is to be purchased by his agency. He works with substantial independence of action and exercises significant judgment in developing the requests. By engaging in this activity, he is participating personally and substantially in the contracting process. The contracting officer should be required to file a confidential financial disclosure report.

Example 2: An agency environmental engineer inspects a manufacturing plant to ascertain whether the plant complies with permits to release a certain effluent into a nearby stream. Any violation of the permit standards may result in civil penalties for the plant, and in criminal penalties for the plant's management based upon any action which they took to create the violation. If the agency engineer determines that the plant does not meet the permit requirements, he can require the plant to terminate release of the effluent until the plant satisfies the permit standards. Because the engineer exercises substantial discretion in regulating the plant's activities, and because his final decisions will have a substantial economic effect on the plant's interests, the engineer should be required to file a confidential financial disclosure report.

Example 3: A GS–13 employee at an independent grant making agency conducts the initial agency review of grant applications from nonprofit organizations and advises the Deputy Assistant Chairman for Grants and Awards about the merits of each application. Although the process of reviewing the grant applications entails significant judgment, the employee's analysis and recommendations are reviewed by the Deputy Assistant Chairman, and the Assistant Chairman, before the Chairman decides what grants to award. Because his work is subject to ''substantial supervision and review,'' the employee is not required to file a confidential financial disclosure report unless the agency determines that filing is necessary under § 2634.904(a)(1)(ii).

Example 4: As a senior investigator for a criminal law enforcement agency, an employee often leads investigations, with substantial independence, of suspected felonies. The investigator usually decides what information will be contained in the agency's report of the suspected misconduct. Because he participates personally and substantially through the exercise of significant judgment in investigating violations of criminal law, the investigator should be required to file a confidential financial disclosure report.

(2) Unless required to file public financial disclosure reports by subpart B of this part, all executive branch special Government employees who:

(i) Have a substantial role in the formulation of agency policy;

(ii) Serve on a Federal Advisory Committee; or

(iii) Meet the requirements of paragraph (a)(1) of this section.

Example 1: A consultant to an agency periodically advises the agency regarding important foreign policy matters. The consultant must file a confidential report if he is retained as a special Government employee and not an independent contractor.

Example 2: A special Government employee serving as a member of an advisory committee (who is not a private group representative) attends four committee meetings every year to provide advice to an agency about pharmaceutical matters. No compensation is received by the committee member, other than travel expenses. The advisory committee member must file a confidential disclosure report because she is a special Government employee.

(3) Each public filer referred to in § 2634.202 on public disclosure who is required by agency regulations and forms issued in accordance with §§ 2634.103 and 2634.601(b) to file a supplemental confidential financial disclosure report which contains information that is more extensive than the information required in the reporting individual's public financial disclosure report under this part.

(4) Any employee who, notwithstanding the employee's exclusion from the public financial reporting requirements of this part by virtue of a determination under § 2634.203, is covered by the criteria of paragraph (a)(1) of this section.

(b) Any individual or class of individuals described in paragraph (a) of this section, including special Government employees unless otherwise noted, may be excluded from all or a portion of the confidential reporting requirements of this subpart, when the agency head or designee determines that the duties of a position make remote the possibility that the incumbent will be involved in a real or apparent conflict of interest.

Example 1: A special Government employee who is a draftsman prepares the drawings to be used by an agency in

soliciting bids for construction work on a bridge. Because he is not involved in the contracting process associated with the construction, the likelihood that this action will create a conflict of interest is remote. As a result, the special Government employee is not required to file a confidential financial disclosure report.

Example 2: An agency has just hired a GS–5 Procurement Assistant who is responsible for typing and processing procurement documents, answering status inquiries from the public, performing office support duties such as filing and copying, and maintaining an on-line contract database. The Assistant is not involved in contracting and has no other actual procurement responsibilities. Thus, the possibility that the Assistant will be involved in a real or apparent conflict of interest is remote, and the Assistant is not required to file.

§ 2634.905 Use of alternative procedures.

Agencies are encouraged to consider whether an alternative procedure would allow the agency to more effectively assess possible conflicts of interest. With the prior written approval of OGE, an agency may use an alternative procedure in lieu of filing the OGE Form 450. The alternative procedure may be an agency-specific form to be filed in place thereof. An agency must submit for approval a description of its proposed alternative procedure to OGE.

Example 1: A nonsupervisory auditor at an agency is regularly assigned to cases involving possible loan improprieties by financial institutions. Prior to undertaking each enforcement review, the auditor reviews the file to determine if she has a conflict of interest. After determining that she has no conflict of interest, she signs and dates a certification which verifies that she has reviewed the file and has made such a determination. She then files the certification with the head of her auditing division at the agency. On the other hand, if she cannot execute the certification, she informs the head of her auditing division. In response, the division will either reassign the case or review the conflicting interest to determine whether a waiver would be appropriate. This alternative procedure, if approved by the Office of Government Ethics in writing, may be used in lieu of requiring the auditor to file a confidential financial disclosure report.

Example 2: To reduce its workload, an agency proposes that employees may file a statement certifying there has been no change in reportable information and no change in the filer's position and duties and attaching the most recent OGE Form 450. This alternative procedure, if approved by the Office of Government Ethics in writing, may be used in lieu of requiring the filer to complete an OGE Form 450.

§ 2634.906 Review of confidential filer status.

The head of each agency, or an officer designated by the head of the agency for that purpose, will review any complaint by an individual that the individual's position has been improperly determined by the agency to be one which requires the submission of a confidential financial disclosure report pursuant to this subpart. A decision by the agency head or designee regarding the complaint will be final.

§ 2634.907 Report contents.

(a) Other than the reports described in § 2634.904(a)(3), each confidential financial disclosure report must comply with instructions issued by the Office of Government Ethics and include on the standardized form prescribed by OGE (see § 2634.601) the information described in paragraphs (b) through (g) of this section for the filer. Each report must also include the information described in paragraph (h) of this section for the filer's spouse and dependent children.

(b) *Noninvestment income.* Each financial disclosure report must disclose the source of earned or other noninvestment income in excess of $1,000 received by the filer from any one source during the reporting period, including:

(1) Salaries, fees, commissions, wages and any other compensation for personal services (other than from United States Government employment);

(2) Any honoraria, including payments made or to be made to charitable organizations on behalf of the filer in lieu of honoraria; and

Note to paragraph (b)(2): In determining whether an honorarium exceeds the $1,000 threshold, subtract any actual and necessary travel expenses incurred by the filer and one relative, if the expenses are paid or reimbursed by the filer. If such expenses are paid or reimbursed by the honorarium source, they will not be counted as part of the honorarium payment.

(3) Any other noninvestment income, such as prizes, scholarships, awards, gambling income or discharge of indebtedness.

Example to paragraphs (b)(1) and (b)(3): A filer teaches a course at a local community college, for which she receives a salary of $3,000 per year. She also received, during the previous reporting period, a $1,250 award for outstanding local community service. She must disclose both.

(c) *Assets and investment income.* Each financial disclosure report must disclose separately:

(1) Each item of real and personal property having a fair market value in excess of $1,000 held by the filer at the end of the reporting period in a trade or business, or for investment or the production of income, including but not limited to:

(i) Real estate;

(ii) Stocks, bonds, securities, and futures contracts;

(iii) Sector mutual funds, sector exchange-traded funds, and other pooled investment funds;

(iv) Pensions and annuities;

(v) Vested beneficial interests in trusts;

(vi) Ownership interest in businesses and partnerships; and

(vii) Accounts receivable.

(2) The source of investment income (dividends, rents, interest, capital gains, or the income from qualified or excepted trusts or excepted investment funds (see paragraph (i) of this section)), which is received by the filer during the reporting period, and which exceeds $1,000 in amount or value from any one source, including but not limited to income derived from:

(i) Real estate;

(ii) Collectible items;

(iii) Stocks, bonds, and notes;

(iv) Copyrights;

(v) Vested beneficial interests in trusts and estates;

(vi) Pensions;

(vii) Sector mutual funds (see definition at § 2640.102(q) of this chapter);

(viii) The investment portion of life insurance contracts;

(ix) Loans;

(x) Gross income from a business;

(xi) Distributive share of a partnership;

(xii) Joint business venture income; and

(xiii) Payments from an estate or an annuity or endowment contract.

Note to paragraphs (c)(1) and (c)(2): For Individual Retirement Accounts (IRAs), brokerage accounts, trusts, mutual or pension funds, and other entities with portfolio holdings, each underlying asset must be separately disclosed, unless the entity qualifies for special treatment under paragraph (i) of this section.

(3) *Exceptions.* The following assets and investment income are excepted from the reporting requirements of paragraphs (c)(1) and (c)(2) of this section:

(i) A personal residence, as defined in § 2634.105(l);

(ii) Accounts (including both demand and time deposits) in depository institutions, including banks, savings and loan associations, credit unions, and similar depository financial institutions;

(iii) Money market mutual funds and accounts;

(iv) U.S. Government obligations, including Treasury bonds, bills, notes, and savings bonds;

(v) Government securities issued by U.S. Government agencies;

(vi) Financial interests in any retirement system of the United States (including the Thrift Savings Plan) or under the Social Security Act;

(vii) Financial interest in any diversified fund held in any pension plan established or maintained by State government or any political subdivision of a State government for its employees;

(viii) A diversified fund in an employee benefit plan; and

(ix) Diversified mutual funds and unit investment trusts.

Note to paragraphs (c)(3)(vii) through (ix): For purposes of this section, ''diversified'' means that the fund does not have a stated policy of concentrating its investments in any industry, business, single country other than the United States, or bonds of a single State within the United States and, in the case of an employee benefit plan, means that the plan's independent trustee has a written policy of varying plan investments. Whether a fund meets this standard may be determined by checking the fund's prospectus or by calling a broker or the manager of the fund.

Example 1: A filer owns a beach house which he rents out for several weeks each summer, receiving annual rental income of approximately $5,000. He must report the rental property, as well as the city and state in which it is located.

Example 2: A filer's investment portfolio consists of several stocks, U.S. Treasury bonds, several cash bank deposit accounts, an account in the Government's Thrift Savings Plan, and shares in sector mutual funds and diversified mutual funds. He must report the name of each sector mutual fund in which he owns shares, and the name of each company in which he owns stock, valued at over $1,000 at the end of the reporting period or from which he received income of more than $1,000 during the reporting period. He need not report his diversified mutual funds, U.S. Treasury bonds, bank deposit accounts, or Thrift Savings Plan holdings.

(d) *Liabilities.* Each financial disclosure report filed pursuant to this subpart must identify liabilities in excess of $10,000 owed by the filer at any time during the reporting period, and the name and location of the creditors to whom such liabilities are owed, except:

(1) Personal liabilities owed to a spouse or to the parent, brother, sister, or child of the filer, spouse, or dependent child;

(2) Any mortgage secured by a personal residence of the filer or the filer's spouse;

(3) Any loan secured by a personal motor vehicle, household furniture, or appliances, provided that the loan does not exceed the purchase price of the item which secures it;

(4) Any revolving charge account;

(5) Any student loan; and

(6) Any loan from a bank or other financial institution on terms generally available to the public.

Example: A filer owes $2,500 to his mother-in-law and $12,000 to his best friend. He also has a $15,000 balance on his credit card, a $200,000 mortgage on his personal residence, and a car loan. Under the financial disclosure reporting requirements, he need not report the debt to his mother-in-law, his credit card balance, his mortgage, or his car loan. He must, however, report the debt of over $10,000 to his best friend.

(e) *Positions with non-Federal organizations*—(1) *In general.* Each financial disclosure report filed pursuant to this subpart must identify all positions held at any time by the filer during the reporting period, other than with the United States, as an officer, director, trustee, general partner, proprietor, representative, executor, employee, or consultant of any corporation, company, firm, partnership, trust, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution.

(2) *Exceptions.* The following positions are excepted from the reporting requirements of paragraph (e)(1) of this section:

(i) Positions held in religious, social, fraternal, or political entities; and

(ii) Positions solely of an honorary nature, such as those with an emeritus designation.

Example 1: A filer holds outside positions as the trustee of his family trust, the secretary of a local political party committee, and the ''Chairman'' of his town's Lions Club. He also is a principal of a tutoring school on weekends. The individual must report his outside positions as trustee of the family trust and as principal of the school. He does not need to report his positions as secretary of the local political party committee or ''Chairman'' because each of these positions is excepted from disclosure.

Example 2: An official recently terminated her role as the managing member of a limited liability corporation upon appointment to a position in the executive branch. The managing member position must be disclosed in the official's new entrant financial disclosure report pursuant to this section.

Example 3: An official is a member of the board of his church. The official does not need to disclose the position in his financial disclosure report.

Example 4: An official is an officer in a fraternal organization that exists for the purpose of performing service work in the community. The official does not need to disclose this position in her financial disclosure report.

Example 5: An official is the ceremonial Parade Marshal for a local town's annual Founders' Day event and, in that capacity, leads a parade and serves as Master of Ceremonies for an awards ceremony at the town hall. The official does not need to disclose this position in her financial disclosure report.

Example 6: An official recently terminated his role as a campaign manager for a candidate for the Office of the President of the United States upon appointment to a noncareer position in the executive branch. The official does not need to disclose the campaign manager position in his financial disclosure report.

Example 7: Immediately prior to her recent appointment to a position in an agency, an official terminated her employment as a corporate officer. In connection with her employment, she served for several years as the corporation's representative to an incorporated association that represents members of the industry in which the corporation operates. She does not need to disclose her role as her employer's representative to the association because she performed her representative duties in her capacity as a corporate officer.

Example 8: An official holds a position on the board of directors of a local food bank. The official must disclose the position in his financial disclosure report.

(f) *Agreements and arrangements.* Each financial disclosure report filed pursuant to this subpart must identify the parties to, and must briefly describe the terms of, any agreement or arrangement of the filer in existence at any time during the reporting period with respect to:

(1) Future employment (including the date on which the filer entered into the agreement for future employment);

(2) A leave of absence from employment during the period of the filer's Government service;

(3) Continuation of payments by a current or former employer other than the United States Government; and

(4) Continuing participation in an employee welfare or benefit plan maintained by a current or former employer other than the United States Government. Confidential filers are not required to disclose continuing participation in a defined contribution plan, such as a 401(k) plan, to which a former employer is no longer making contributions.

Note to paragraph (f)(4): Even if the agreement is not reportable, the filer must disclose any reportable asset, such as a sector fund or a stock, held in the account.

Example 1: A filer plans to retire from Government service in eight months. She has negotiated an arrangement for part-time employment with a private-sector company, to commence upon her retirement. On her financial disclosure report, she must identify the future employer, and briefly describe the terms of, this agreement and disclose the date on which she entered into the agreement.

Example 2: A new employee has entered a position which requires the filing of a confidential form. During his Government tenure, he will continue to receive deferred

compensation from his former employer and will continue to participate in its pension plan. He must report the receipt of deferred compensation and the participation in the defined benefit plan.

Example 3: An employee has a defined contribution plan with a former employer. The employer no longer makes contributions to the plan. In the account, the employee holds shares worth $15,000 in an S&P 500 Index fund and shares worth $7,000 in an U.S. Financial Services fund. The employee does not need to disclose either the agreement to continue to participate in the plan or the S&P 500 Index Fund. The employee must disclose the U.S. Financial Services Fund sector fund.

(g) *Gifts and travel reimbursements.* (1) Each annual financial disclosure report filed pursuant to this subpart must contain a brief description of all gifts and travel reimbursements aggregating more than $390 in value which are received by the filer during the reporting period from any one source, as well as the identity of the source. For travel-related items, the report must include a travel itinerary, the dates, and the nature of expenses provided. Special government employees are not required to report the travel reimbursements received from their non-Federal employers.

(2) *Aggregation exception.* Any gift or travel reimbursement with a fair market value of $156 or less need not be aggregated for purposes of the reporting rules of this section. However, the acceptance of gifts, whether or not reportable, is subject to the restrictions imposed by Executive Order 12674, as modified by Executive Order 12731, and the implementing regulations on standards of ethical conduct.

Note to paragraph (g)(2): The Office of Government Ethics sets these amounts every 3 years using the same disclosure thresholds as those for public financial disclosure filers. In 2017, the reporting threshold was set at $390 and the aggregation threshold was set at $156. The Office of Government Ethics will update this part in 2020 and every three years thereafter to reflect the new amount.

(3) *Valuation of gifts and travel reimbursements.* The value to be assigned to a gift or travel reimbursement is its fair market value. For most reimbursements, this will be the amount actually received. For gifts, the value should be determined in one of the following manners:

(i) If the gift is readily available in the market, the value will be its retail price. The filer need not contact the donor, but may contact a retail establishment selling similar items to determine the present cost in the market.

(ii) If the item is not readily available in the market, such as a piece of art, the filer may make a good faith estimate of the value of the item.

(iii) The term ''readily available in the market'' means that an item generally is available for retail purchase.

(4) New entrants, as described in § 2634.903(b), need not report any information on gifts and travel reimbursements.

(5) *Exceptions.* Reports need not contain any information about gifts and travel reimbursements received from relatives (see § 2634.105(o)) or during a period in which the filer was not an officer or employee of the Federal Government. Additionally, any food, lodging, or entertainment received as ''personal hospitality of any individual,'' as defined in § 2634.105(k), need not be reported. See also exclusions specified in the definitions of ''gift'' and ''reimbursement'' at § 2634.105(h) and (n).

Example: A filer accepts a laptop bag, a t-shirt, and a cell phone from a community service organization he has worked with solely in his private capacity. He determines that the value of these gifts is:

Gift 1—Laptop bag: $200
Gift 2—T-shirt: $20
Gift 3—Cell phone: $275

The filer must disclose Gift 1 and Gift 3 because, together, they aggregate more than $390 in value from the same source. He need not aggregate or report Gift 2 because the gift's value does not exceed $156.

(h) *Disclosure rules for spouses and dependent children*—(1) *Noninvestment income.* (i) Each financial disclosure report required by the provisions of this subpart must disclose the source of earned income in excess of $1,000 from any one source, which is received by the filer's spouse during the reporting period. If earned income is derived from a spouse's self-employment in a business or profession, the report must disclose the nature of the business or profession. The filer is not required to report other noninvestment income received by the spouse such as prizes, scholarships, awards, gambling income, or a discharge of indebtedness.

(ii) Each report must disclose the source of any honoraria received by the spouse (or payments made or to be made to charity on the spouse's behalf in lieu of honoraria) in excess of $1,000 from any one source during the reporting period.

Example to paragraph (h)(1): A filer's husband has a seasonal part-time job as a sales clerk at a department store, for which he receives a salary of $1,000 per year, and an honorarium of $1,250 from the state university. The filer need not report her husband's outside earned income because it did not exceed $1,000. She must, however, report the source of the honorarium because it exceeded $1,000.

(2) *Assets and investment income.* Each confidential financial disclosure report must disclose the assets and investment income described in paragraph (c) of this section and held by the spouse or dependent child of the filer.

(3) *Liabilities.* Each confidential financial disclosure report must disclose all information concerning liabilities described in paragraph (d) of this section and owed by a spouse or dependent child.

(4) *Gifts and travel reimbursements.* (i) Each annual confidential financial disclosure report must disclose gifts and reimbursements described in paragraph (g) of this section and received by a spouse or dependent child which are not received totally independently of their relationship to the filer.

(ii) A filer who is a new entrant as described in § 2634.903(b) is not required to report information regarding gifts and reimbursements received by a spouse or dependent child.

(5) *Divorce and separation.* A filer need not report any information about:

(i) A spouse living separate and apart from the filer with the intention of terminating the marriage or providing for permanent separation;

(ii) A former spouse or a spouse from whom the filer is permanently separated; or

(iii) Any income or obligations of the filer arising from dissolution of the filer's marriage or permanent separation from a spouse.

Example: A filer and her husband are living apart in anticipation of divorcing. The filer need not report any information about her spouse's sole assets and liabilities, but she must continue to report their joint assets and liabilities.

(6) *Unusual circumstances.* In very rare cases, certain interests in property, transactions, and liabilities of a spouse or a dependent child are excluded from reporting requirements, provided that each requirement of this paragraph is strictly met.

(i) The filer must certify without qualification that the item represents the spouse's or dependent child's sole financial interest or responsibility, and that the filer has no knowledge regarding that item;

(ii) The item must not be in any way, past or present, derived from the income, assets or activities of the filer; and

(iii) The filer must not derive, or expect to derive, any financial or economic benefit from the item.

Note to paragraph (h)(6): The exception described in paragraph (6) of this section is not available to most filers. One who prepares or files a joint tax return with a spouse will normally derive a financial or economic benefit from assets held by the spouse, and will also be presumed to have knowledge of such items; therefore one could not avail oneself of this exception after preparing or filing a joint tax return. If the filer and the spouse cohabitate and share household expenses, the filer will be deemed to derive an economic benefit from the item, unless the item is beyond the filer's control.

Example: The spouse of a filer has a managed account with a brokerage firm. The filer knows the account exists but the spouse does not share any information about the holdings and does not want the information disclosed on a financial disclosure statement. The filer must disclose the holdings in the spouse's managed account because the spouse shares in paying expenses (for example, household, vacation, or child related).

(i) *Trusts, estates, and investment funds*—(1) *In general.* (i) Except as otherwise provided in this section, each confidential financial disclosure report must include the information required by this subpart about the holdings of any trust, estate, investment fund or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, the filer, the filer's spouse, or dependent child.

(ii) Information about the underlying holdings of a trust is required if the filer, filer's spouse, or dependent child currently is entitled to receive income from the trust or is entitled to access the principal of the trust. If a filer, filer's spouse, or dependent child has a beneficial interest in a trust that either will provide income or the ability to access the principal in the future, the filer should determine whether there is a vested interest in the trust under controlling state law. However, no information about the underlying holdings of the trust is required for a nonvested beneficial interest in the principal or income of a trust.

Note to paragraph (i)(1): Nothing in this section requires the reporting of the holdings of a revocable inter vivos trust (also known as a ''living trust'') with respect to which the filer, the filer's spouse or dependent child has only a remainder interest, whether or not vested, provided that the grantor of the trust is neither the filer, the filer's spouse, nor the filer's dependent child. Furthermore, nothing in this section requires the reporting of the holdings of a revocable inter vivos trust from which the filer, the filer's spouse or dependent child receives any discretionary distribution, provided that the grantor of the trust is neither the filer, the filer's spouse, nor the filer's dependent child.

(2) *Qualified trusts and excepted trusts.* (i) A filer should not report information about the holdings of any qualified blind trust (as defined in § 2634.402) or any qualified diversified trust (as defined in § 2634.402).

(ii) In the case of an excepted trust, a filer should indicate the general nature of its holdings, to the extent known, but does not otherwise need to report information about the trust's holdings. For purposes of this part, the term ''excepted trust'' means a trust:

(A) Which was not created directly by the filer, spouse, or dependent child; and

(B) The holdings or sources of income of which the filer, spouse, or dependent child have no specific knowledge through a report, disclosure, or constructive receipt, whether intended or inadvertent.

(3) *Excepted investment funds.* (i) No information is required under paragraph (i)(1) of this section about the underlying holdings of an excepted investment fund as defined in paragraph (i)(3)(ii) of this section, except that the fund itself must be identified as an interest in property and/or a source of income.

(ii) For purposes of financial disclosure reports filed under the provisions of this subpart, an ''excepted investment fund'' means a widely held investment fund (whether a mutual fund, regulated investment company, common trust fund maintained by a bank or similar financial institution, pension or deferred compensation plan, or any other investment fund), if:

(A)*(1)* The fund is publicly traded or available; or

(2) The assets of the fund are widely diversified; and

(B) The filer neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

(iii) A fund is widely diversified if it does not have a stated policy of concentrating its investments in any industry, business, single country other than the United States, or bonds of a single State within the United States.

Note to paragraph (i)(3): The fact that an investment fund qualifies as an excepted investment fund is not relevant to a determination as to whether the investment qualifies for an exemption to the criminal conflict of interest statute at 18 U.S.C. 208(a), pursuant to part 2640 of this chapter. Some excepted investment funds qualify for exemptions pursuant to part 2640, while other excepted investment funds do not qualify for such exemptions. If an employee holds an excepted investment fund that is not exempt from 18 U.S.C. 208(a), the ethics official may need additional information from the filer to determine if the holdings of the fund create a conflict of interest and should advise the employee to monitor the fund's holdings for potential conflicts of interest.

(j) *Special rules.* (1) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed under this subpart. However, if the individual has authority to exercise control over the fund's assets for personal use rather than campaign or political purposes, that portion of the fund over which such authority exists must be reported.

(2) With permission of the designated agency ethics official, a filer may attach to the reporting form a copy of a statement which, in a clear and concise fashion, readily discloses all information which the filer would otherwise have been required to enter on the concerned part of the report form.

(k) For reports of confidential filers described in § 2634.904(a)(3), each supplemental confidential financial disclosure report will include only the supplemental information:

(1) Which is more extensive than that required in the reporting individual's public financial disclosure report under this part; and

(2) Which has been approved by the Office of Government Ethics for collection by the agency concerned, as set forth in supplemental agency regulations and forms, issued under §§ 2634.103 and 2634.601(b) (see § 2634.901(b) and (c)).

§ 2634.908 Reporting periods.

(a) *Incumbents.* Each confidential financial disclosure report filed under § 2634.903(a) must include the information required to be reported under this subpart for the preceding calendar year, or for any portion of that period not covered by a previous confidential or public financial disclosure report filed under this part.

(b) *New entrants.* Each confidential financial disclosure report filed under § 2634.903(b) must include the information required to be reported under this subpart for the following reporting periods:

(1) Noninvestment income for the preceding 12 months;

(2) Assets held on the date of filing. New entrant filers are not required to report assets no longer held at the time of appointment, even if the assets previously produced income before the filers were appointed to their confidential positions;

(3) Liabilities owed on the date of filing;

(4) Positions with non-Federal organizations for the preceding 12 months; and

(5) Agreements and arrangements held on the date of filing.

§ 2634.909 Procedures, penalties, and ethics agreements.

(a) The provisions of subpart F of this part govern the filing procedures and forms for, and the custody and review of, confidential disclosure reports filed under this subpart.

(b) For penalties and remedial action which apply in the event that the reporting individual fails to file, falsifies information, or files late with respect to confidential financial disclosure reports, see subpart G of this part.

(c) Subpart H of this part on ethics agreements applies to both the public and confidential reporting systems under this part.

Subpart J—Certificates of Divestiture

§ 2634.1001 Overview.

(a) *Scope.* 26 U.S.C. 1043 and the rules of this subpart allow an eligible person to defer paying capital gains tax on property sold to comply with conflict of interest requirements. To defer the gains, an eligible person must obtain a Certificate of Divestiture from the Director of the Office of Government Ethics before selling the property. This subpart describes the circumstances when an eligible person may obtain a Certificate of Divestiture and establishes the procedure that the Office of Government Ethics uses to issue Certificates of Divestiture.

(b) *Purpose.* The purpose of section 1043 and this subpart is to minimize the burden that would result from paying capital gains tax on the sale of assets to comply with conflict of interest requirements. Minimizing this burden aids in attracting and retaining highly qualified personnel in the executive branch and ensures the confidence of the public in the integrity of Government officials and decision-making processes.

§ 2634.1002 Role of the Internal Revenue Service.

The Internal Revenue Service (IRS) has jurisdiction over the tax aspects of a divestiture made pursuant to a Certificate of Divestiture. Eligible persons seeking to defer capital gains:

(a) Must follow IRS requirements for reporting dispositions of property and electing under section 1043 not to recognize capital gains; and

(b) Should consult a personal tax advisor or the IRS for guidance on these matters.

§ 2634.1003 Definitions.

For purposes of this subpart:

(a) *Eligible person* means:

(1) Any officer or employee of the executive branch of the Federal Government, except a person who is a special Government employee as defined in 18 U.S.C. 202;

(2) The spouse or any minor or dependent child of the individual referred to in paragraph (1) of this definition; and

(3) Any trustee holding property in a trust in which an individual referred to in paragraph (1) or (2) of this definition has a beneficial interest in principal or income.

(b) *Permitted property* means:

(1) An obligation of the United States; or

(2) *A diversified investment fund.* A diversified investment fund is a diversified mutual fund (including diversified exchange-traded funds) or a diversified unit investment trust, as defined in 5 CFR 2640.102(a), (k) and (u);

(3) Provided, however, a permitted property cannot be any holding prohibited by statute, regulation, rule, or Executive order. As a result, requirements applicable to specific agencies and positions may limit an eligible person's choices of permitted property. An employee seeking a Certificate of Divestiture should consult the appropriate designated agency ethics official to determine whether a statute, regulation, rule, or Executive order may limit choices of permitted property.

§ 2634.1004 General rule.

(a) The Director of the Office of Government Ethics may issue a Certificate of Divestiture for specific property in accordance with the procedures of § 2634.1005 if:

(1) The Director determines that divestiture of the property by an eligible person is reasonably necessary to comply with 18 U.S.C. 208, or any other Federal conflict of interest statute, regulation, rule, or Executive order; or

(2) A congressional committee requires divestiture as a condition of confirmation.

(b) The Director of the Office of Government Ethics cannot issue a Certificate of Divestiture for property that already has been sold.

Example 1: An employee is directed to divest shares of stock, a limited partnership interest, and foreign currencies. If the sale of these assets will result in capital gains under the Internal Revenue Code, the employee may request and receive a Certificate of Divestiture.

Example 2: An employee of the Department of Commerce is directed to divest his shares of XYZ stock acquired through the exercise of options held in an employee benefit plan. The employee explains that the gain from the sale of the stock will be treated as ordinary income. Because only capital gains realized under Federal tax law are eligible for deferral under section 1043, a Certificate of Divestiture cannot be issued for the sale of the XYZ stock.

Example 3: During her Senate confirmation hearing, a nominee to a Department of Defense (DOD) position is directed to divest stock in a DOD contractor as a condition of her confirmation. Eager to comply with the order to divest, the nominee sells her stock immediately after the hearing and prior to being confirmed by the Senate. Once she is a DOD employee, she requests a Certificate of Divestiture for the stock. Because the Office of Government Ethics cannot issue a Certificate of Divestiture for property that has already been divested, the employee's request for a Certificate of Divestiture must be denied.

§ 2634.1005 How to obtain a Certificate of Divestiture.

(a) *Employee's request to the designated agency ethics official.* An employee seeking a Certificate of Divestiture must submit a written request to the designated agency ethics official at his or her agency. The request must contain:

(1) A full and specific description of the property that will be divested. For example, if the property is corporate stock, the request must include the number of shares for which the eligible person seeks a Certificate of Divestiture;

(2) A brief description of how the eligible person acquired the property;

(3) A statement that the eligible person holding the property has agreed to divest the property; and

(4)(i) The date that the requirement to divest first applied; or

(ii) The date the employee first agreed that the eligible person would divest the property in order to comply with conflict of interest requirements.

(b) *Designated agency ethics official's submission to the Office of Government Ethics.* The designated agency ethics official must forward to the Director of the Office of Government Ethics the employee's written request described in paragraph (a) of this section. In addition, the designated agency ethics official must submit:

(1) A copy of the employee's most recent Incumbent financial disclosure report, or New Entrant report, if an Incumbent report has not been filed, and any subsequent Periodic Transaction reports, as required by this part. If the employee is not required to file a financial disclosure report, the designated agency ethics official must obtain from the employee, and submit to the Office of Government Ethics, a listing of the employee's interests that would be required to be disclosed on a

confidential financial disclosure report excluding gifts and travel reimbursements. For purposes of this listing, the reporting period is the preceding 12 months from the date the requirement to divest first applied or the date the employee first agreed that the eligible person would divest the property;

(2) An opinion that describes why divestiture of the property is reasonably necessary to comply with 18 U.S.C. 208, or any other Federal conflict of interest statute, regulation, rule, or Executive order;

(3) If applicable, a statement identifying any factors that, in the opinion of the designated agency ethics official, weigh against the issuance of a certificate of divestiture; and

(4) A brief description of the employee's position or a citation to a statute that sets forth the duties of the position.

(c) *Divestitures required by a congressional committee.* In the case of a divestiture required by a congressional committee as a condition of confirmation, the designated agency ethics official must submit appropriate evidence that the committee requires the divestiture. A transcript of congressional testimony or a written statement from the designated agency ethics official concerning the committee's custom regarding divestiture are examples of evidence of the committee's requirements.

(d) *Divestitures for property held in a trust.* In the case of divestiture of property held in a trust, the employee must submit a copy of the trust instrument, as well as a list of the trust's current holdings, unless the holdings are listed on the employee's most recent financial disclosure report. In certain cases involving divestiture of property held in a trust, the Director may not issue a Certificate of Divestiture unless the parties take actions which, in the opinion of the Director, are appropriate to exclude, to the extent practicable, parties other than eligible persons from benefitting from the deferral of capital gains. Such actions may include, as permitted by applicable State law, division of the trust into separate portfolios, special distributions, dissolution of the trust, or anything else deemed feasible by the Director, in his or her sole discretion.

Example: An employee has a 90% beneficial interest in an irrevocable trust created by his grandfather. His four adult children have the remaining 10% beneficial interest in the trust. A number of the assets held in the trust must be sold to comply with conflicts of interest requirements. Due to State law, no action can be taken to separate the trust assets. Because the adult children have a small interest in the trust and the assets cannot be separated, the Director may consider issuing a Certificate of Divestiture to the trustee for the sale of all of the conflicting assets.

(e) *Time requirements.* A request for a Certificate of Divestiture does not extend the time in which an employee otherwise must divest property required to be divested pursuant to an ethics agreement, or prohibited by statute, regulation, rule, or Executive order. Therefore, an employee must submit his or her request for a Certificate of Divestiture as soon as possible once the requirement to divest becomes applicable. The Office of Government Ethics will consider requests submitted beyond the applicable time period for divestiture. If the designated agency ethics official submits a request to the Office of Government Ethics beyond the applicable time period for divestiture, he must explain the reason for the delay. See §§ 2634.802 and 2635.403 for rules relating to the time requirements for divestiture.

(f) *Response by the Office of Government Ethics.* After reviewing the materials submitted by the employee and the designated agency ethics official, and making a determination that all requirements have been met, the Director will issue a Certificate of Divestiture. The certificate will be sent to the designated agency ethics official who will then forward it to the employee.

§ 2634.1006 Rollover into permitted property.

(a) *Reinvestment of proceeds.* In order to qualify for deferral of capital gains, an eligible person must reinvest the proceeds from the sale of the property divested pursuant to a Certificate of Divestiture into permitted property during the 60-day period beginning on the date of the sale. The proceeds may be reinvested into one or more types of permitted property.

Example 1: A recently hired employee of the Department of Transportation receives a Certificate of Divestiture for the sale of a large block of stock in an airline. He may split the proceeds of the sale and reinvest them in an S&P Index Fund, a diversified Growth Stock Fund, and U.S. Treasury bonds.

Example 2: The Secretary of Treasury sells certain stock after receiving a Certificate of Divestiture and is considering reinvesting the proceeds from the sale into U.S. Treasury securities. However, because the Secretary of the Treasury is prohibited by 31 U.S.C. 329 from being involved in buying obligations of the United States Government, the Secretary cannot reinvest the proceeds in such securities. However, she may invest the proceeds in a diversified mutual fund. See the definition of *permitted property* at § 2634.1003(b).

(b) *Internal Revenue Service reporting requirements.* An eligible person who elects to defer the recognition of capital gains from the sale of property pursuant to a Certificate of Divestiture must follow Internal Revenue Service rules for reporting the sale of the property and the reinvestment transaction.

§ 2634.1007 Cases in which Certificates of Divestiture will not be issued.

The Director of the Office of Government Ethics, in his or her sole discretion, may deny a request for a Certificate of Divestiture in cases where an unfair or unintended benefit would result. Examples of such cases include:

(a) *Employee benefit plans.* The Director will not issue a Certificate of Divestiture if the property is held in a pension, profit-sharing, stock bonus, or other employee benefit plan and can otherwise be rolled over into an eligible tax-deferred retirement plan within the 60-day reinvestment period.

(b) *Tax-Deferred and Tax-Advantaged Accounts.* The Director will not issue a Certificate of Divestiture if the property is held in an Individual Retirement Account, college savings plan (529 plan), or other tax-deferred or tax-advantaged account (*e.g.,* 401(k), 403(b), 457 plans, etc.), which allow the account holder to exchange the property for permissible property without incurring a capital gain.

(c) *Complete divestiture.* The Director will not issue a Certificate of Divestiture unless the employee agrees to divest all of the property that presents a conflict of interest, as well as other similar or related property that presents a conflict of interest under a Federal conflict of interest statute, regulation, rule, or Executive order. However, any property that qualifies for a regulatory exemption at part 2640 of this chapter need not be divested for a Certificate of Divestiture to be issued.

Example: A Department of Agriculture employee owns shares of stock in Better Workspace, Inc. valued at $25,000. As part of his official duties, the employee is assigned to evaluate bids for a contract to renovate office space at his agency. The Department's designated agency ethics official discovers that Better Workspace is one of the companies that has submitted a bid and directs the employee to sell his stock in the company. Because Better Workspace is a publicly traded security, the employee could retain up to $15,000 of the stock under the regulatory exemption for interests in securities at § 2640.202(a) of this chapter. He would be able to request a Certificate of Divestiture for the $10,000 of Better Workspace stock that is not covered by the exemption. Alternatively, he could request a

Certificate of Divestiture for the entire $25,000 worth of stock. If he chooses to sell his stock down to an amount permitted under the regulatory exemption, the Office of Government Ethics will not issue additional Certificates of Divestiture if the value of the stock goes above $15,000 again.

(d) *Property acquired under improper circumstances.* The Director will not issue a Certificate of Divestiture:

(1) If the eligible person acquired the property at a time when its acquisition was prohibited by statute, regulation, rule, or Executive order; or

(2) If circumstances would otherwise create the appearance of a conflict with the conscientious performance of Government responsibilities.

§ 2634.1008 Public access to a Certificate of Divestiture.

A Certificate of Divestiture issued pursuant to the provisions of this subpart is available to the public in accordance with the rules of § 2634.603.

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FEDERAL REGISTER

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Part III

The President

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 9767 of July 13, 2018

Captive Nations Week, 2018

By the President of the United States of America

A Proclamation

Two hundred and forty-two years ago, America was founded on the fundamental principle that all men and women are created equal and share an inherent dignity that government must value, respect, and protect. The founding of our great country lit a spark of freedom that spread around the world, unleashing human potential and lifting billions out of poverty. Today, we continue this sacred legacy. We hold in common the responsibility to strengthen the bonds of liberty for future generations to inherit and carry forward.

At the same time, we recognize that many around the world continue to live under the dark shadow of oppression and despotism. During Captive Nations Week, we remember that the rights and privileges we enjoy in the United States are not held by all. We stand in solidarity with those who continue to suffer under governments that stifle basic freedoms and deny the opportunity to build a better life.

President Dwight D. Eisenhower proclaimed the first Captive Nations Week in 1959 during the height of the Cold War. At that time, the United States was locked in an enduring struggle to preserve and advance freedom for nations held captive by totalitarian communist regimes in Eastern Europe, Asia, and elsewhere. These regimes dismissed the very idea of individual rights. Then, as it does today, the United States blazed as a beacon of hope for the oppressed, for lovers of freedom and justice, and for those who strive for the rule of law.

When the citizens of East Germany tore down the Berlin Wall in 1989, it was a defining moment for freedom. But much work remains unfinished. In many countries today, people remain subject to unjust arrest, detention, and execution. Individual rights, such as freedom of expression, freedom of association, and freedom to assemble, which are necessary to hold governments accountable, are significantly circumvented or denied entirely. The United States stands with the repressed and continues to encourage despotic regimes to turn away from authoritarianism and respect the God-given rights of life and liberty.

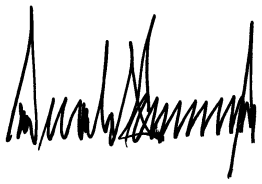
As we observe Captive Nations Week, let us recall the words of President Ronald Reagan, declared on this occasion in 1983: ''Free people, if they are to remain free, must defend the liberty of others.'' Let us today resolve to continue the work of those who came before: to ensure that America remains the world's brightest example of liberty; to do justice; to respect the rule of law; and to never, ever give up on liberty.

The Congress, by Joint Resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week of July of each year as ''Captive Nations Week.''

NOW, THERFORE, 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 July 15 through July 21, 2018, as Captive Nations Week. I call upon all Americans to reaffirm

our commitment to those around the world striving for liberty, justice, and the rule of law.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of July, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-third.



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Presidential Documents

Proclamation 9768 of July 13, 2018

Made in America Day and Made in America Week, 2018

By the President of the United States of America

A Proclamation

On Made in America Day and during Made in America Week, we celebrate the importance of American manufacturing, construction, agriculture, mining, and entrepreneurship to our Nation's prosperity and economic vitality. Made in America products represent the global gold standard for quality, innovation, and craftsmanship and the output of a highly skilled workforce that is second to none.

American workers and job creators sustain and inspire the American Dream, while enhancing both our economic and national security, which are inextricably linked.

For far too long, the working men and women of our country have been ignored. That era is over.

Last year, I signed into law historic tax cuts and reform, which have unleashed a flow of investment and jobs back into America from overseas. Optimism among American manufacturers has hit all-time highs as American businesses across the country have paid bonuses, increased wages, and boosted contributions to employee retirement plans.

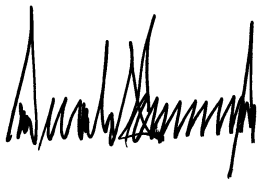
My Administration is also delivering on its promise to cut unnecessary and burdensome regulations that hamper economic growth.

I have consistently pledged to the American people that I will reinvigorate our workforce by instituting fair and reciprocal trade practices so that companies can compete, thrive, and grow. My trade agenda is focused on defending our workers and businesses from unfair trade practices and on removing barriers to our products and services, so that our Nation can compete and so that ''buy American and hire American'' once again becomes the best option in an increasingly international and competitive market. Accordingly, I will continue to negotiate and modernize our trade agreements to bring about free, fair, and reciprocal trade and thereby ensure open, fair, and competitive markets for America's products and services.

Our Nation continues to thrive due to the determination, imagination, skill, creativity, and excellence of our people. American industry reflects these qualities and evokes patriotism, pride, and the hope of a bright and prosperous future. We salute our Nation's workers, job creators, and inventors, and we pledge to continue creating an environment that makes the United States the most attractive place in the world to do business.

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 July 17, 2018, as Made in America Day and this week, July 15 through July 21, 2018, as Made in America Week. I call upon all Americans to pay special tribute to the builders, the ranchers, the crafters, the entrepreneurs, and all those who work with their hands every day to make America great.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of July, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-third.



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