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

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Presidential Documents

Title 3—

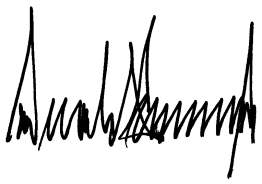
The President

Notice of August 8, 2018

Continuation of the National Emergency With Respect to Export Control Regulations

On August 17, 2001, the President issued Executive Order 13222 pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). In that order, the President declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States related to the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. 4601 *et seq.*). Because the Congress has not renewed the Export Administration Act, the national emergency declared on August 17, 2001, must continue in effect beyond August 17, 2018. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622 (d)), I am continuing for 1 year the national emergency declared in Executive Order 13222, as amended by Executive Order 13637 of March 8, 2013.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
August 8, 2018.

[FR Doc. 2018–17465
Filed 8–10–18; 8:45 am]
Billing code 3295–F8–P

Rules and Regulations

Federal Register
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DEPARTMENT OF ENERGY

10 CFR Part 429

[EERE–2016–BT–TP–0029]

RIN 1904–AD71

Energy Conservation Program: Test Procedures for Central Air Conditioners and Heat Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Lifting of administrative stay.

SUMMARY: On July 3, 2017, the Department of Energy (DOE) issued an administrative stay postponing the effectiveness of certain provisions of a final rule, published in the **Federal Register** on January 5, 2017. The January 5, 2017 final rule amended the test procedure and certain certification, compliance, and enforcement provisions for central air conditioners and heat pumps. Specifically, in issuing the administrative stay, DOE stayed the effectiveness of two provisions of the January 5, 2017 final rule that require outdoor unit models be tested under the outdoor unit with no match procedure if they meet either of two enumerated conditions. By this action, DOE lifts the administrative stay of the two provisions.

DATES: As of August 3, 2018, the administrative stay issued under 5 U.S.C. 705, postponing the effectiveness of certain provisions of 10 CFR 429.16(a)(3)(i), was lifted.

FOR FURTHER INFORMATION CONTACT: Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Ave. SW, Washington, DC 20585–0121. Phone: (202) 586–9496. Email: *Peter.Cochran@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background

On January 5, 2017, DOE published a final rule (January 2017 final rule) amending the test procedure and certification, compliance, and enforcement provisions for central air conditioners and heat pumps (CAC/HP). 82 FR 1426. Among other changes, the January 2017 final rule added a paragraph at 10 CFR 429.16(a)(3)(i) requiring, among other things, that central air conditioners and heat pumps be tested under the outdoor unit with no match provisions if: (1) Any of the refrigerants approved for use with an outdoor unit model is HCFC–22 or has a 95 °F midpoint saturation absolute pressure that is +/− 18 percent of the 95 °F saturation absolute pressure for HCFC–22, or if there are no refrigerants designated as approved for use; or (2) a model of outdoor unit is not charged with a specified refrigerant from the point of manufacture or if the unit is shipped requiring the addition of more than two pounds of refrigerant to meet the charge required for testing per section 2.2.5 of appendix M or appendix M1 (unless either (a) the factory charge is equal to or greater than 70% of the outdoor unit internal volume times the liquid density of refrigerant at 95 °F or (b) an A2L refrigerant is approved for use and listed in the certification report).

The original effective date of the January 2017 final rule was February 6, 2017. Subsequently, DOE delayed the effective date of the January 2017 final rule until March 21, 2017 (82 FR 8985), and then further delayed the effective date until July 5, 2017 (82 FR 14425; 82 FR 15457).

On March 3, 2017, Johnson Controls, Inc. (JCI) filed a petition for review of the January 2017 final rule in the United States Court of Appeals for the Seventh Circuit. This litigation is subject to ongoing mediation. JCI manufactures outdoor units with an approved refrigerant that has a 95 °F midpoint saturation absolute pressure that is +/− 18 percent of the 95 °F saturation absolute pressure for HCFC–22. These same models are also shipped requiring the addition of more than two pounds of refrigerant to meet the charge required for testing per section 2.2.5 of appendix M or appendix M1, and the factory charge is not equal to or greater than 70% of the outdoor unit internal volume times the liquid density of refrigerant at 95 °F. Thus, under either of the two provisions that were added at 10 CFR 429.16(a)(3)(i) by the January 2017 final rule, these models would need to be tested as outdoor units with no match under appendix M or M1.

Also on March 3, 2017, JCI submitted to DOE a petition for a 180-day extension of the requirement that JCI make efficiency representations for its GAW Series products in accordance with the two new provisions of the January 2017 final rule. DOE granted this request on June 2, 2017.

On April 6, 2017, JCI submitted to DOE a petition for waiver and application for interim waiver from these two test procedure provisions. JCI subsequently submitted an amended petition for waiver and application for interim waiver on June 5, 2018.

On May 31, 2017, JCI requested that DOE grant it an administrative stay of the above described two provisions pending judicial review of the January 2017 final rule. On June 6, 2017, JCI requested that DOE hold its stay request in abeyance, noting that DOE's June 2, 2017 grant of a 180-day extension of the date by which JCI must comply with the two provisions specified above obviated the need for an immediate grant of an administrative stay. Subsequently, on June 29, 2017, Lennox International Inc. (Lennox), a manufacturer of central air conditioners and heat pumps, filed a complaint in the U.S. District Court for the Northern District of Texas challenging DOE's decision to grant the 180-day extension to JCI.

On July 3, 2017, DOE issued an administrative stay in accordance with the Administrative Procedure Act (5 U.S.C. 705).[1] DOE's determination to issue the stay and postpone the effectiveness of the two provisions was based on JCI's submissions that raised concerns about significant potential impacts of the test procedure provisions on JCI, as well as the desire to ensure that all manufacturers of central air conditioners and heat pumps would have the same relief granted to JCI. 82

[1] The administrative stay was made publicly available on DOE's website on July 3, 2017: *https://www.energy.gov/sites/prod/files/2017/07/f35/Grant%20of%20Administrative%20Stay%20Concerning%20Test%20Procedure%20For%20Cental%20Air%20Conditioners%20and%20Heat%20Pumps.pdf.* The administrative stay was subsequently published in the **Federal Register** on July 13, 2017. 82 FR 32227. On September 14, 2017, the Natural Resources Defense Council filed a complaint in the U.S. District Court for the Southern District of New York challenging DOE's decision to issue the administrative stay.

FR 32228. On July 17, 2017, following the denial of its request for stay of the 180-day extension and/or for preliminary injunctive relief, Lennox voluntarily dismissed its lawsuit.

Grant of JCI's Application for Interim Waiver

As stated above, JCI submitted initial and amended petitions for waiver and interim waiver that raise concerns about the equity of the challenged test procedure provisions. JCI contends that the challenged test procedure provisions unfairly require central air conditioner systems that are approved for use with R–407C refrigerant and are offered as new, matched systems to be tested as outdoor units with no match. Under the outdoor unit with no match testing provisions, these systems are treated as replacement outdoor units, regardless of whether they are sold as new, matched systems or replacement outdoor units, and are rated using default indoor parameters that approximate the performance of an old, previously installed indoor unit. As such, JCI argues that the test procedure is not representative of the energy consumption of such central air conditioners when installed in the field as new, matched systems. JCI proposes to evaluate the 1,178 system combinations listed in its amended waiver petition and certified in DOE's Compliance Certification Management System in a manner that is representative of the true energy consumption of these products when installed as new, matched systems, similar to how central air conditioners that use other refrigerants and are sold both as new, matched systems and as replacement outdoor units are treated under DOE's test procedure.

While the administrative stay has been in place, DOE has continued to evaluate JCI's initial and amended petitions for waiver and interim waiver. Based on a review of these petitions and JCI's public-facing materials, it is DOE's current understanding that the basic models listed in JCI's amended petition, similar to central air conditioners that use other refrigerants, are offered as both matched, new systems and as replacement outdoor units for existing systems. As a result, DOE determined that JCI's amended petition for waiver would likely be granted and issued a decision granting JCI an interim waiver subject to certain conditions.

Lifting of the Administrative Stay

In issuing the administrative stay, DOE determined that it was in the interest of justice to do so based on two concerns: (1) The potential for significant economic impacts for JCI resulting from a possibly unrepresentative test procedure; and (2) the desire to maintain a level playing field for all central air conditioner manufacturers. The issuance of the interim waiver removes the first concern and subjects the final determination on the waiver request to the administrative process, including a notice-and-comment period, in DOE's waiver regulations at 10 CFR 430.27. Further, even if DOE ultimately denies JCI's amended waiver petition, an administrative stay would still no longer be needed as DOE would have determined that the results of the test procedure issued in the January 2017 final rule accurately represent the energy use of JCI's products.[2] In that case, there would be no concern about possible significant economic impacts to JCI resulting from an unrepresentative test procedure.

The waiver petition process also addresses the second concern as any manufacturer of a similar product may also submit a waiver petition. In fact, if DOE ultimately grants JCI's amended waiver petition, a manufacturer of a similar product would be required to submit a petition for waiver under DOE's regulations. 10 CFR 430.27(j). Further, DOE has determined that the waiver petition process is a better, more tailored approach to ensuring a level playing field as manufacturers are required to propose alternative test procedures to the test procedure from which the waiver is sought, which are then subject to potential modification and approval by DOE. 10 CFR 430.27(b)(1)(iii). Because DOE explicitly approves alternative test procedures, there is no possibility of uncertainty regarding how a product subject to a waiver should be tested. This also allows DOE to ensure that manufacturers of similar products are making energy efficiency representations using the same alternative test procedure, which is essential for maintaining integrity in a market.

Based on the foregoing reasons, DOE lifts the administrative stay issued on July 3, 2017.

[2] DOE will grant a waiver from the test procedure requirements if the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy or water consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(f)(2). JCI argues that the test procedure provisions in question result in materially inaccurate comparative data for the basic models listed in its amended petition.

Signed in Washington, DC, on August 3, 2018.

Stephen C. Skubel,

Assistant General Counsel for Litigation.

[FR Doc. 2018–17187 Filed 8–10–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–4007; Product Identifier 2015–SW–064–AD; Amendment 39–19351; AD 2018–16–11]

RIN 2120–AA64

Airworthiness Directives; Various Model 234 and Model CH–47D Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for various Model 234 and Model CH–47D helicopters. This AD requires inspections of the pitch housing and revising the pitch housing retirement life. This AD was prompted by reports of cracking in the pitch housing lugs. The actions of this AD are intended to detect and prevent an unsafe condition on these products.

DATES: This AD is effective September 17, 2018.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of September 17, 2018.

ADDRESSES: For service information identified in this final rule, contact Boeing Helicopters, The Boeing Company, 1 S. Stewart Avenue, Ridley Park, PA 19078, telephone 610–591–2121, and Columbia Helicopters, Inc. (Columbia), 14452 Arndt Road NE, Aurora, OR 97002, telephone (503) 678–1222, fax (503) 678–5841, or at *http://www.colheli.com.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

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–2015–4007; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket

contains this AD, any incorporated-by-reference service information, the Special Airworthiness Information Bulletin (SAIB), the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Chris Bonar, Aerospace Engineer, Airframe Section, Seattle ACO Branch, FAA, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3521; email *Christopher.Bonar@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On March 14, 2017, at 82 FR 13567, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Model 234 and Model CH–47D helicopters with a pitch housing part number (P/N) 145R2075–11, 145R2075–12, 145R2075–13, 145R2075–14, 145R2075–15, 145R2075–16, 234R2075–1, or 234R2075–2 installed. The type certificate (TC) holder for Model 234 helicopters is Columbia (TC previously held by Boeing Defense & Space Group), and the TC holders for Model CH–47D helicopters currently include Columbia, Billings Flying Service, Inc., and Tandem Rotor, LLC. We did not limit the proposed AD to these TC holders because we expect additional TC holders of helicopters that are subject to this same unsafe condition.

The NPRM was prompted by reports of cracking in the pitch housing lugs, located on the lead side of the lower vertical pin lug. The reports initially prompted the FAA to issue SAIB SW–11–03, dated October 22, 2010, which recommends that all owners and operators of Columbia Model 234 helicopters perform repetitive ultrasonic inspections of the lugs. At that time, there were no civil Model CH–47D helicopters in service. On March 20, 2015, we received a report of lateral vibration on a Model 234 helicopter caused by a crack in an aft pitch housing upper lug. The crack was determined to be caused by fatigue and attributed to underestimated load conditions in the original life limit calculations. This cracking differed from the cracking described in the SAIB.

To correct this unsafe condition, we proposed to require repetitive eddy current and ultrasonic inspections of the pitch housing. Boeing, the original manufacturer of both model helicopters, developed service information for the SAIB ultrasonic inspections, which we proposed to require in the NPRM. Due to the rapid growth rate, an effective eddy current inspection must detect an inward-growing crack of no more than 0.10 inch. The NPRM proposed to require, for Columbia helicopters, the eddy current inspection method specified in Columbia's service information. Because the other TC holders have not developed service instructions, we proposed to require the eddy current inspection procedures for all other helicopters be submitted to the Seattle or Denver Aircraft Certification Offices for approval.

We also proposed to require removing the pitch housing from service when it accumulates a total of 8,200 hours time-in-service (TIS). Forward pitch housings on Model CH–47D helicopters had no life limit and the aft pitch housing already had a life limit of 8,200 hours TIS. For Model 234 helicopters, the forward pitch housing had a life limit of 12,547 hours TIS and the aft pitch housing had a life limit of 19,077 hours TIS. The NPRM proposed to establish or reduce these life limits to 8,200 hours TIS for both forward and aft pitch housings, regardless of the model helicopter.

The actions specified by the NPRM were intended to detect and prevent a crack in a pitch housing lug. This condition could result in loss of a rotor blade and consequent loss of helicopter control.

Since the NPRM was issued, the FAA's Aircraft Certification Service has changed its organization structure. The new structure replaces product directorates with functional divisions. We have revised some of the office titles and nomenclature throughout this final rule to reflect the new organizational changes. Additional information about the new structure can be found in the Notice published on July 25, 2017 (82 FR 34564).

Ex Parte Contact

On October 25, 2017, after the comment period closed, we had a teleconference with Columbia about Columbia's service information identified in the NPRM. Columbia's comment during this teleconference is addressed below. A summary of this discussion can be found in the rulemaking docket at *http://www.regulations.gov* in Docket No. FAA–2015–4007.

Comments

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

Request

One commenter supported the actions required by this AD.

Another commenter requested that we provide more information regarding our determination to include all Model CH–47D and Model 234 helicopters in this AD, including the number of hours on the failed Japanese military CH–47 pitch housing. This commenter suggested the failures may be unique to the Model 234 helicopter or may result from factors, such as high speed operations, a corrosive Japanese operating environment, or inaccurate fatigue equations.

We agree to provide additional information regarding our determination. The Japanese military CH–47 pitch housing failure referenced in SAIB SW–11–03 failed due to fatigue cracking initiated by fretting. The event occurred in 2006, and we do not have access to the number of hours on the failed pitch housing. The reported pitch housing lug cracks occurred on both the Model 234 and the Model CH–47D. These models use identical rotor head design and components, including the same part-numbered pitch housings. Therefore, we determined that the life limits for the pitch housings on both models should be the same.

We found no indication that the lug failure resulted from the Japanese operating environment. Investigation of the cracking did not show evidence of damage originating at corrosion sites. The Japanese operating environment is not unique as these aircraft operate worldwide in a variety of conditions. We also found no indications that the failures were due to inaccuracies in the Boeing Model 234 cycle count equations. Our investigation concluded that the original fatigue life evaluation excluded certain loading conditions and resulted in a life limit that was too high.

Tandem Rotor requested the AD not impose a life limit on the forward pitch housing or, alternatively, impose a life limit consistent with the life limit of the MH–47E/G forward pitch housing of 24,975 hours TIS. As part of this request, Tandem Rotor asks us to reconsider the service lives established by Boeing.

We disagree. We reviewed newer analyses than those considered by Boeing, including fatigue loading that was not part of the original design data. These newer analyses show a life limit is required on both the forward and aft pitch housings. This is consistent with SAIB SW–11–03, which included the

forward pitch housing despite cracks having only been found in service on the aft pitch housing. The newer analyses do not support the 24,975-hour life limit requested by Tandem Rotor. These helicopters are used in a wide variety of operations. The life limits required by this AD assume more severe usage than the average operator in order to fully cover the range of different operators and usages. Individual operators may request an alternative method of compliance if sufficient data is submitted to substantiate a different life limit because their usage is not as damaging to a particular part.

Tandem Rotor also requested that the repetitive ultrasonic inspection interval be increased from 200 hours to 250 hours TIS to align the inspection with an existing recurring 500-hour eddy current inspection, thus reducing travel costs and simplifying maintenance planning for the technician.

We disagree. We have determined that the 200-hour interval for the inspection represents an appropriate time in which the required actions can be performed in a timely manner within the affected fleet, while still maintaining an adequate level of safety. A 250-hour interval did not yield a sufficient safety margin when considering all usage spectrums in the current fleet.

Columbia requested that we change the AD to make the eddy current inspection requirement the same for all helicopters. In support of its request, Columbia states that its service bulletin is proprietary and should not be incorporated by reference (and thus made publicly available) as an inspection method in the AD.

We agree. The inspection methods in the Columbia service information is specific to Columbia helicopters. Because Columbia is the only operator of its U.S. fleet, we determined there are no other operators that need this information to perform the eddy current inspections. We have changed the AD accordingly.

FAA's Determination

We have reviewed the relevant information, considered the comments received, and determined that an unsafe condition exists and is likely to exist or develop on other products of these same type designs and that air safety and the public interest require adopting the AD with the change previously described. This change will not increase the economic burden on any operator or increase the scope of the AD.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Service Bulletin 145R2075–62–0001, Revision 1, dated September 27, 2011, which specifies updated life limits for the forward and aft pitch housings and revised overhaul and ultrasonic inspection procedures for various military Model CH–47 and Model 234 helicopters.

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.

Other Related Service Information

We also reviewed Columbia Helicopters, Inc. Alert Service Bulletin No. 234–62–A0012, Revision 2, dated March 1, 2016, and Alert Service Bulletin No. 47D–62–A0002, Revision 0, dated March 1, 2016. This service information specifies performing repetitive eddy current inspections, visual inspections, and ultrasonic inspections and for reducing the life limit of the pitch housing assemblies.

Differences Between This AD and the Service Information

The service information provides different life limits for the forward and aft pitch housings, while this AD requires a life limit of 8,200 hours TIS for all pitch housings. The service information requires either an ultrasonic inspection or a dye penetrant inspection as part of the overhaul procedures. The service information specifies different compliance times for the inspections than what this AD requires.

Costs of Compliance

We estimate that this AD affects 15 helicopters of U.S. Registry and that labor costs average $85 per work-hour. Based on these estimates, we expect the following costs:

- An eddy current inspection requires 4 work-hours for a total cost of $340 per helicopter and $5,100 for the U.S. fleet, per inspection cycle.
- An ultrasonic inspection requires 4 work-hours for a total cost of $340 per helicopter and $5,100 for the U.S. fleet, per inspection cycle.
- Replacing a pitch housing requires 8 work-hours and parts cost $13,000, for a total cost of $13,680 per helicopter.

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.

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 to the extent that it justifies making a regulatory distinction; 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.

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

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):

2018–16–11 Various Model 234 and Model CH–47D Helicopters: Amendment 39–19351; Docket No. FAA–2015–4007; Product Identifier 2015–SW–064–AD.

(a) Applicability

This AD applies to Model 234 and Model CH–47D helicopters, regardless of type certificate holder, with a pitch housing assembly (pitch housing) part number (P/N) 145R2075–11, 145R2075–12, 145R2075–13, 145R2075–14, 145R2075–15, 145R2075–16, 234R2075–1, or 234R2075–2 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in a pitch housing lug. This condition could result in loss of a rotor blade and consequent loss of helicopter control.

(c) Effective Date

This AD becomes effective September 17, 2018.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Before further flight, remove from service any pitch housing P/N 145R2075–11, 145R2075–12, 145R2075–13, 145R2075–14, 145R2075–15, 145R2075–16, 234R2075–1, and 234R2075–2 that has accumulated 8,200 hours total time-in-service (TIS).

(2) Before the pitch housing accumulates 200 hours TIS after the effective date of this AD and thereafter at intervals not to exceed 200 hours TIS, ultrasonic inspect the pitch housing for a crack in accordance with Attachment 1, paragraphs F and H through K, of Boeing Service Bulletin 145R2075–62–0001, Revision 1, dated September 27, 2011. If there is a crack, replace the pitch housing before further flight.

(3) Within 400 hours TIS after the effective date of this AD or before the pitch housing has accumulated 4,000 hours total TIS, whichever occurs later, and thereafter at intervals not to exceed 500 hours TIS, eddy current inspect the pitch housing for a crack. If there is a crack, replace the pitch housing before further flight. The eddy current inspection must be accomplished using a method approved by the Manager, Seattle ACO Branch, or by the Manager, Denver ACO Branch. For a repair method to be approved as required by this AD, the manager's approval letter must specifically refer to this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) For operators of helicopters with type certificates issued by the Denver Aircraft Certificate Office or ACO Branch, the manager of the Denver ACO Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Greg Johnson, Senior Aerospace Engineer, Denver ACO Branch, Compliance and Airworthiness Division, FAA, 26805 East 68th Avenue, Denver, CO 80249; phone: 303–342–1083; fax: 303–342–1088; email: *Gregory.Johnson@faa.gov.*

(2) All other AMOC requests should be sent to the Manager, Seattle ACO Branch, FAA. Send your proposal to: Chris Bonar, Aerospace Engineer, Airframe Section, Seattle ACO Branch, FAA, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3521; email *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(3) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

Special Airworthiness Information Bulletin SW–11–03, dated October 22, 2010 (SAIB); Columbia Helicopters, Inc., Alert Service Bulletin No. 234–62–A0012, Revision 2, dated March 1, 2016; and Columbia Helicopters, Inc., Alert Service Bulletin No. 47D–62–A0002, Revision 0, dated March 1, 2016, which are not incorporated by reference, contain additional information about the subject of this AD. You may view the SAIB on the internet at *http://www.regulations.gov* in the AD Docket. For Columbia service information identified in this final rule, contact Columbia Helicopters, Inc., 14452 Arndt Road NE, Aurora, OR 97002, telephone (503) 678–1222, fax (503) 678–5841, or at *http://www.colheli.com.* You may view a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6220, Main Rotor Head.

(i) Material Incorporated by Reference

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

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

(i) Boeing Service Bulletin 145R2075–62–0001, Revision 1, dated September 27, 2011.

(ii) Reserved.

(3) For Boeing Helicopters service information identified in this AD, contact Boeing Helicopters, The Boeing Company, 1 S. Stewart Avenue, Ridley Park, PA 19078, telephone 610–591–2121.

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(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 Fort Worth, Texas, on July 27, 2018.

Scott A. Horn,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2018–17112 Filed 8–10–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 542

RIN 3141–AA55

Minimum Internal Control Standards

AGENCY: National Indian Gaming Commission, Department of the Interior.

ACTION: Notification of final rulemaking; stay.

SUMMARY: The National Indian Gaming Commission (NIGC) is suspending its minimum internal control standards (MICS) for Class III gaming under the Indian Gaming Regulatory Act. Updated guidance for Class III MICS will now be maintained at *www.nigc.gov.*

DATES: This rule is effective September 27, 2018. Title 25 CFR part 542 is stayed effective September 27, 2018.

FOR FURTHER INFORMATION CONTACT: Jennifer Lawson at 202–632–7003 or write to *info@nigc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The NIGC Class III MICS were promulgated in 1999 and last substantively revised in 2005. In 2006, the D.C. Circuit Court of Appeals in *Colorado River Indian Tribes* v. *Nat'l Indian Gaming Comm'n,* 466 F.3d 134 (*CRIT* v. *NIGC*), held that NIGC lacked authority to enforce or promulgate Class III MICS. Since that time, the Class III MICS have remained untouched. Technology has advanced rapidly, though, making some standards obsolete and introducing new areas of risk not contemplated by the outdated standards. And yet, many tribal-state compacts—even those entered into since 2006—continue to adopt NIGC Class III MICS by reference.

II. Development of the Rule

In light of the ruling in *CRIT* v. *NIGC* and recognizing the industry's need for updated standards, the NIGC sought comment on what to do with the outdated standards still remaining in the regulations and whether to draft updated, non-binding guidance for Class III MICS. Between 2015 and 2016, over

forty tribes provided comment and overwhelmingly supported the NIGC proposal for non-binding guidance. Many also supported keeping the existing 542 regulations in the Code of Federal Regulations, even though they would be unenforceable, to minimize impacts on tribal/state compacts that incorporate them by reference. Additionally, the Commission sent letters to state gaming regulators on June 14, 2017, requesting comment on the draft guidance. One responded with recommendations.

In light of these comments, the Commission has developed non-binding guidance for Class III MICS and is suspending the existing part 542 regulations. Doing so will leave the existing regulations ''on the books,'' but with an editorial note stating that they are not enforceable. The updated guidance document for Class III MICS is available on the NIGC website at *www.nigc.gov*. This guidance is not intended to modify or amend any terms in a state compact.

Because the document will be guidance instead of regulations, NIGC will be able to keep it updated and adapt much more quickly to changes in the industry.

III. Regulatory Matters

Notice and Comment

Typically, the suspension of Agency regulations would require the Agency to follow the notice and comment process mandated by the Administrative Procedure Act (APA). However, the APA permits agencies to finalize some rules without first publishing a proposed rule in the **Federal Register**. This exception is limited to cases where the agency has ''good cause'' to find that the notice-and-comment process would be ''impracticable, unnecessary, or contrary to the public interest.'' In this case, because the D.C. Circuit has ruled that the NIGC may not enforce its Class III MICS, or even maintain them as agency regulations, the NIGC has good cause to find that the notice and comment period is unnecessary and may directly publish a final rule suspending the Class III MICS regulations. The NIGC did not appeal the Circuit court's decision to the United States Supreme Court, so it is the law of the land and the NIGC has no discretion in regard to following the court's mandates.

Regulatory Flexibility Act

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of $100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions, nor will the proposed rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

Suspending part 542 also suspends any information collection requirements contained within. Therefore, no detailed statement is required pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

Tribal Consultation

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (E.O.) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published July 15, 2013. The NIGC's consultation policy specifies that it will consult with tribes on Commission Action with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to the ability of an Indian tribe to regulate its Indian gaming; an Indian tribe's formal relationship with the Commission; or the consideration of the Commission's trust responsibilities to Indian tribes.

On February 26, 2015, the Commission announced consultation and sought comments over its plans to draft updated, non-mandatory Class III MICS guidance and proposal to withdraw the part 542 regulations. The Commission held four in-person and one telephonic consultation sessions. The consultation and comment period ended on February 23, 2016. Over forty tribes commented on the plan. As a result of the comments, the Commission, on November 22, 2016, announced its proposal to suspend the part 542 regulations and issue updated, non-mandatory Class III MICS guidance. The Commission developed and shared a draft of the guidance and held six in-person consultation sessions. The Commission received comments through July 2017.

List of Subjects in 25 CFR Part 542

Accounting, Administrative practice and procedure, Gambling, Indian—Indian lands, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commission amends 25 CFR part 542 as follows:

PART 542—MINIMUM INTERNAL CONTROL STANDARDS

■ 1. The authority for part 542 is revised to read as follows:

Authority: 25 U.S.C. 2706(b)(10).

■ 2. Section 542.1 is revised to read as follows:

§ 542.1 What does this part cover?

(a) This part previously established the minimum internal control standards for gaming operations on Indian land.

(b) This part is suspended pursuant to the decision in *Colorado River Indian Tribes* v. *Nat'l Indian Gaming Comm'n,* 466 F.3d 134 (D.C. Cir. 2006). Updated

non-binding guidance on Class III Minimum Internal Control Standards may be found at *www.nigc.gov.*

■ 3. Effective September 27, 2018, part 542 is stayed.

Dated: July 18, 2018.

Jonodev O. Chaudhuri,

Chairman.

Dated: July 18, 2018.

Kathryn Isom-Clause,

Vice Chair.

[FR Doc. 2018–16254 Filed 8–10–18; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2018–0725]

Special Local Regulations; Marine Events Within the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations for the Baltimore Air Show from October 4, 2018, through October 7, 2018, to provide for the safety of life on navigable waterways during the event. Our regulation for marine events within the Fifth Coast Guard District identifies the regulated area for the event. During the enforcement period, the Coast Guard patrol commander or designated marine event patrol may forbid and control the movement of all vessels in the regulated area.

DATES: The regulations in 33 CFR 100.501 will be enforced for the Baltimore Air Show regulated area listed in item b.23 in the table to § 100.501 from 11 a.m. through 5 p.m. on October 4, 2018, from 10:30 a.m. through 5 p.m. on October 5, 2018, from 11 a.m. through 5 p.m. on October 6, 2018, and from 11 a.m. through 5 p.m. on October 7, 2018.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region (WWM Division); telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard was notified by the Historic Ships in Baltimore, Inc., on February 6, 2018, through submission of a marine event application that, due to a scheduling change, a change of dates is necessary to the dates previously published in the Code of Federal Regulations (CFR) for the biennially scheduled Baltimore Air Show, as listed in the table to 33 CFR 100.501. The date of the event for this year is changed to October 4, 2018, through October 7, 2018. The Coast Guard will enforce the special local regulations in 33 CFR 100.501 for the Baltimore Air Show regulated area from 11 a.m. through 5 p.m. on October 4, 2018, from 10:30 a.m. through 5 p.m. on October 5, 2018, from 11 a.m. through 5 p.m. on October 6, 2018, and from 11 a.m. through 5 p.m. on October 7, 2018. Our regulation for marine events within the Fifth Coast Guard District, § 100.501, specifies the location of the regulated area for the Baltimore Air Show, which encompasses portions of the Patapsco River, at Baltimore, MD.

This action is being taken to provide for the safety of life on navigable waterways during the event. As specified in § 100.501(c), during the enforcement period, the Coast Guard patrol commander or designated marine event patrol may forbid and control the movement of all vessels in the regulated area. Vessel operators may request permission to enter and transit through a regulated area by contacting the Coast Guard patrol commander on VHF–FM channel 16.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: August 7, 2018.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2018–17282 Filed 8–10–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0091]

Drawbridge Operation Regulation; Petaluma River, Haystack Landing (Petaluma), CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Northwestern Pacific (SMART) railroad bridge across the Petaluma River, mile 12.4, at Haystack Landing (Petaluma), CA. This deviation will be a second test of a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is appropriate. This test deviation will modify the existing regulation to add an advance notification requirement for obtaining bridge openings.

DATES: This deviation is effective from 6 a.m. on August 20, 2018 to 6 a.m. on October 18, 2018.

Comments and related materials must reach the Coast Guard on or before November 1, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0091 using Federal eRulemaking Portal at *http://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this test deviation, call or email Carl T. Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516; email *Carl.T.Hausner@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Background, Purpose and Legal Basis

On March 2, 2018, the Coast Guard published a Test Deviation entitled Petaluma River, Haystack Landing (Petaluma), CA in the **Federal Register** (83 FR 8936). We received five comments on this rule. Four of the five comments submitted, concerning the test deviation, addressed the 2-hour advance notification. The commenters stated that the lengthy advance notification would be a burden on waterway users. The fifth comment was directed at the structural deficiency of a number of dams in the United States; this comment is not pertinent to this deviation.

Sonoma-Marin Area Rail Transit (SMART) owns the Northwestern Pacific railroad bridge across the Petaluma River, mile 12.4, at Haystack Landing (Petaluma), CA. The bridge has a vertical clearance of 3.6 feet above mean high water in the closed-to-navigation position and unlimited vertical clearance in the open-to-navigation position, and currently operates under 33 CFR 117.187(a).

The duration of this initial test deviation was 90 days. During this initial test, according to drawtender logs, 96 vessels requested openings and passed through the bridge. At no time was a 2-hour notice given to the

drawtender and in only one instance was a one-hour advance notice given. In all other instances, a notification of 30 minutes or less was given to the drawtender and the bridge opened for the passage of those vessels. The Coast Guard received five comments, via the Federal eRulemaking Portal, related to the initial test deviation. Four of the five comments indicated the 2-hour notice would be a burden on waterway users.

In order to meet the reasonable needs of navigation, while benefiting rail transportation, the Coast Guard is publishing this alternate temporary deviation to the proposed schedule change to determine whether a permanent change to the schedule is appropriate to better balance the needs of marine and rail traffic.

Under this temporary deviation, in effect from 6 a.m. on August 20, 2018 to 6 a.m. on October 18, 2018, the bridge shall open on signal from 3 a.m. to 11 p.m. if at least 30 minutes notice is given to the drawtender. At all other times, the draw shall be maintained in the fully open position, except for the passage of trains or for maintenance. To request an opening, mariners can contact the drawtender via marine radio VHF–FM channel 16/9 or by telephone at (707) 890–8650. Vessels able to pass through the bridge in the closed position may do so at any time. The bridge will be required to open as soon as practicable for vessels engaged in emergency response. SMART will log dates and times of vessels requesting openings. There are no alternate routes for vessels transiting upstream of the bridge on the Petaluma River.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners and through direct outreach to local harbors, marinas, and water-based business of the temporary change in the operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

II. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and materials received during the comment period. Your comments can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacynotice.*

Documents mentioned in this notice as being available in this docket and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

Dated: August 7, 2018.

Carl T. Hausner,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2018–17234 Filed 8–10–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0512]

RIN 1625–AA09

Drawbridge Operation Regulation; Chevron Oil Company Canal, Fourchon, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulation for the State Route (SR) 3090 Bridge, mile 0.05, across the Chevron Oil Company Canal, at Fourchon, Lafourche Parish, LA. The drawbridge was removed in May 7, 2018 and the operating regulation is no longer applicable or necessary.

DATES: This rule is effective August 13, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0512. In the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms. Donna Gagliano, Bridge Branch Office, Eighth District, U.S. Coast Guard; telephone 504–671–2128, email *Donna.Gagliano@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code
SR State Road

II. Background Information and Regulatory History

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the State Route (SR) 3090 Bridge, mile 0.05, across the Chevron Oil Company Canal, at Fourchon, Lafourche Parish, LA (SR 3090 Bridge), that once required draw operations in 33 CFR 117.437, was removed from the waterway. Therefore, the regulation is no longer applicable and shall be removed from publication. It is unnecessary to publish an NPRM because this regulatory action does not purport to place any restrictions on mariners but rather removes a restriction that has no further use or value.

Under 5 U.S.C. 553(d)(3), and for the same reasons stated in the preceding paragraph, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

On May 7, 2018, the SR 3090 Bridge, mile 0.05, across the Chevron Oil

Company Canal, at Fourchon, Lafourche Parish, LA was removed in its entirety. It has come to the attention of the Coast Guard that the governing regulation for this drawbridge was never removed subsequent to the removal of the drawbridge completion. The elimination of this drawbridge necessitates the removal of the drawbridge operation regulation, 33 CFR 117.437, which pertained to the former drawbridge.

The purpose of this rule is to remove 33 CFR 117.437 that refers to the Chevron Oil Company Canal, SR 3090 Bridge, mile 0.05, from the Code of Federal Regulations because it governs a bridge that is no longer in existence.

IV. Discussion of Final Rule

The Coast Guard is removing the regulation in 33 CFR 117.437 and the regulatory burden related to the draw operations for this bridge that is no longer in existence. This change does not affect waterway or land traffic.

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 protesters.

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, it 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 fact that the bridge was removed from the waterway and no longer operates as a drawbridge. The removal of the operating schedule from 33 CFR 117 Subpart B will have no effect on the movement of waterway or land traffic.

B. Impact on Small Entities

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

For the reasons stated in section IV.A above this final rule would not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Government

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply removes the operating regulations or procedures for a drawbridge no longer in existence. This action is categorically excluded from further review, under figure 2–1, paragraph (32)(e), of the Instruction.

A Record of Environmental Consideration and a Memorandum for the Record are not required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

§ 117.437 [Removed]

■ 2. Remove § 117.437.

Dated: July 30, 2018.

Paul F. Thomas,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 2018–17271 Filed 8–10–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0372]

RIN 1625–AA00

Safety Zone; Lower Mississippi River, Mile Markers 94 to 97 Above Head of Passes, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone for the navigable waters of the Lower Mississippi River between mile marker (MM) 94 and MM 97, above Head of Passes. This action is necessary to provide for the safety of life on these navigable waters during firework displays. This regulation prohibits vessels from entering the safety zone before, during, and after the firework displays unless authorized by the Captain of the Port Sector New Orleans or a designated representative.

DATES: This rule is effective September 12, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0372 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 about this proposed rulemaking, call or email Lieutenant Commander Benjamin Morgan, Sector New Orleans, U.S. Coast Guard; telephone 504–365–2231, email *Benjamin.P.Morgan@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector New Orleans
DHS Department of Homeland Security
FR Federal Register
MM Mile Marker
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard Captain of the Port Sector New Orleans (COTP) is establishing a permanent safety zone on the Lower Mississippi River in order to better provide for the safety of life on these navigable waters during firework displays. The COTP has determined that a large and increasing volume of the firework displays occurring within Sector New Orleans' area of responsibility take place at locations between mile markers (MMs) 94 and 97 above Head of Passes on the Lower Mississippi River. Many of these events recur annually and are listed in Table 5 of 33 CFR 165.801 titled Sector New Orleans Annual and Recurring Safety Zones. However, a substantial and increasing number of these firework displays are one-time events associated with conventions, weddings, festivals, etc. By creating a permanent safety zone that can be enforced through a notice of enforcement, the COTP can more efficiently provide for the safety of life on these navigable waters. Therefore, on June 18, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Lower Mississippi River, Mile Markers 94 to 97 Above Head of Passes, New Orleans, LA (83 FR 28175). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display safety zone. During the comment period that ended on July 18, 2018, we received two comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that a permanent safety zone that can be enforced as necessary for fireworks displays will better allow the COTP to provide for the safety of life. A large and increasing number of marine events has been occurring on the Lower Mississippi River, with the bulk of the events occurring within the same three-mile stretch of river. This rule allows for more timely and efficient responses to these requests and will also greatly reduce the administrative burden the COTP encounters with establishing individual safety zones for these various events. The purpose of this rulemaking is to ensure the safety of life on these navigable waters within this three-mile segment of the Lower Mississippi River before, during, and after firework displays. Potential hazards associated with firework displays include the accidental discharge of fireworks, dangerous projectiles, and falling embers and other debris.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received two comments on our NPRM published on June 18, 2018. One comment was unrelated to the rule. The second comment requested that the regulatory text include geographic coordinates in degrees-minutes-seconds with an associated horizontal datum in order to accurately depict the safety zone boundaries on NOAA nautical charts. The Coast Guard agrees that the requested information would be helpful for NOAA and the public to identify the boundaries of the zone. The regulatory text of this final rule has been updated to include this information.

This rule establishes a permanent safety zone between mile marker (MM) 94 (29°57′32″ N, 90°03′05″ W) and MM 97 (29°55′19″ N, 90°04′00″ W), NAD83 datum, on the Lower Mississippi River, above Head of Passes. While this zone encompasses a three-mile section of the waterway, the COTP will limit the enforcement of the zone only to the areas necessary for the protection of life on these navigable waters before, during, and after firework displays. No vessel or person is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative means any Coast Guard commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans. Persons and vessels requiring entry into this proposed safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or 67 or by telephone at (504) 365–2200. Persons and vessels permitted to enter the safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

In accordance with 33 CFR 165.7, for each enforcement of the safety zone established under this proposed rule, the COTP will publish a notice of enforcement in the **Federal Register** as early as practicable. The COTP or a designated representative will inform

the public of the enforcement area and period of this safety zone through Vessel Traffic Service Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

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, duration, and location of the safety zone. While this zone would be permanent, it would only be enforced on an as needed basis to better regulate marine events in the area. This typically encompasses one-hour operations for a one-mile portion of the waterway.

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.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

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 safety zone on the Lower Mississippi River, mile marker (MM) 94 to MM 97. While this zone will be permanent, it will only be subject to enforcement on an as-needed basis. 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. 0170.1.

■ 2. Add § 165.845 above the center heading ''Ninth Coast Guard District'' to read as follows:

§ 165.845 Safety Zone; Lower Mississippi River, mile markers 94 to 97 above Head of Passes, New Orleans, LA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Lower Mississippi River, New Orleans, LA from mile marker (MM) 94 (29°57′32″ N, 90°03′05″ W) to MM 97 (29°55′19″ N, 90°04′00″ W), NAD83 datum, on the Lower Mississippi River, above Head of Passes.

(b) *Enforcement period.* The safety zone established by this section will be enforced only upon notice of the Captain of the Port Sector New Orleans (COTP). In accordance with 33 CFR 165.7, for each enforcement of a safety zone established under this section, the COTP will publish a notice of enforcement in the **Federal Register** as early as practicable. In addition, the COTP will also inform the public of the enforcement area and times of this section as indicated in paragraph (d) of this section.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited to all vessels and persons except vessels authorized by the COTP or designated representative. A designated representative means any Coast Guard commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of Sector New Orleans.

(2) Persons and vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or 67 or by telephone at (504) 365–2200.

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

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement period of this safety zone through Vessel Traffic Service Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: August 6, 2018.

K.M. Luttrell,

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

[FR Doc. 2018–17263 Filed 8–10–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0718]

RIN 1625–AA00

Safety Zone; Allegheny River, Miles 43.5 to 45.5, Kittanning, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Allegheny River, extending the entire width of the river, from mile marker (MM) 43.5 to MM 45.5. This safety zone is necessary to protect persons, property, and the marine environment from potential hazards associated with a boat race. Entry of persons or vessels into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh or a designated representative.

DATES: This rule is effective each day from 9 a.m. to 8 p.m. from August 17, 2018, through August 19, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0718 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 Petty Officer Charles Morris, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone 412–221–0807, email *Charles.F.Morris@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Marine Safety Unit Pittsburgh
DHS Department of Homeland Security
FR Federal Register
MM Mile marker
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. This safety zone must be established by August 17, 2018 and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule. The NPRM process would delay the establishment of the safety zone until after the date of the boat race and compromise public safety.

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 this rule would be contrary to the public interest because immediate action is necessary to respond to the potential safety hazards associated with this boat race.

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 Pittsburgh (COTP) has determined that potential hazards associated with this boat race will be a safety hazard for anyone within a two-mile stretch of the Allegheny River. The rule is needed to protect persons, property, and the marine environment in the navigable waters within the safety zone before, during, and after the boat race.

IV. Discussion of the Rule

This rule establishes a safety zone from 9 a.m. on August 17, 2018 through 8 p.m. on August 19, 2018. The safety zone will be enforced each day during the effective period from 9 a.m. through 8 p.m. The safety zone will cover all navigable waters of the Allegheny River, extending the entire width of the river, from mile marker (MM) 43.5 to MM 45.5. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters before, during, and after the boat race. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Marine Safety Unit Pittsburgh. Persons and vessels seeking entry into this safety zone must request permission from the COTP or a designated representative.

They may be contacted on VHF–FM Channel 16 or by telephone at (412) 221–0807. Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful instructions of the COTP or a designated representative. The COTP or a designated representative will inform the public of the enforcement period for the safety zone as well as any changes in the schedule through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Broadcasts (MSIBs) as appropriate.

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, time, duration, and location of the safety zone. This safety zone encompasses a two-mile stretch of the Allegheny River for eleven hours on each of three days. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners (BNMs) via VHF–FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the 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 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security 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 a safety zone lasting eleven hours that will prohibit entry on a two-mile stretch of the Allegheny River on each of three days. 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. 0170.1.

■ 2. Add § 165.T08–0718 to read as follows:

§ 165.T08–0718 Safety Zone; Allegheny River, miles 43.5 to 45.5, Kittanning, PA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Allegheny River, extending the entire width of the river, from mile marker (MM) 43.5 to MM 45.5.

(b) *Effective period.* This section is effective each day from 9 a.m. through 8 p.m. August 17, 2018 through August 19, 2018.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Marine Safety Unit Pittsburgh.

(2) Persons and vessels seeking entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or by telephone at (412) 221–0807.

(3) Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful instructions of the COTP or a designated representative.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public of the enforcement period for the safety zone as well as any changes in the schedule through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Broadcasts (MSIBs) as appropriate.

Dated: August 6, 2018.

F.M. Smith,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port Marine Safety Unit Pittsburgh.

[FR Doc. 2018–17262 Filed 8–10–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AQ10

Automatic Burial Benefits for Previously Unestablished Surviving Spouses

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Veterans Affairs (VA) regulation governing persons who may receive VA burial benefits on behalf of a deceased veteran. As amended, the regulation reflects VA's current policy of paying an automatic burial benefit to surviving spouses who were not established in VA systems as a veteran's spouse at the time of the veteran's death. The intended effect of this amendment is to ensure that a veteran's surviving spouse receives burial benefits to which he or she is entitled at the earliest possible time.

DATES: This final rule is effective August 13, 2018.

FOR FURTHER INFORMATION CONTACT: Julieann (Jewels) Brantseg, Pension Analyst, Pension and Fiduciary Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, (202) 632–8863. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This final rule amends the VA regulation regarding persons who may receive burial benefits, paid by the Veterans Benefits Administration (VBA), to ensure that the regulation properly reflects current VBA policy. On June 6, 2014, VA published in the **Federal Register** final burial regulations that permit VBA to automate certain burial allowance payments, pay flat-rate burial and plot or interment allowances, and establish priority of payments to certain survivors and estate representatives. Burial Benefits, 79 FR 32653. The revised burial regulations became effective July 7, 2014. *See* 79 FR 32653.

Burial regulations at 38 CFR 3.1700 through 3.1713 streamlined VBA's burial benefits program to ensure that VBA quickly, efficiently, and accurately delivers benefits to survivors and other individuals who incur the cost of a veteran's burial and funeral. The regulations established rules for the automatic payment of burial allowances that facilitated payment to many surviving spouses at the time VA updates its computer system to reflect the veteran's date of death. Other individuals seeking reimbursement for burial expenses are paid on a first-to-file basis.

On December 16, 2016, Congress enacted Public Law 114–315, Sec. 101, which authorized VA to pay benefits under 38 U.S.C. chapters 13 and 15 and sections 2302, 2307, and 5121 ''to a survivor of a veteran who has not filed a formal claim if [VA] determines that the record contains sufficient evidence to establish the entitlement of the survivor to such benefits.'' *See* 38 U.S.C. 5101(a)(1)(B). This new statutory provision essentially affirmed VA's practice of providing automatic burial payments to surviving spouses under the current regulation. This rule brings about a procedural change that would allow VA to provide automatic burial payments to other surviving spouses whom VA determines are entitled to such benefits based on the record at the time VA updates its computer system to reflect the veteran's death, which we believe is consistent with the intent of section 5101(a)(1)(B).

Therefore, at this time, we amend 38 CFR 3.1702, which pertains to persons who may receive burial benefits and the priority of payments. The change in this final rule reflects the intent of the original amendments—to expedite the payment of these small, one-time benefit payments to survivors who generally have an immediate need for supplemental financial assistance after the veteran's death.

We amend § 3.1702(a), which permits VA to make automatic burial benefit payments to a deceased veteran's surviving spouse when VA is able to determine eligibility based on evidence of record at the time VA updates its computer system to reflect the veteran's date of death. We amend paragraph (a) to specifically state that a surviving spouse may receive an automatic burial benefit under certain circumstances, whether or not previously established as a dependent spouse on the veteran's compensation or pension award at the time of the veteran's death. There are several reasons why VA systems may not reflect the existence of a spouse at the time of a veteran's death even though a spouse does, in fact, exist. This could occur if a veteran was receiving disability compensation but was rated less than 30-percent disabled under the rating schedule. Such veterans with a service-connected disability rating of less than 30 percent are not entitled to additional compensation for spouses. *See* 38 U.S.C. 1115. It could also occur if a veteran has never claimed his or her spouse as a dependent. In addition, VA systems could show a spouse who is not the current spouse. This could occur if

VA was never notified that the veteran's dependency status had changed. The amended regulation clarifies that VBA may pay the automatic burial benefit to an eligible surviving spouse when, at the time VA updates its computer system to reflect the veteran's date of death, VA knows of or is informed of the existence of the surviving spouse, can establish the individual's dependent status as the veteran's surviving spouse in accordance with § 3.204 (when applicable), and is able to determine burial benefits eligibility based on evidence of record at the time VA updates its computer system to reflect the veteran's date of death.

At this time, VA systems only permit automatic payments to surviving spouses. In the future, VA may consider making automatic payments to other persons.

Administrative Procedure Act

This rule reflects VA's current practice and effectuates a procedural change to VA's final burial regulations published on June 6, 2014, to establish a uniform process for providing automatic burial payments to all surviving spouses. The lack of documentation of a dependent spouse in VA's system at the time of the veteran's death should not impose additional procedural requirements on those individuals when applying for burial benefits established under the regulations.

This rule does not make any substantive policy change or impose new rights, duties, or obligations on affected individuals but simply reflects VA's existing policy and effectuates a procedural change to VA's final burial regulations published on June 6, 2014, to ensure uniform procedures for eligible surviving spouses to receive burial allowance payments faster. In other words, this rule does not expand the class of individuals eligible for burial allowance payments but merely ensures faster payment of the burial allowance to surviving spouses who otherwise would have to submit an application for the burial allowance. Also, this rule does not adversely impact surviving spouses who would have been eligible for automatic payment under the 2014 amendments; we contemplate that all such individuals would also qualify for such payments under this rule. As a rule of agency procedure or practice, this rule is exempt under 5 U.S.C. 553(b)(A) from the prior notice-and-comment requirements of 5 U.S.C. 553. Also, this rule is exempt from the delayed effective date requirement under 5 U.S.C. 553(d) because it is a procedural rule and, alternatively, because this rule is beneficial to surviving spouses at a time of need, pursuant to 5 U.S.C. 553(d)(3), VA finds good cause to make the amendments effective on the date of publication.

Paperwork Reduction Act

Section 3.1703 contains an information collection approved by the Office of Management and Budget (OMB) under OMB control number 2900–0003. This final rule does not contain any provisions constituting an additional collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) and does not alter the existing information collection contained in § 3.1703; rather, the final rule merely provides that VA may grant benefits in certain cases even if the claimant has not filed an application under the existing information collection.

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by OMB, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm* by following the link for ''VA Regulations Published from FY 2004 through Fiscal Year to Date.'' This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will not directly affect any small entities; only individuals will be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this rulemaking is 64.101, Burial Expenses Allowance for Veterans.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans

Affairs, approved this document on August 6, 2018, for publication.

Dated: August 6, 2018.

Jeffrey M. Martin,

Impact Analyst, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For reasons set out in the preamble, the Department of Veterans Affairs amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.1702 by revising paragraph (a) to read as follows:

§ 3.1702 Persons who may receive burial benefits; priority of payments.

(a) *Automatic payments to surviving spouses of eligible deceased veterans.* (1) On or after July 7, 2014, VA may automatically pay a burial benefit to an eligible veteran's surviving spouse, whether or not previously established as a dependent spouse on the deceased veteran's compensation or pension award, when VA knows of or is informed of the existence of the surviving spouse, can establish the surviving spouse's relationship under § 3.204 (when applicable), and is able to determine burial benefits eligibility based on evidence of record at the time VA updates its computer system to reflect the veteran's date of death.

(2) VA may grant additional burial benefits, including the plot or interment allowance, reimbursement for transportation, and the service-connected burial allowance under § 3.1704, to the surviving spouse or any other eligible person in accordance with paragraph (b) of this section and based on a claim described in § 3.1703.

* * * * *

[FR Doc. 2018–17274 Filed 8–10–18; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2018–0098; A–1–FRL–9981–55—Region 1]

Air Plan Approval; Rhode Island; Control of Volatile Organic Compound Emissions, Control of Nitrogen Oxide Emissions, and Sulfur Content of Fuels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision updates Rhode Island Air Pollution Control Regulations (APCRs) for volatile organic compound (VOC) emissions, nitrogen oxide (NO_X) emissions, sulfur content in fuel requirements and associated general definitions. The intended effect of this action is to approve the revised regulations. This action is being taken under the Clean Air Act.

DATES: This rule is effective September 12, 2018.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2018–0098. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* 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 at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: David L. Mackintosh, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912, tel. 617–918–1584, email *Mackintosh.David@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background and Purpose

On June 15, 2018 (83 FR 25981), EPA issued a notice of proposed rulemaking (NPRM) for the State of Rhode Island. In the NPRM, EPA proposed approval of SIP revisions submitted by the Rhode Island Department of Environmental Management (RI DEM) on February 10, 2017. This SIP submittal included six revised Air Pollution Control Regulations (APCRs): No. 8, ''Sulfur Content of Fuels;'' No. 19, ''Control of Volatile Organic Compounds from Surface Coating Operations;'' No. 27, ''Control of Nitrogen Oxides Emissions;'' No. 35, ''Control of Volatile Organic Compounds and Volatile Hazardous Air Pollutants from Wood Products Manufacturing Operations;'' No. 36, ''Control of Emissions from Organic Solvent Cleaning;'' and General Definitions.

The NPRM provides the rationale for EPA's proposed approval, which will not be restated here.

II. Response to Comments

EPA received two anonymous comments in response to the notice of proposed rulemaking. The comments address subjects outside the scope of the proposed action, did not explain (or provide a legal basis for) how the proposed action should differ in any way, and made no specific mention of the proposed action. Therefore, the comments are not germane and EPA provides no further response.

III. Final Action

EPA is approving the February 10, 2017 RI DEM SIP submittal consisting of the six revised APCRs: No. 8, ''Sulfur Content of Fuels'' (with the exception of sections 8.7 and 8.8.3); No. 19, ''Control of Volatile Organic Compounds from Surface Coating Operations'' (with the exception of sections 19.2.2 and 19.9.2); No. 27, ''Control of Nitrogen Oxides Emissions'' (with the exception of section 27.7.3); No. 35, ''Control of Volatile Organic Compounds and Volatile Hazardous Air Pollutants from Wood Products Manufacturing Operations'' (with the exception of sections 35.2.3 and 35.9.3); No. 36, ''Control of Emissions from Organic Solvent Cleaning'' (with the exception of sections 36.2.2 and 36.14.2); and

General Definitions (with the exception of the provision entitled ''Application'' under the ''General Provisions'').

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Rhode Island regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 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.[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 Act and applicable Federal regulations. *See* 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 Orders12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- This action is not an Executive Order 13771 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 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 October 12, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 6, 2018.

Alexandra Dunn,

Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart OO—Rhode Island

■ 2. In § 52.2070(c), the table is amended by revising the entries for ''Air Pollution Control General Definitions Regulation'', ''Air Pollution Control Regulation 8'', ''Air Pollution Control Regulation 19'', ''Air Pollution Control Regulation 27'', ''Air Pollution Control Regulation 35'', and ''Air Pollution Control Regulation 36'' to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(c) *EPA approved regulations.*

[1] 62 FR 27968 (May 22, 1997).

EPA-APPROVED RHODE ISLAND REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
Air Pollution Control General Definitions Regulation.	General Definitions	1/9/2017	8/13/2018, [Insert **Federal Register** citation].	Excluding ''Application'' section of the ''General Provisions'' which was not submitted by the State
* *	*	*	*	* *
Air Pollution Control Regulation 8.	Sulfur Content of Fuels	1/9/2017	8/13/2018, [Insert **Federal Register** citation].	Excluding sections 8.7 and 8.8.3 which were not submitted by the State.
* *	*	*	*	* *
Air Pollution Control Regulation 19.	Control of Volatile Organic Compounds from Surface Coating Operations.	1/9/2017	8/13/2018, [Insert **Federal Register** citation].	Excluding sections 19.2.2 and 19.9.2, which were not submitted by the State.
* *	*	*	*	* *
Air Pollution Control Regulation 27.	Control of Nitrogen Oxides Emissions.	1/9/2017	8/13/2018, [Insert **Federal Register** citation].	Excluding section 27.7.3 which was not submitted by the State.
* *	*	*	*	* *
Air Pollution Control Regulation 35.	Control of Volatile Organic Compounds and Volatile Hazardous Air Pollutants from Wood Products Manufacturing Operations.	1/9/2017	8/13/2018, [Insert **Federal Register** citation].	Excluding sections 35.2.3 and 35.9.3 which were not submitted by the State.
Air Pollution Control Regulation 36.	Control of Emissions from Organic Solvent Cleaning.	1/9/2017	8/13/2018, [Insert **Federal Register** citation].	Excluding sections 36.2.2 and 36.14.2 which were not submitted by the State.
* *	*	*	*	* *

* * * * *

[FR Doc. 2018–17246 Filed 8–10–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2018–0178; FRL–9981–40—Region 1]

Air Plan Approval; Connecticut; 1997 8-Hour Ozone Attainment Demonstration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the ozone attainment demonstration portion of a State Implementation Plan (SIP) revision submitted by the State of Connecticut to meet the Clean Air Act (CAA) requirements for attaining the 1997 8-hour ozone national ambient air quality standard (NAAQS). The EPA is approving Connecticut's demonstration of attainment of the 1997 8-hour ozone NAAQS for the New York-Northern New Jersey-Long Island, NY-NJ-CT moderate 1997 8-hour ozone nonattainment area (hereafter, the NY-NJ-CT area or the NY-NJ-CT nonattainment area). In addition, the EPA is approving Connecticut's reasonably available control measures (RACM) analysis. This action is being taken under the Clean Air Act.

DATES: This rule is effective on September 12, 2018.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2018–0178. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* 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 at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Eric Wortman, Air Permits, Toxics, and Indoor Programs Unit, U.S. Environmental Protection Agency, EPA Region 1 Regional Office, 5 Post Office Square—Suite 100 (Mail Code OEP05–2), Boston, MA 02109–3912, phone number: (617) 918–1624, fax number: (617) 918–0624, email: *wortman.eric@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background and Purpose

On May 25, 2018 (83 FR 24259), the EPA published a Notice of Proposed Rulemaking (NPRM) for the State of Connecticut. In the May 25, 2018 proposed rulemaking action, the EPA

proposed to approve the portion of a Connecticut SIP revision submitted on August 8, 2017 which demonstrates attainment of the 1997 ozone NAAQS. The EPA also proposed to approve the associated RACM analysis for the same area. Connecticut previously submitted an initial attainment demonstration for the 1997 ozone NAAQS for the Connecticut portion of the NY-NJ-CT area on February 1, 2008.

This action addresses Connecticut's demonstrations of attainment of the 1997 8-hour ozone standard and associated RACM analysis for the Connecticut portion of the NY-NJ-CT area, submitted by Connecticut on February 1, 2008 and August 8, 2017. The EPA is taking separate action on the 2011 base year emission inventories, RFP plans, motor vehicle emission budgets, and contingency measures submitted as part of the August 8, 2017 SIP revisions in a forthcoming **Federal Register** document.

II. Summary of Action

As discussed in the **Federal Register** at 83 FR 24259, May 25, 2018, proposed rulemaking, the EPA reviewed the photochemical grid modeling used by Connecticut in its August 8, 2017 SIP submittal to demonstrate attainment of the 1997 ozone NAAQS and determined the modeling meets the EPA's guidelines and is acceptable to the EPA. Air quality monitoring data for 2014–2016 also demonstrates attainment of the 1997 8-hour ozone standard throughout the NY-NJ-CT area. The purpose of the attainment demonstration is to demonstrate how, through enforceable and approvable emission reductions, an area will meet the standard by the attainment date. The purpose of the RACM analysis is to show that the State has considered all reasonable available control measures to achieve attainment of the 1997 8-hour ozone standard. All necessary ozone control measures have already been adopted, submitted, approved and implemented. Also discussed in further detail in the **Federal Register** at 83 FR 24259, May 25, 2018, proposed rulemaking and based on (1) the State following the EPA's modeling guidance, (2) the modeled attainment of 1997 standard, (3) the air quality monitoring data for 2014–2016, and (4) the implemented SIP-approved control measures, the EPA is approving the attainment demonstration and RACM analysis for the 1997 ozone NAAQS for the Connecticut portion of the NY-NJ-CT area. The EPA is not taking action on the attainment demonstration and RACM analysis for the 2008 ozone NAAQS at this time.

Other specific requirements of an attainment demonstration and the rationale for the EPA's proposed action are explained in the NPRM and will not be restated here. The EPA received two comments during the comment period. Although one comment was partially supportive of the EPA's proposed action, the comments otherwise discuss subjects outside the scope of an attainment demonstration action, do not explain (or provide a legal basis for) how the proposed action should differ in any way, and make no specific mention of the proposed action. As such, they are not germane and do not require further response to finalize the action as proposed.

III. Final Action

The EPA is approving the attainment demonstration and RACM analysis for the Connecticut portion of the NY-NJ-CT area for the 1997 ozone NAAQS. This rulemaking addresses the EPA's obligations to act on Connecticut's February 1, 2008 SIP revision for the 1997 ozone NAAQS, as well as the attainment demonstration and RACM analysis portion of the August 8, 2017 SIP submittal for the 1997 ozone NAAQS for the Connecticut portion of the NY-NJ-CT area.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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);
- This action is not an Executive Order 13771 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 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 October 12, 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 6, 2018.

Alexandra Dunn,

Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart H—Connecticut

■ 2. Section 52.377 is amended by adding paragraph(s) to read as follows:

§ 52.377 Control strategy: Ozone.

* * * * *

(s) *Approval*—An attainment demonstration for the 1997 8-hour ozone standard to satisfy requirements of section 182(c)(2)(A) of the Clean Air Act, and a Reasonably Available Control Measure (RACM) analysis to satisfy requirements of section 172(c)(1) of the Clean Air Act for the New York-Northern New Jersey-Long Island (NY-NJ-CT) ozone nonattainment area, submitted by the Connecticut Department of Energy and Environmental Protection. This rulemaking addresses the EPA's obligations to act on Connecticut's February 1, 2008 SIP revision for the 1997 ozone NAAQS, as well as the attainment demonstration and RACM analysis portion of the August 8, 2017 SIP submittal for the 1997 ozone NAAQS for the Connecticut portion of the NY-NJ-CT area.

[FR Doc. 2018–17245 Filed 8–10–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2018–0269; FRL–9981–93–Region 1]

Air Plan Approval; Maine; Infrastructure Requirement for the 2010 Nitrogen Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision addresses the interstate transport requirements of the Clean Air Act (CAA) with respect to the 2010 primary nitrogen dioxide (NO_2) National Ambient Air Quality Standard (NAAQS). This action approves Maine's demonstration that the State is meeting its obligations regarding the interstate transport of NO_2 emissions into other states. This action is being taken under the CAA.

DATES: This rule is effective on September 12, 2018.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2018–0269. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* 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 at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Patrick Bird, Office of Ecosystem Protection, 5 Post Office Square—Suite 100 (Mail Code OEP 05–2), Boston, MA 01209–3912, tel. (617) 918–1287, email *bird.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background and Purpose

On May 25, 2018 (83 FR 24264), EPA published a Notice of Proposed Rulemaking (NPRM) regarding specific Clean Air Act requirements applicable to the State of Maine. In particular, the NPRM proposed approval of Maine's February 21, 2018, SIP submittal for the 2010 primary NO_2 NAAQS as it pertains to section 110(a)(2)(D)(i)(I) of the CAA.

Section 110(a)(2)(D)(i)(I) requires a state's SIP to include provisions prohibiting any source or other type of emissions activity within the state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. The two clauses of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance of the NAAQS).

In the NPRM, EPA proposed to approve Maine's February 21, 2018, infrastructure SIP submittal for the 2010 primary NO_2 NAAQS, concluding Maine's SIP submittal adequately addresses prong 1 and prong 2 requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 primary NO_2 NAAQS. The rationale for EPA's proposed action is explained in the NPRM and will not be restated here.

II. Response to Comments

In response to the May 25, 2018 NPRM, we received a number of anonymous comments that address subjects outside the scope of our proposed action, do not explain (or provide a legal basis for) how the proposed action should differ in any way, and make no specific mention of the proposed action. Consequently, those comments are not germane to this rulemaking and require no further response.

EPA received one relevant comment that referred specifically to the proposed rulemaking on the Maine's infrastructure SIP submittal for the 2010 primary NO_2 NAAQS.

Comment: The commenter suggests that, under the Plain Writing Act of 2010, EPA should not have used the word ''promulgated'' in the NPRM for this action.

Response: The Plain Writing Act of 2010 (''PWA'' or the ''Act''), Public Law

111–274, 124 Stat. 2861, requires EPA to ''use plain writing in every covered document of the agency that the agency issues or substantially revises.'' *See* PWA section 4(b). The Act defines ''plain writing'' as ''writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience.'' *See* PWA section 3(3). The Office of Management and Budget (''OMB'') published guidance [1] on the Act that encourages agencies to follow Federal Plain Language Guidelines available at *www.plainlanguage.gov* that recommend agencies avoid certain words, including ''promulgate.'' Neither the PWA nor the guidelines, however, bar its use.

In the NPRM, EPA used forms of ''promulgate'' twice as follows: ''[o]n February 9, 2010, EPA *promulgated* a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations'' and ''states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after *promulgation* of a new or revised NAAQS'' (emphasis added). The Clean Air Act specifically requires EPA to ''promulgate'' NAAQS, CAA section 109(a)(1)(B), and requires states to submit infrastructure SIPs to EPA within three years after the ''promulgation'' of a NAAQS, CAA section 110(a)(1). EPA agrees that it can sometimes be clearer to avoid words like ''promulgate,'' but EPA appropriately used ''promulgated'' and ''promulgation'' in the NPR to refer specifically to these formal CAA requirements. In any event, the comment does not suggest that the commenter misunderstood EPA's proposed action due to the use of these words. *See* PWA section 2. Nor does the commenter state that EPA should disapprove Maine's submittal. Therefore, we are approving the SIP submittal as proposed.

III. Final Action

EPA is approving Maine's February 21, 2018, SIP revision addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2010 primary NO_2 NAAQS. EPA is taking final action to approve this SIP submittal because Maine's SIP includes adequate provisions to prevent emissions sources within the State from significantly contributing to nonattainment or interfering with maintenance of this standard in any other state.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, 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);
- This action is not an Executive Order 13771 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 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 October 12, 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 6, 2018.

Alexandra Dunn,

Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

[1] OMB, Final Guidance on Implementing the Plain Writing Act of 2010 (April 13, 2011), *available at https://plainlanguage.gov/law/.*

Authority: 42 U.S.C. 7401 *et seq.*

Subpart U—Maine

■ 2. Section 52.1020(e) is amended by adding an entry titled ''Interstate Transport SIP to meet Infrastructure Requirements for the 2010 1-hour NO_2 NAAQS'' at the end of the table to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(e) *Nonregulatory.*

MAINE NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date [3]	Explanations
* *	*	*	*	* *
Interstate Transport SIP to meet Infrastructure Requirements for the 2010 1-hour NO_2 NAAQS.	Statewide	2/21/2018	8/13/2018, [Insert **Federal Register** citation].	This approval addresses Prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) only.

[3] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2018–17248 Filed 8–10–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–ES–2012–0013; 4500030115]

RIN 1018–BC79

Endangered and Threatened Wildlife and Plants; Listing the Hyacinth Macaw

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine threatened species status under the Endangered Species Act of 1973 (Act), as amended, for the hyacinth macaw (*Anodorhynchus hyacinthinus*), a species that occurs almost exclusively in Brazil and marginally in Bolivia and Paraguay. This rule adds this species to the List of Endangered and Threatened Wildlife. We are also establishing a rule pursuant to section 4(d) of the Act to further provide for the conservation of the hyacinth macaw.

DATES: This rule is effective September 12, 2018.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this rule, are available for public inspection at *http://www.regulations.gov* under Docket No. FWS–R9–ES–2012–0013.

FOR FURTHER INFORMATION CONTACT: Don Morgan, Chief, Division of Delisting and Foreign Species, Ecological Services Program, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: ES, Falls Church, VA 22041; telephone 703–358–2444. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act (Act), a species may warrant protection through listing if it is found to be an endangered or threatened species. Listing a species as an endangered or threatened species can only be completed by issuing a rule. On July 6, 2012, the U.S. Fish and Wildlife Service (Service) published in the **Federal Register** (FR) a 12-month finding and proposed rule to list the hyacinth macaw (*Anodorhynchus hyacinthinus*) as an endangered species under the Act (77 FR 39965). On November 28, 2016, the Service published a revised proposed rule to list the hyacinth macaw as a threatened species (81 FR 85488), which included a proposed rule under section 4(d) of the Act that defined the prohibitions we are extending to the hyacinth macaw and the exceptions to those prohibitions, as well as provisions that are necessary and advisable for the species' conservation. This rule finalizes the listing of the hyacinth macaw as a threatened species under the Act, and establishes a 4(d) rule to further provide for the species' conservation.

The basis for our action. Under section 4(a)(1) of the Act, we determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. The primary causes attributed to the decline of the hyacinth macaw include habitat loss and degradation (Factor A), hunting (Factor B), predation (Factor C), competition and low reproduction rate (Factor E), and climate change (Factor E).

Section 4(d) of the Act authorizes the Secretary of the Interior (Secretary) to extend to threatened species the prohibitions provided for endangered species under section 9 of the Act. Our implementing regulations for threatened wildlife, found at title 50 of the Code of Federal Regulations (CFR) at § 17.31 (50 CFR 17.31), incorporate the section 9 prohibitions for endangered wildlife, except when a species-specific rule under section 4(d) of the Act is promulgated. For threatened species, section 4(d) of the Act gives the Service discretion to specify the prohibitions and any exceptions to those prohibitions that are appropriate for the species, as well as include provisions that are necessary and advisable to provide for the conservation of the species. A rule issued under section 4(d) of the Act allows us to include provisions that are tailored to the specific conservation needs of that threatened species and which may be more or less restrictive than the general provisions at 50 CFR 17.31.

Peer review and public comment. We sought comments from independent specialists to ensure that our analysis is based on scientifically sound data, assumptions, and analyses. We invited peer reviewers and the public to comment on our listing proposals. All substantive information from peer review and public comments was fully considered and incorporated into this final rule, where appropriate.

Previous Federal Actions

Please refer to the proposed listing rule, published in the **Federal Register** on July 6, 2012 (77 FR 39965), for previous Federal actions for this species prior to that date. The publication of the proposed listing rule opened a 60-day public comment period, which closed on September 4, 2012. Based on new information, on November 28, 2016, we published a revised proposed rule (81 FR 85488) to list the hyacinth macaw as a threatened species, which included a proposed rule under section 4(d) of the Act (16 U.S.C. 1531 *et seq.*) that defines the conservation measures that apply to the hyacinth macaw (50 CFR 17.41(c)). That revised proposed rule also opened a 60-day public comment period, which closed on January 27, 2017.

Summary of Changes From the Revised Proposed Rule

We included additional information regarding action plans in Brazil that aim to reduce deforestation.

Brazil has implemented actions plans that aim to reduce deforestation rates in the Amazon and Cerrado, referred to as the Plan of Action for Prevention and Control of Deforestation in the Legal Amazon (PPCDAm) and the Action Plan for the Prevention and Control of Deforestation and Burning in the Cerrado (PPCerrado), respectively. In the proposed rule we stated that we did not have any details regarding the success or progress of these plans. However, in this final rule we included the most recent information available and results achieved by these plans (see Factor D discussion, below).

Summary of Comments and Recommendations

We reviewed all comments we received from peer reviewers and the public for substantive issues and new information. All substantive information from peer review and public comments has been fully considered and is incorporated into this final rule, where appropriate.

We received 104 public comments combined on the proposed and revised proposed rules to list the hyacinth macaw under the Act during their respective comment periods. Many commenters supported listing the hyacinth macaw as an endangered or threatened species under the Act. However, many commenters also recommended that we issue a rule under section 4(d) of the Act that would allow interstate commerce of hyacinth macaws to occur without needing a permit. The following discussion summarizes issues and substantive information from public comments and provides our responses.

Comment (1): Many commenters opined that the Act was meant to protect species native to the United States, and the hyacinth macaw should not be listed since it is a foreign species.

Our Response: The Act does not differentiate between domestic and foreign species as it applies to our responsibilities to determine whether species are endangered or threatened, and sections 4(b)(1)(A) and 4(b)(1)(B)(i) expressly require the Service to consider efforts by a foreign nation prior to making a listing determination. The broad definitions of ''species,'' ''fish or wildlife,'' and ''plants'' in section 3 of the Act do not differentiate between species native to the United States, species native to both the United States and one or more other countries, and species not native to the United States. Further, the findings and purposes at sections 2(a)(4), 2(a)(5), and 2(b) of the Act also speak to the application of the Act to foreign species and numerous provisions of the Act and the implementing regulations refer to foreign jurisdictions (*e.g.,* sections 8 and 8A, 50 CFR 424.11(e)).

Comment (2): Some commenters believed that there is no demonstrable benefit to listing the hyacinth macaw under the Act because it is already protected by CITES and the Wild Bird Conservation Act (WBCA; 16 U.S.C. 4901–4916).

Our Response: The decision to list a species under the Act is based on whether the species meets the definition of an endangered or threatened species as defined under section 3 of the Act and is made solely on the basis of the best scientific and commercial data available. Conservation measures provided to species listed as endangered or threatened under the Act include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and may encourage and result in conservation actions by foreign governments, Federal and State governments, private agencies and interest groups, and individuals. The purpose of the WBCA is to ensure that exotic bird species are not harmed by international trade and encourages wild bird conservation programs in countries of origin. The purpose of CITES is to ensure that international trade in plants and animals does not threaten their survival in the wild. Protection provided by other laws, such as CITES and WBCA, is taken into consideration when determining the status of the species. However, simply being protected by these other laws does not preclude the need to list if the species still meets the definition of an endangered or threatened species. Listing under the Act can help ensure that the United States and its citizens do not contribute to the further decline of the species. That said, we considered the conservation role that CITES and WBCA provide when developing the 4(d) rule for the species. The 4(d) rule that we are putting in place streamlines the permitting process by deferring to existing laws that are protective of hyacinth macaws in the course of import and export and not requiring permits under the Act for certain types of activities. Additionally, we are not prohibiting interstate commerce of hyacinth macaw within the United States (see 4(d) Rule, below).

Comment (3): Several commenters stated that the information used in the proposed rule was outdated; one also expressed concern that the information was from English-only sources.

Our Response: The Service is required by the Act to make determinations solely on the basis of the best scientific and commercial data available. We based the proposed rule on all the information we received following the initiation of the status review for the hyacinth macaw, as well as all of the information we found during our own research. The information we use is not always current, as it depends on research being conducted in the field and the availability of information. At that time, the information we compiled was considered the best available information. After we published the proposed rule in 2012, additional information became available or was submitted by the public, including more recent information and studies from a species expert and conservation organizations within the hyacinth macaw's range countries. Literature that was not in English was professionally translated and then reviewed, to the best of our ability. The information we received has been incorporated into this final rule and helped serve as the basis for our determination that the hyacinth macaw is threatened, not endangered.

Comment (4): Two commenters stated that significant additional wild populations have been recently discovered and were not included in the data cited for the proposed listings.

Our Response: The commenters did not provide any information or citations to support their claims. The information that we have indicates that hyacinth macaws may be expanding into new areas or areas previously abandoned; however, we found no support for significant additional populations

having been established. The overall population estimate for the hyacinth macaw remains 6,500 individuals.

Comment (5): Many commenters raised concerns about the listing of the hyacinth macaw due to economic impacts on small businesses because of the restriction on commercial trade within the United States.

Our Response: Determinations on whether a species should be added to the Federal Lists of Endangered and Threatened Wildlife and Plants are based on whether the species meets the definition of ''endangered species'' or of ''threatened species'' in section 3 of the Act. The Act directs the Service to make these determinations solely on the basis of the best scientific and commercial data available. Furthermore, the Act directs the Service to consider economic impacts only when designating critical habitat. Therefore, we may not consider economic impacts when determining the status of a species. We understand that the regulations imposed by the listing of the hyacinth macaw will have an effect on those involved in the pet bird industry, especially bird breeders. The 4(d) rule that we are putting in place streamlines the permitting process by deferring to existing laws that are protective of hyacinth macaws in the course of import and export and not requiring permits under the Act for certain types of activities. Additionally, we are not prohibiting interstate commerce of hyacinth macaw within the United States (see 4(d) Rule, below).

Comment (6): Some commenters requested that captive birds in the United States be considered a separate and self-sustaining population from the wild population because the wild populations are in need of immediate help and should be managed and listed independently under the Act.

Our Response: We have determined that the Act does not allow for captive wildlife to be assigned separate legal status from their wild counterparts on the basis of their captive state, including through designation as a separate distinct population segment (DPS) (80 FR 34500; June 16, 2015).

Comment (7): One commenter stated that the proposed rule does not address the many positive steps that have been taken to conserve the hyacinth macaw in the wild. The commenter referenced the work of the Hyacinth Macaw Project specifically.

Our Response: We included a detailed description of the work being done by the Hyacinth Macaw Project under *Conservation Measures* in the November 28, 2016, revised proposed rule (81 FR 85488, November 28, 2016 see pp. 85499–85501) and ''Conservation Actions'' in the July 6, 2012, proposed rule (77 FR 39965, see pp. 39971–39972). Our final rule considers and incorporates additional information we subsequently received from the President of the Hyacinth Macaw Institute and Coordinator for the Hyacinth Macaw Project, Neiva Guedes.

Comment (8): Two commenters pointed to a recent increase in deforestation within the hyacinth macaw's range as a reason why the species should be listed as endangered rather than threatened.

Our Response: The deforestation rate is generally decreasing from historical levels (see Factor A discussion, below), although we recognize that the rates of deforestation may fluctuate annually, with some years having a higher rate than other years. If the deforestation rates are maintained or further reduced, the loss of all native habitat from these areas, including the species of trees needed by the hyacinth macaw for food and nesting, and the hyacinth macaw's risk of extinction, is not as imminent as predicted. Additionally, Brazil has implemented plans to reduce deforestation in the Amazon (PPCDAm) and Cerrado (PPCerrado) and has obtained significant reduction of the deforestation rate after 12 years of the PPCDAm and 6 years of PPCerrado (see Factor D discussion, below). Therefore, we do not find that the hyacinth macaw is currently in danger of extinction.

Comment (9): One commenter stated that deforestation stabilization does not equate with regeneration and does not account for negative impacts of historical habitat disturbance, which effects manduvi in the Pantanal, upon which the hyacinth macaw relies almost exclusively for nesting.

Our Response: Although the recruitment of the manduvi tree has been severely reduced and is expected to become increasingly rare in the future, active management has contributed to the increase in the hyacinth macaw population in the Pantanal, and farmers have begun to protect hyacinth macaws on their property. Additionally, hyacinth macaws have been reported in various trees species and even on cliffs on the border of the Pantanal (see *Essential Needs of the Species,* above), although the majority of their nests are in Brazil nut (*Bertholettia excels*) (in Pará) and manduvi (in the Pantanal). Further, hyacinth macaws in the Gerais region now use rock crevices for nesting. While we do not know if the hyacinth macaws in this region will respond in the same way to the loss of nesting trees as those in the Gerais region, it is possible that if these primary nesting trees become scarcer, hyacinth macaws may adapt to using cavities of other trees (van der Meer 2013, p. 3) or perhaps even cliff faces.

Comment (10): One commenter stated that we provide conflicting data on annual deforestation rates in the Gerais region because we stated that annual deforestation rates were more than 14,200 km^2 (5,483 mi^2) each year from 2002 to 2008, an estimated 12,949 km^2 (4,999 mi^2) per year from 2000 to 2005, and 11,812 km^2 (4,560 mi^2) per year from 2005 to 2010.

Our Response: We cited the best available data from research that used time frames that overlap or vary; therefore, it is difficult to make comparisons between studies and across years to provide a linear estimate of the annual deforestation rates within the species' range. Estimates of the deforestation rate from 2002 to 2008 of 14,200 km^2 (5,483 mi^2) each year are based on data from the PROBIO program (Projeto de Conservação e Utilização Sustentável da Diversidade Biológica) using imagery from 2002 (Beuchle *et al.* 2015, p. 117). The Project to Monitor Deforestation of Brazilian Biomes by Satellite (PMDBBS) used this baseline data to estimate deforestation rates from 2002 through 2008 in the Cerrado (see Table 2, below), and to map cleared areas from 2008 to 2009, 2009 to 2010, and 2010 to 2011; these data are also cited by Brazilian Ministry of the Environment (Ministério do Meio Ambiente) (MMA) (2015, p. 9) and World Wildlife Fund—United Kingdom (WWF–UK) (2011b, p. 2). The PMDBBS is one of the official national biome scale estimates for the Brazilian biomes. Estimates of the deforestation rate we cited from 2000 to 2005 of 12,949 km^2 (4,999 mi^2) per year and from 2005 to 2010 of 11,812 km^2 (4,560 mi^2) per year are from Beuchle *et al.* (2015, pp. 124–125), who were comparing their results to PMDBBS (see Factor A discussion, below).

Comment (11): Some commenters, while not opposed to the listing of the species, requested a rule under section 4(d) of the Act, which would allow ownership and interstate trade of the species to occur without obtaining a permit under the Act.

Our Response: Ownership of a listed species is not prohibited by the Act and, therefore, does not require a permit. Section 4(d) of the Act allows the Service to apply the prohibitions of section 9 or to provide measures that are necessary and advisable to provide for the conservation of threatened species. Therefore, whenever we list a species as a threatened species, we may issue regulations as we deem necessary and

advisable to conserve the species under a 4(d) rule. We determined that listing the hyacinth macaw as threatened under the Act is appropriate, and as part of our determination, this final listing includes a 4(d) rule for the species articulating the measures that we deemed is necessary and advisable for the conservation of the species. See 4(d) Rule, below, for more discussion.

Comment (12): Two commenters stated that the proposed 4(d) rule is not adequate because it does not stem demand for illegally obtained hyacinth macaws and makes wild-sourced supply of hyacinth macaws more accessible to breeders.

Our Response: The 4(d) rule generally adopts the existing conservation regulatory requirements of CITES and the WBCA as the appropriate regulatory provisions for the import and export of certain hyacinth macaws. CITES is an international agreement between governments and ensures that the international trade of CITES-listed plants and animals does not threaten the survival of the species in the wild. Trade must be authorized through a system of permits and certificates that are provided by the designated CITES Scientific and Management Authorities of each CITES Party. The hyacinth macaw is listed in Appendix I of CITES. For species included in CITES Appendix I, international trade is permitted only under exceptional circumstances, which generally precludes commercial trade. The United States implements CITES through the Act and our implementing regulations at 50 CFR part 23. It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of CITES, or to possess any specimens traded contrary to the provisions of CITES, the Act, or part 23. Protections for CITES-listed species are provided independently of whether a species is an endangered species or a threatened species under the Act.

Based on trade data obtained from the CITES Trade Database (accessed on January 12, 2018), from the time the hyacinth macaw was uplisted to CITES Appendix I in October 1987 through 2015, less than 3 percent of the live hyacinth macaws reported in trade were wild-sourced (see Factor B discussion and Table 4, below).

Two other laws in the United States apart from the Act provide protection from the illegal import of wild-caught birds into the United States: The WBCA and the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378). The WBCA ensures that exotic bird species are not harmed by international trade and encourages wild bird conservation programs in countries of origin. Under the WBCA and our implementing regulations (50 CFR 15.11), it is unlawful to import into the United States any exotic bird species listed under CITES except under certain circumstances. The Service may issue permits to allow import of listed birds for scientific research, zoological breeding or display, cooperative breeding, or personal pet purposes when the applicant meets certain criteria (50 CFR 15.22–15.25). Under the Lacey Act, in part, it is unlawful: (1) To import, export, transport, sell, receive, acquire, or purchase any fish, or wildlife taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law, or (2) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law. For example, because the take of wild-caught hyacinth macaws would be in violation of Brazil's Environmental Crimes Law, the subsequent import of hyacinth macaws would violate the Lacey Act. Similarly, under the Lacey Act it is unlawful to import, export, transport, sell, receive, acquire, or purchase specimens of this species traded contrary to CITES.

Based in large part on the protection from illegal and legal trade afforded to the hyacinth macaw by CITES, the WBCA, and the Lacey Act, the best available data indicate that legal and illegal trade of hyacinth macaws is not currently occurring at levels that are affecting the population of the species in the wild or would negatively affect any efforts aimed at the recovery of wild populations of the species. Although illegal trapping for the pet trade occurred at high levels during the 1980s, it has decreased significantly and we found no information suggesting that illegal trapping and trade of wild hyacinth macaws are current threats to the species. Therefore, we find that our 4(d) rule contains all the prohibitions and authorizations necessary and advisable for the conservation of the hyacinth macaw.

Comment (13): One commenter stated that interstate and international transport of hyacinth macaws seems to be a generally accepted practice of the exotic pet trade, and one that is expressly endorsed by the 4(d) rule, yet it is extremely dangerous and often detrimental to the animal's health and well-being.

Our Response: International transport is guided by part 50 CFR part 14, subpart J—Standards for the Humane and Healthful Transport of Wild Mammals and Birds to the United States. As mentioned earlier, importers/exporters must meet the requirement of this and other requirements in order to import their birds into the United States. These regulations are enforced by the Service. Interstate transport is guided by the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*), which is the Federal law in the United States that regulates the treatment of animals in research, exhibition, transport, and by dealers (United States Department of Agriculture 2017, unpaginated). While other laws, policies, and guidelines may include additional species coverage or specifications for animal care and use, all refer to the AWA as the minimum acceptable standard. The AWA is enforced by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service. Therefore, we determine that these laws and regulations adequately promote the humane treatment and transport of hyacinth macaws.

Comment (14): One commenter recommended there be an exception for legitimate parrot owners and opined that the United States should not confiscate private property (*i.e.,* legitimately purchased pets) because of a problem occurring in Brazil, especially when there are already laws to protect wild parrots.

Our Response: There is no prohibition for ownership of lawfully acquired hyacinth macaws. With regards to import/export, we proposed exceptions for personal pet parrot owners in the 4(d) rule to allow a person to import or export either: (1) A specimen that was held in captivity prior to the date this species is listed under the Act; or (2) a captive-bred specimen, without a permit issued under the Act, provided the export is authorized under CITES and the import is authorized under CITES and the WBCA. A person may deliver, receive, carry, transport, or ship a hyacinth macaw in interstate commerce in the course of a commercial activity, or sell or offer to sell in interstate commerce a hyacinth macaw without a permit under the Act. However, the import and export of birds into and from the United States, taken from the wild after the date this species is listed under the Act; conducting an activity that could take or incidentally take hyacinth macaws; and foreign commerce will need to meet the requirements of 50 CFR 17.31 and 17.32, including obtaining a permit under the Act. See 4(d) Rule, below, for more discussion.

Comment (15): One commenter believed that we should have listed the species as endangered because they believed that it is in danger of extinction in a significant portion of its range.

Our Response: Under the Act and our implementing regulations, a species may warrant listing if it is an endangered or threatened species. The Act defines ''endangered species'' as any species that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)), and ''threatened species'' as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). Because we have determined that the hyacinth macaw is threatened throughout all of its range, under the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37578; July 1, 2014) (SPR Policy), if a species warrants listing throughout all of its range, no portion of the species' range can be a ''significant'' portion of its range.

While it is the Service's position under the SPR Policy that no further analysis of ''significant portion of its range'' in this circumstance is consistent with the language of the Act, we recognize that the SPR Policy is currently under judicial review, so we also took the additional step of considering whether there could be any significant portions of the species' range where the species is in danger of extinction. We evaluated whether there is substantial information indicating that there are any portions of the hyacinth macaw's range: (1) That may be ''significant,'' and (2) where the species may be in danger of extinction. In practice, a key part of identifying portions appropriate for further analysis is whether the threats are geographically concentrated. The hyacinth macaw's primary driver of its status is habitat destruction. This threat is affecting the species throughout its entire range and is of similar magnitude throughout its range; therefore, there is not a meaningful geographical concentration of threats to the hyacinth macaw. As a result, even if we were to undertake a detailed SPR analysis, there would not be any portions of the species' range where the threats are harming the species to a greater degree such that the species is in danger of extinction in that portion.

Comment (16): One commenter stated that the Service was obligated to issue a final regulation based on the proposal to list the hyacinth macaw as endangered in 2012, or issue a notice of withdrawal. They asserted the Service should have to go through the same requirements and procedures as for a downlisting by making a full scientific finding of why listing the hyacinth macaw as endangered is no longer warranted before it can repropose to list the species as threatened.

Our Response: We are obligated to make listing determinations under the Act based on the best available scientific and commercial information. In our 2012 proposed rule (77 FR 39965; July 6, 2012), we found that the hyacinth macaw was in danger of extinction (an endangered species) based on information estimating the original vegetation of the Amazon, Cerrado, and Pantanal, including the hyacinth macaw's habitat, would be lost between the years 2030 and 2050 due to deforestation, combined with the species' naturally low reproductive rate, highly specialized nature, hunting, competition, and effects of climate change. However, subsequent to publishing that proposal, we received new information from the public and peer review. As a result of this information, we reevaluated impacts to the species, made technical corrections, and assessed additional information regarding conservation efforts. Subsequently, we revised our determination in consideration of the new information and public comments we received to conclude that the hyacinth macaw's risk of extinction is not as imminent as previously predicted, and we published a revised proposed rule that opened a new comment period to allow the public the opportunity to submit additional comments in light of this new information (81 FR 85488; November 28, 2016).

Comment (17): One commenter stated that, while the proposed 4(d) rule is an amendment of an existing 4(d) rule for several other species of parrots at 50 CFR 17.41(c), it leaves out two provisions of that existing rule: (1) The exception for import and export of captive-bred specimens, and (2) interstate commerce. They assert that because the Service includes these provisions in the preamble of the proposed 4(d) rule but does not include the actual text in the draft rule, the Service did not provide sufficient notice and opportunity for public comment.

Our Response: In the revised proposed rule, under Proposed Regulation Promulgation (81 FR 85488, November 28, 2016, see pp. 81 FR 85506–85507), we proposed to amend 50 CFR 17.41 by revising paragraph (c) introductory text, paragraphs (c)(1), (c)(2) introductory text, (c)(2)(ii) introductory text, and (c)(2)(ii)(E). The amendatory instruction and regulatory text were formatted in accordance with Office of the Federal Register standards and only include those provisions of the existing text that are being revised. The proposed regulatory text for 50 CFR 17.41(c), together with the text we were not proposing to amend in that paragraph of the CFR, encompasses the whole of the proposed 4(d) rule for the hyacinth macaw. As the commenter notes, we explain the proposed 4(d) rule for the hyacinth macaw in the preamble of the revised proposed rule (81 FR 85488, November 28, 2016, see pp. 85505–85506). We accepted public comments on the revised proposed rule to list the hyacinth macaw as a threatened species, including the proposed 4(d) rule (81 FR 85488; November 28, 2016), for 60 days, ending January 27, 2017. We have complied with the notice-and-comment requirements of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Act.

Comment (18): One commenter stated that neither CITES nor the WBCA provide for public notice and comment, which is required for permits for endangered species under the Act. They indicated the public would receive no notice about import/export or interstate movement of these parrots, which makes it difficult to track and protect these species from the pet trade.

Our Response: It is true that neither CITES nor the WBCA provide for public notice and comment for interstate movement of species. It is also true that there is required notice and comment for permits for endangered species under the Act. However, there is no notice-and-comment requirement for permits for threatened species. We found the hyacinth macaw to be a threatened species; therefore, the notice-and-comment provision for permits under the Act does not apply in this case. Additionally, we found it was not necessary or advisable for the conservation of the hyacinth macaw to extend the permit requirements to certain import/export and interstate transport because we did not find the pet trade to be a threat to the species. Further, interstate commerce within the United States was not found to threaten the hyacinth macaw, and the best available data indicate that legal and illegal trade of hyacinth macaws is not currently occurring at levels that are affecting the population of the species in the wild or would negatively affect any efforts aimed at the recovery of wild populations of the species.

Comment (19): One commenter stated that the Service provides no logical basis for the proposed 4(d) rule's assumption that ''generally accepted animal husbandry practices'' or breeding procedures do not result in harm and harassment as covered under the Act's prohibition on take.

Our Response: While the Act does not define ''harm'' or ''harassment,'' the Service's regulations at 50 CFR 17.3 provide definitions for those terms. ''Harm'' is defined as an act which actually kills or injures wildlife and ''harassment,'' when applied to captive wildlife, does not include generally accepted animal husbandry practices or breeding procedures as defined by the Service's regulations at 50 CFR 17.3. Consequently, such actions would not be prohibited or require a permit under the Act.

Comment (20): One commenter stated that wildlife-trade management authorities have shown that fraudulent permitting has been a frequent occurrence in many illicitly traded species across the globe (United Nations Office on Drugs and Crime 2016) and this impacts the hyacinth macaw.

Our Response: Although we recognize that fraudulent permitting may occur as part of the global wildlife trade, we have no information indicating that fraudulent permitting practices are impacting the hyacinth macaw. Furthermore, the commenter did not provide any information regarding fraudulent permitting specific to hyacinth macaws.

Comment (21): One commenter suggested an alternative 4(d) rule for the hyacinth macaw, which they say would better further the conservation of the species. The commenter suggested that any trade in captive-bred specimens must be limited to specimens legitimately designated as source code D instead of codes C, D, or F under CITES, and that commercial interstate commerce should not be exempted. (*Note:* Source codes indicate the source of the specimen used on CITES permits and certificates. See 4(d) Rule, below, for more discussion.)

Our Response: We considered the commenter's alternative approach to the 4(d) rule, and ultimately we determined that the import and export requirements of 50 CFR 17.41(c) provide the necessary and advisable conservation measures needed for this species. Interstate commerce within the United States was not found to threaten the hyacinth macaw, and the best available data indicate that legal and illegal trade of hyacinth macaws is not currently occurring at levels that are affecting the population of the species in the wild or would negatively affect any efforts aimed at the recovery of wild populations of the species.

Background

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

We summarize below the information on which we based our final determination and evaluation of the five factors provided in section 4(a)(1) of the Act. We are also including hyacinth macaws under a rule authorized under section 4(d) of the Act. This 4(d) rule contains the prohibitions and authorizations necessary and advisable for the conservation of the hyacinth macaw.

Species Information

Taxonomy and Species Description

The hyacinth macaw is one of three species of the *Anodorhynchus* genus and the largest bird of the parrot family, Family Psittacidae, (Guedes and Harper 1995, p. 395; Munn *et al.* 1989, p. 405). It measures approximately 1 meter (m) (3.3 feet (ft)) in length. Average female and male wing lengths measure approximately 400 to 408 millimeters (mm) (1.3 ft), respectively. Average tail lengths for females and males are approximately 492 mm (1.6 ft) and 509 mm (1.7 ft), respectively (Forshaw 1989, p. 388). Hyacinth macaws are characterized by a predominately cobalt-blue plumage, black underside of wing and tail, and unlike other macaws, have feathered faces and lores (areas of a bird's face from the base of the bill to the front of the eyes). In addition, they have bare yellow eye rings, bare yellow patches surrounding the base of their lower mandibles, large and hooked gray-black bills, and dark-brown irises. Their legs, which are dark gray in most birds but lighter gray to white in older adults, are short and sturdy to allow the bird to hang sideways or upside down while foraging. Immature birds are similar to adults, but with shorter tails and paler yellow bare facial skin (Juniper and Parr 1998, pp. 416–417; Guedes and Harper 1995, p. 395; Munn *et al.* 1989, p. 405; Forshaw 1989, p. 388).

The hyacinth macaw experiences late maturity, not reaching first reproduction until 8 or 9 years old (Guedes 2009, p. 117). Hyacinth macaws are monogamous and faithful to nesting sites; a couple may reproduce for more than a decade in the same nest. They nest from July to January in tree cavities and, in some parts of its range, cliff cavities (Tortato and Bonanomi 2012, p. 22; Guedes 2009, pp. 4, 5, 12; Pizo *et al.* 2008, p. 792; Pinho and Nogueira 2003, p. 35; Abramson *et al.* 1995, p. 2). The hyacinth macaw lays two smooth, white eggs approximately 48 mm (1.9 inches (in)) long and 36 mm (1.4 in) wide. Eggs are usually found in the nest from August until December (Guedes 2009, p. 4; Juniper and Parr 1998, p. 417; Guedes and Harper 1995, p. 406). The female alone incubates the eggs for approximately 28 to 30 days. The male remains near the nest to protect it from invaders, but may leave 4 to 6 times a day to forage and collect food for the female (Schneider *et al.* 2006, pp. 72, 79; Guedes and Harper 1995, p. 406). Chicks are mostly naked, with sparse white down feathers at hatching. Young are fed regurgitated, chopped palm nuts (Munn *et al.* 1989, p. 405). Most chicks fledge at 105 to 110 days old; however, separation from the parents is a slow process. Fledglings will continue to be fed by the parents for 6 months, when they begin to break hard palm nuts themselves, and may remain with the adults for 16 months, after which they will join groups of other young birds (Schneider *et al.* 2006, pp. 71–72; Guedes and Harper 1995, pp. 407–411).

Hyacinth macaws naturally have a low reproductive rate, a characteristic common to all parrots, due, in part, to asynchronous hatching. Although hyacinth macaws lay two eggs, usually only one chick survives (Guedes 2009, p. 31; Faria *et al.* 2008, p. 766; Kuniy *et al.* 2006, p. 381; Guedes, 2004b, p. 6; Munn *et al.* 1989, p. 409). Not all hyacinth nests fledge young, and due to the long period of chick dependence, hyacinth macaws breed only every 2 years (Faria *et al.* 2008, p. 766; Schneider *et al.* 2006, pp. 71–72; Guedes 2004b, p. 7; Pinho and Nigueira 2003, p. 30; Guedes and Harper 1995, pp. 407–411; Munn *et al.* 1989, p. 409). In a study of the Pantanal, which contains the largest population of hyacinth macaws, it was suggested that only 15–30 percent of adults attempt to breed; it may be that the same or an even smaller percentage in Pará and Gerais attempt to breed (Munn *et al.* 1989, p. 409).

Range and Population

At one time, hyacinth macaws were widely distributed, occupying large areas of Central Brazil into the Bolivian and Paraguayan Pantanal (Guedes 2009, pp. xiii, 11; Pinho and Nogueira 2003, p. 30; Whittingham *et al.* 1998, p. 66; Guedes and Harper 1995, p. 395). Today, the species is limited to three areas totaling approximately 537,000 square kilometers (km^2), (207,337 square miles (mi^2)) almost exclusively within Brazil: (1) Eastern Amazonia in Pará, Brazil, south of the Amazon River along the Tocantins, Xingu, and Tapajós rivers; (2) the Gerais region of northeastern Brazil, including the states of Maranhão, Piauí, Goiás, Tocantins, Bahia, and Minas Gerais; and (3) the Pantanal of Mato Grosso and Mato Grosso do Sul, Brazil, and marginally in Bolivia and Paraguay. These populations of hyacinth macaws inhabit those portions of the species' original range that experienced the least pressure from bird catchers, meat and feather hunters, and agricultural developers (Munn *et al.* 1989, pp. 406–407).

Prior to the arrival of Indians and Europeans to South America, there may have been between 100,000 and 3 million hyacinth macaws (Munn *et al.* 1989, p. 412); however, due to the species' large but patchy range, an estimate of the original population size when the species was first described (1790) is unattainable (Collar *et al.* 1992, p. 253). Although some evidence indicates that the hyacinth macaw was abundant before the mid-1980s (Guedes 2009, p. 11; Collar *et al.* 1992, p. 253), the species significantly declined throughout the 1980s due to an estimated 10,000 birds illegally captured during the 1980s for the pet trade and a further reduction in numbers due to habitat loss and hunting. Population estimates prior to 1986 are lacking, but a very rapid population decline is suspected to have taken place over the last 31 years (three generations) (Birdlife International (BLI) 2014a, unpaginated). In 1986, the total population of hyacinth macaws was estimated to be 3,000, with a range between 2,500 and 5,000 individuals; 750 occurred in Pará, 1,000 in Gerais, and 1,500 in Pantanal (Guedes 2004b, p. 2; Collar *et al.* 1992, p. 253; Munn *et al.* 1989, p. 413). In 2003, the population was estimated at 6,500 individuals; 5,000 of which were located in the Pantanal region, and 1,000–1,500 in Pará and Gerais, combined (BLI 2017, unpaginated; Guedes 2009, p. 11; Brouwer 2004, unpaginated). Observations of hyacinth macaws in the wild have increased in Paraguay, especially in the northern region (Espinola 2013, pers. comm.), but no quantitative data are available. Locals report the species increasing in Bolivia; between 100 and 200 hyacinth macaws are estimated to occur in the Bolivian Pantanal, with estimates up to 300 for the country (Guedes 2012, p. 1; Pinto-Ledezma 2011, p. 19; BLI 2017, unpaginated; BLI 1992, p. 4).

The 2003 estimate indicates a substantial increase in the Pantanal population, although the methods or techniques used to estimate the population is not described. Therefore, the reliability of the estimation techniques, as well as the accuracy of the estimated increase, is not known (Santos, Jr. 2013, pers. comm.). Despite the uncertainty in the estimated population increase, the Pantanal is the stronghold for the species and has shown signs of recovery since 1990, most likely as a response to conservation projects (BLI 2017, unpaginated; Antas *et al.* 2006, p. 128; Pinho and Nogueira 2003, p. 30). The overall population trend for the hyacinth macaw throughout its range is reported as decreasing (BLI 2016, unpaginated), although there are no extreme fluctuations reported in the number of individuals (BLI 2016, unpaginated).

Essential Needs of the Species

Hyacinth macaws use a variety of habitats in the Pará, Gerais, and Pantanal regions. Each region features a dry season that prevents the growth of extensive closed-canopy tropical forests and maintains the more open habitat preferred by this species. In Pará, the species prefers palm-rich várzea (flooded forests), seasonally moist forests with clearings, and savannas. In the Gerais region, hyacinth macaws are located within the Cerrado biome, where they inhabit dry open forests in rocky, steep-sided valleys and plateaus, gallery forests (a stretch of forest along a river in an area of otherwise open country), and *Mauritia* palm swamps. In the Pantanal region, hyacinth macaws frequent gallery forests and palm groves with wet grassy areas (Juniper and Parr 1998, p. 417; Guedes and Harper 1995, p. 395; Munn *et al.* 1989, p. 407).

Hyacinth macaws have a specialized diet consisting of the fruits of various palm species, which are inside an extremely hard nut that only the hyacinth macaw can easily break (Guedes and Harper 1995, p. 400; Collar *et al.* 1992, p. 254). Hyacinth macaws are highly selective in choice of palm nut; they have to be the right size and shape, as well as have an extractable kernel with the right lignin pattern (Brightsmith 1999, p. 2; Pittman 1993, unpaginated). They forage for palm nuts and water on the ground, but may also forage directly from the palm tree and drink fluid from unripe palm fruits. Hyacinth macaws also feed on the large quantities of nuts eliminated by cattle in the fields and have been observed in close proximity to cattle ranches where waste piles are concentrated (Juniper and Parr 1998, p. 417; Yamashita 1997, pp. 177, 179; Guedes and Harper 1995, pp. 400–401; Collar *et al.* 1992, p. 254).

In each of the three regions where hyacinth macaws occur, they use only a few specific palm species. In Pará, hyacinth macaws have been reported to feed on *Maximiliana regia* (inajá), *Orbignya martiana* (babassu), *Orbignya phalerata* (babacú) and *Astrocaryum* sp. (tucumán). In the Gerais region, hyacinth macaws feed on *Attalea funifera* (piacava), *Syagrus coronata* (catolé), and *Mauritia vinifera* (buriti). In the Pantanal region, hyacinth macaws feed exclusively on *Scheelea phalerata* (acuri) and *Acrocomia totai* (bocaiúva) (Antas *et al.* 2006, p. 128; Schneider *et al.* 2006, p. 74; Juniper and Parr 1998, p. 417; Guedes and Harper 1995, p. 401; Collar *et al.* 1992, p. 254; Munn *et al.* 1989, pp. 407–408). Although hyacinth macaws prefer bocaiúva palm nuts over acuri, bocaiúva is only readily available from September to December, which coincides with the peak of chick hatching; however, the acuri is available throughout the year and constitutes the majority of this species' diet in the Pantanal (Guedes and Harper 1995, p. 400).

Hyacinth macaws have specialized nesting requirements. As a secondary tree nester, they require large, mature trees with preexisting tree holes to provide nesting cavities large enough to accommodate them (Tortato and Bonanomi 2012, p. 22; Guedes 2009, pp. 4–5, 12; Pizo *et al.* 2008, p. 792; Abramson *et al.* 1995, p. 2). In Pará, the species nests in holes of *Bertholettia excelsa* (Brazil nut). In the Gerais region, nesting may occur in large dead *Mauritia vinifera* (buriti), but is most commonly found in natural rock crevices. In the Pantanal region, the species nests almost exclusively in *Sterculia striata* (manduvi) as it is one of the few tree species that grows large enough to supply cavities that can accommodate the hyacinth's large size. Manduvi trees must be at least 60 years old, and on average 80 years old, to provide adequate cavities (Guedes 2009, pp. 59–60; Pizo *et al.* 2008, p. 792; Santos Jr. *et al.* 2006, p. 185). Nesting has also been reported in *Pithecellobium edwalii* (angio branco),

Enterolobium contortisiliquum (ximbuva), *Vitex* sp. (tarumá), and the cliff face of mountains on the border of the Pantanal (van der Meer 2013, p. 24; Guedes 2004b, p. 6; Kuniy *et al.* 2006, p. 381; Santos Jr. *et al.* 2006, p. 180; Pinho and Nogueira 2003, pp. 30, 33; Guedes 2002, p. 4; Juniper and Parr 1998, p. 417; Guedes and Harper 1995, p. 402; Collar *et al.* 1992, p. 255; Munn *et al.* 1989, p. 408).

Conservation Status

In 1989, the hyacinth was listed on the Official List of Brazilian Fauna Threatened with Extinction by the Brazilian Institute of Environment and Natural Resources (IBAMA), the government agency that controls the country's natural resources (Lunardi *et al.* 2003, p. 283; IBAMA Ordinance No. 1522, of December 19, 1989). Due to actions to combat trafficking of animals, the hyacinth macaw was removed from the list in 2014 (Instituto Chico Mendes de Conservação da Bioversidade 2016, unpaginated). It is listed as ''critically endangered'' by the State of Minas Gerais and ''vulnerable'' by the State of Pará (Garcia and Marini 2006, p. 153). In Paraguay, the hyacinth macaw is listed as in danger of extinction (Bauer 2012, pers. comm.).

From 2000 to 2013, this species was classified as ''endangered'' by the International Union for Conservation of Nature (IUCN). However, in 2014, the hyacinth macaw was downlisted to ''vulnerable'' because evidence suggested that it had not declined as rapidly as previously thought. A ''vulnerable'' taxon is considered to be facing a high risk of extinction in the wild, whereas an ''endangered'' taxon is considered to be facing a very high risk of extinction in the wild (IUCN 2012, unpaginated). The hyacinth macaw is also listed as Appendix I on the CITES list. Species included in CITES Appendix I are considered threatened with extinction, and international trade is permitted only under exceptional circumstances, which generally precludes commercial trade.

Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations in title 50 of the Code of Federal Regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Most of the information on the hyacinth macaw is from the Pantanal region, as this is the largest and most studied population. The species occurs only marginally within Bolivia and Paraguay as extensions from the Brazilian Pantanal population, and there is little information on the species in those countries. We found little information on the status of the Pará and Gerais populations; therefore, we evaluated impacts to these populations by a broader region (*e.g.,* the Amazon biome for Pará and the Cerrado biome for Gerais).

Parrots in general have traits that increase their vulnerability of extinction (Lee 2010, p. 3; Thiollay 2005, p. 1121; Guedes 2004a, p. 280; Wright *et al.* 2001, p. 711; Munn *et al.* 1989, pp. 407–409). The specialized nature and reproductive biology of the hyacinth macaw contribute to low recruitment of juveniles and decrease the ability to recover from reductions in population size caused by anthropogenic disturbances (Faria *et al.* 2008, p. 766; Wright *et al.* 2001, p. 711). This species' vulnerability to extinction is further impacted by deforestation that negatively affects the availability of essential food and nesting resources; hunting that removes individuals from already small populations; and other factors that further reduce naturally low reproductive rates, recruitment, and the population. Additionally, the hyacinth macaw has highly specialized food and nest-site requirements (Faria *et al.* 2008, p. 766; Pizo *et al.* 2008, p. 795; Munn *et al.* 1998, p. 409; Johnson *et al.* 1997, p. 186; Guedes and Harper 1995, p. 400), as they feed on and nest in very limited number of tree species. Therefore, hyacinth macaws are particularly vulnerable to extinction due to the loss of food sources and nesting sites (Faria *et al.* 2008, p. 766; Pizo 2008, p. 795; Munn *et al.* 1989, pp. 407–409; Johnson *et al.* 1997, p. 186).

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

Deforestation

Natural ecosystems across Latin America are being transformed due to economic development, international market demands, and government policies. In Brazil, demand for soybean oil and soybean meal has increased, causing land conversion to significantly increase to meet this demand (Barona *et al.* 2010, pp. 1–2). Much of the recent surge in cropland area expansion is taking place in the Brazilian Amazon and Cerrado regions (Nepstad *et al.* 2008, p. 1738). Brazil has also become the world's largest exporter of beef. Over the past decade, more than 10 million hectares (ha) (24.7 million acres (ac)) were cleared for cattle ranching, and the government is aiming to double the country's share of the beef export market to 60 percent by 2018 (Butler 2009, unpaginated).

Pará: Pará is one of the Brazilian states that constitute the Amazon biome (Greenpeace 2009, p. 2). This biome contains more than just the well-known tropical rainforests; it also encompasses other ecosystems, including floodplain forests and savannas. Between 1995 and 2009, conversion of floodplain forests in the Amazon region to cattle ranching expanded significantly and was the greatest cause of deforestation (da Silva 2009, p. 3; Lucas 2009, p. 1; Collar *et al.* 1992, p. 257).

Cattle ranching has been present in the várzea (floodplain forests) of the Amazon for centuries (Arima and Uhl, 1997, p. 433). However, since the late 1970s, state subsidies and massive infrastructure development have facilitated large-scale forest conversion and colonization for cattle ranching (Barona *et al.* 2010, p. 1). Certain factors have led to a significant expansion of this land use. The climate of the Brazilian Amazon is favorable for cattle ranching; frosts do not occur in the north of Brazil; and rainfall is more evenly distributed throughout the year, increasing pasture productivity and reducing the risk of fire. Additionally, the price of land in Pará has been lower than in central and south Brazil, resulting in ranchers establishing larger farms in Pará (Arima and Uhl, 1997, p. 446).

Although the immediate cause of deforestation in the Amazon was predominantly the expansion of pasture between 2000 and 2006 (Barona *et al.* 2010, p. 8), the underlying cause may be the expansion of soy cultivation in other areas, leading to a displacement of pastures farther north into parts of Pará and causing additional deforestation (Barona *et al.* 2010, pp. 6, 8).

In the Brazilian North region, including Pará, cattle occupy 84 percent of the total area under agricultural and livestock uses. This area, on average, expanded 9 percent per year over 10 years, causing 70–80 percent of deforestation (Nepstad *et al.* 2008, p. 1739). Pará itself contains two-thirds of the Brazilian Amazonia cattle herd (Arima and Uhl 1997, p. 343), with a sizable portion of the state classified as

cattle-producing area (Walker *et al.* 2009, p. 69). For 7 months of the year, cattle are grazed in the várzea, but are moved to the upper terra firma the other 5 months (Arima and Uhl, 1997, p. 440). Intense livestock activity can affect seedling recruitment via trampling and grazing. Cattle also compact the soil such that regeneration of forest species is severely reduced (Lucas 2009, pp. 1–2). This type of repeated disturbance can lead to an ecosystem dominated by invasive trees, grasses, bamboo, and ferns (Nepstad *et al.* 2008, p. 1740).

Pará has long been known as the epicenter of illegal deforestation (Dias and Ramos 2012, unpaginated) and has one of the highest deforestation rates in the Brazilian Amazon (Butler 2016, unpaginated). From 1988 to 2016, the state lost 143,159 km^2 (55,274 mi^2), with annual rates varying between 1,741 and 8,870 km^2 (672 and 3,425 mi^2) (Brazil's National Institute for Space Research (INPE) 2016, unpaginated; Butler 2016, unpaginated) (Table 1). Since 2004, deforestation rates in Pará have generally decreased. However, rates rose 35 percent in 2013, decreased in 2014, and increased in 2015 and 2016 (INPE 2016, unpaginated) (Table 1). The impacts to and loss of biodiversity within the two large regions of the Brazilian Amazon located in the state of Pará are due to not only deforestation across the landscape but also within-forest disturbance, such as wildfire and selective logging, resulting in a loss of biodiversity beyond what is expected based on deforestation alone. Within-forest disturbance can increase even as deforestation rates fall (Barlow *et al.* 2016, p. 144).

TABLE 1—DEFORESTATION IN PARÁ (2004–2016) (INPE 2016)

Year	Accumulated deforested area (km^2)	Annual deforested area (km^2)
2004	* 98,257	8,870
2005	104,156	5,899
2006	109,815	5,659
2007	115,341	5,526
2008	120,948	5,607
2009	125,229	4,281
2010	128,999	3,770
2011	132,007	3,008
2012	133,748	1,741
2013	136,094	2,346
2014	137,981	1,887
2015	140,134	2,153
2016	143,159	3,025

* Accumulation since 1988.

Given the role cattle ranching plays in national and international markets and the profitability of ranching, significant expansion of cattle herds in the Brazilian Amazon has continued (Walker *et al.* 2009, p. 68). The remaining forested areas of Pará are at risk of being cleared; Pará is one of the states where most of Brazil's agriculture expansion is taking place (British Broadcasting Company News 2014, unpaginated). Furthermore, modeled future deforestation is concentrated in eastern Amazonia, which includes Pará, where the density of paved highways (existing and planned) will continue to be highest for several decades (Soares-Filho *et al.* 2006, p. 522).

Gerais: The Gerais region is within the Cerrado biome, a 2-million-km^2 (772,204-mi^2) area consisting of plateaus and depressions with vegetation that varies from dense grasslands with sparse shrubs and small trees to almost closed woodland (Pinto *et al.* 2007, p. 14; da Silva 1997, p. 437; Ratter *et al.* 1997, p. 223). In the Cerrado, hyacinth macaws now mostly nest in rock crevices, most likely a response to the destruction of nesting trees (Collar *et al.* 1992, p. 255). These crevices will likely remain constant and are not a limiting factor. However, deforestation for agriculture, primarily soy crops, and cattle ranching threaten the remaining native cerrado vegetation, including palm species the hyacinth macaw relies on as a food source.

Approximately 50 to 80 percent of the original Cerrado vegetation has been lost due to conversion to agriculture and pasture, and the area continues to suffer high rates of habitat loss (Grecchi *et al.* 2015, p. 2865; Beuchle *et al.* 2015, p. 121; WWF 2015, p. 2; Soares-Filho *et al.* 2014, p. 364; Pearce 2011, unpaginated; WWF–UK 2011b, p. 2; Carvalho *et al.* 2009, p. 1393; BLI 2008, unpaginated; Pinto *et al.* 2007, p. 14; Klink and Machado 2005, p. 708; Marini and Garcia 2005, p. 667; WWF 2001, unpaginated; da Silva 1997, p. 446; da Silva 1995, p. 298). From 2002 to 2008, the demand for land conversion in the Cerrado resulted in an annual deforestation rate of more than 14,200 km^2 (5,483 mi^2) (PROBIO program (Projeto de Conservação e Utilização Sustentável da Diversidade Biológica); Ministério do Meio Ambiente (MMA) 2015, p. 9; WWF–UK 2011b, p. 2; Beuchle *et al.* 2015, p. 117). At this rate, the vegetation of the Cerrado region was disappearing faster than the Amazon rainforest (Pearce 2011, unpaginated; WWF–UK 2011c, p. 19; Pennington *et al.* 2006, in Beuchle *et al.* 2015, p. 117; Klink and Machado 2005, p. 708; Ratter *et al.* 1997, p. 228). However, the annual deforestation rate from 2008 to 2009 and 2009 to 2010 in the Cerrado slowed by 46 percent and 16 percent respectively (MMA 2015, p. 9; Critical Ecosystem Partnership Fund (CEPF) 2016, p. 145) (Table 2). In a comparison study, the loss of natural vegetation decreased to an estimated 12,949 km^2 (4,999 mi^2) per year from 2000 to 2005, and 11,812 km^2 (4,560 mi^2) per year from 2005 to 2010 (Beuchle *et al.* 2015, pp. 124–125).

Since 2008, annual monitoring of deforestation in the Cerrado has taken place through a government program that monitors each of the Brazilian biomes. Compared to the deforestation rates of the early 2000s, deforestation has decreased about 40 percent (CEPF 2016, p. 145). Although the annual rate of deforestation is generally decreasing, the total amount of forested habitat continues to experience a slow and steady decline (MMA 2015, p. 9) (Table 2).

Table 2. Deforestation in the Cerrado (2002–2011).

Years Assessed	Accumulated Deforested Area (km^2)	Percent (%) of Cerrado Deforested	Annual Deforested Area (km^2)	Annual Deforestation Rate (%)	Remaining Areas of Natural Vegetation (km^2)
Up to 2002	890,636	43	–	–	1,148,750
2002-2008	975,710	47.8	14,179	0.69	1,063,676
2008-2009	983,347	48.2	7,637	0.37	1,056,039
2009-2010	989,816	48.5	6,469	0.32	1,049,570
2010-2011	997,063	48.9	7,247	0.35	1,042,323

The remaining natural vegetation of the Cerrado is highly fragmented (only 20 percent of the original biome is considered intact) and continues to be pressured by conversion for soy plantations and extensive cattle ranching (WWF–UK 2011b, p. 2; WWF–UK 2011c, p. 21; Carvalho *et al.* 2009, p. 1393; BLI 2008, unpaginated). About 6 in every 10 ha (15 of 25 ac) of the Cerrado are suitable for mechanized agriculture (WWF–UK 2011b, p. 2). Maranhão, Tocantins, Piauí, and Bahia, states where hyacinth macaws occur, are undergoing rapid conversion, mostly to soy crops (CEPF 2016, p. 151). In two of these states, deforestation increased by 40 percent in Toncantins (INPE 2016, unpaginated) and by 25 percent in Maranhão (Butler 2016, unpaginated) in 2016 compared to the deforestation rate in 2015. Soy production will continue to grow as the beans have many uses for food, feed, and industry in Brazil and abroad (CEPF 2016, p. 152). Furthermore, the Brazilian government has proposed a 731,735-km^2 (282,524-mi^2) agricultural development, of which 91 percent occurs in the Cerrado, with little regard for the environment, at least as of 2015 (Clark 2015 and Miranda 2015, in CEPF 2016, p. 95). Additionally, the conversion of land for biofuel production is likely imminent, creating a market for the expansion and establishment of new areas for soy, castor beans, other oil-bearing plants, and sugar cane (Carvalho *et al.* 2009, p. 1400).

Given that the Cerrado is the most desirable biome for agribusiness expansion and contains approximately 40 million ha (99 million ac) of environmental surplus, which is land that exceeds the conservation requirements of the forest code and that could be legally deforested (see Factor D discussion, below) (Soares-Filho *et al.* 2014, p. 364), this region will likely continue to suffer high deforestation rates. Projections for coming decades show the largest increase in agricultural production occurring in the Cerrado (CEPF 2016, p. 145).

Pantanal: The Pantanal is a 140,000-km^2 (54,054-mi^2) seasonally flooded wetland interspersed with higher areas not subject to inundation (cordilleras), covered with cerrado or seasonal forests (Santos Jr. 2008, p. 133; Santos Jr. *et al.* 2007, p. 127; Harris *et al.* 2005, p. 715; Mittermeier *et al.* 1990, p. 103). Transitions during the 1990s to more intensive cattle ranching methods led to the conversion of more forests to pasture and the introduction of nonnative grasses. Ninety-five percent of the Pantanal is privately owned; 80 percent of the privately owned land is used for cattle ranches, making cattle ranching the predominant economic activity in this region and the greatest cause of habitat loss in the Pantanal (van der Meer 2013, p. 5; Guedes and Vicente 2012, pp. 146–147, 148; Guedes 2009, p. 12; Pizo *et al.* 2008, p. 793; Harris *et al.* 2006, pp. 165, 175–176; Harris *et al.* 2005, pp. 715–716, 718; Pinho and Nogueira 2003, p. 30; Seidl *et al.* 2001, p. 414; Guedes and Harper 1995, p. 396; Mittermeier 1990, pp. 103, 107–108).

Manduvi, the tree that hyacinth macaws almost exclusively use for nesting in this region, grow in cordilleras, which constitute only 6 percent of the vegetative area of the Pantanal (van der Meer 2013, p. 6; Pizo *et al.* 2008, p. 793; Johnson *et al.* 1997, p. 186). Many of these patches and corridors are surrounded by seasonally flooded grasslands used as rangeland for cattle during the dry season (Johnson *et al.* 1997, p. 186). During the flooding season (January to June), up to 80 percent of the Pantanal is flooded and ranchers move cattle to cordilleras, increasing cattle pressure on upland forests (van der Meer 2013, p. 3; Guedes 2002, p. 3). These upland forests are often removed and converted to cultivated pastures with exotic grasses (van der Meer 2013, p. 6; Santos Jr. 2008, p. 136; Santos Jr. *et al.* 2007, p. 127; Harris *et al.* 2006, p. 165; Harris *et al.* 2005, p. 716; Pinho and Nogueira 2003, p. 30; Seidl *et al.* 2001, p. 414; Johnson *et al.* 1997, p. 186). Clearing land to establish pasture is perceived as the economically optimal land use, while land not producing beef is often perceived as unproductive (Seidl *et al.* 2001, pp. 414–415).

Since 2002, regular monitoring of land use and vegetative cover in the Upper Paraguay Basin, which includes the Pantanal, has taken place. While the annual rate of deforestation is decreasing, satellite monitoring of the area indicates a slow and steady increase in deforested area (Table 3, below).

Table 3. Deforestation in the Pantanal (2002–2014).

Years Assessed	Accumulated Deforested Area (km^2)	Percent (%) of Pantanal Deforested	Annual Deforested Area (km^2)	Annual Deforestation Rate (%)	Citation
2002-2008	20,265	13.4	612	0.41	CI *et al*. 2009, pp. 30–32
2008-2010	20,851	13.8	605	0.40	CI *et al*. 2011, pp. 3–4
2010-2012	20,833	13.8	389	0.26	CI *et al*. 2013, pp. 4–5
2012-2014	22,439	14.9	394	0.26	CI *et al*. 2015, pp. 2–4

When clearing land for pastures, palm trees are often left, as the cattle will feed on the palm nuts (Pinho and Nogueira 2003, p. 36). In fact, hyacinth macaws occur near cattle ranches and feed off the palm nuts eliminated by the cattle (Juniper and Parr 1998, p. 417; Yamashita 1997, pp. 177, 179; Guedes and Harper 1995, pp. 400–401; Collar *et al.* 1992, p. 254). However, other trees, including potential nesting trees, are often removed (Snyder *et al.* 2000, p. 119). Even in areas where known nesting trees were left and the surrounding area was cleared, competition with each other and other macaw species became so fierce that hyacinth macaws were unable to reproduce; both eggs and chicks were killed by competitors (see Factor C discussion, below).

Other activities associated with cattle ranching, such as grazing, burning, compaction, the introduction of exotic grasses, and fragmentation, negatively impacts the nesting trees of the hyacinth macaw (Guedes 2013, pers. comm.; Guedes and Vicente 2012, pp. 149–150; Santos Jr. *et al.* 2007, p. 128; Harris *et al.* 2006, p. 175; Snyder *et al.* 2000, p. 119). For example, fire is a common method for renewing pastures, controlling weeds, and controlling pests (*e.g.,* ticks); however, fires frequently become uncontrolled and burn patches and corridors of manduvi trees during the dry season (Harris *et al.* 2005, p. 716; Johnson *et al.* 1997, p. 186). Although fire can promote cavity formation in manduvi trees, frequent fires prevent trees from surviving to a size capable of providing suitable cavities, and cause a high rate of nesting-tree loss (Guedes 1993 in Johnson *et al.* 1997, p. 187). Five percent of manduvi trees are lost each year to deforestation, fire, and storms (Guedes 1995, in Santos Jr. *et al.* 2006, pp. 184–185; Guedes and Vicente 2012, p. 157).

In addition to the impact of fire on recruitment of manduvi trees, cattle directly impact the density of manduvi seedlings in the Pantanal. Cattle forage on and trample manduvi seedlings, affecting the recruitment of this species to be able to reach a size large enough to accommodate hyacinth macaws (Pizo *et al.* 2008, p. 793; Johnson *et al.* 1997, p. 187; Mittermeier *et al.* 1990, p. 107). Only those manduvi trees at least 60 years old are capable of providing these cavities (Pizo *et al.* 2008, p. 792; Santos Jr. *et al.* 2006, p. 185). The minimum diameter at breast height (DBH) for trees to potentially contain a cavity suitable for hyacinth macaws is 50 centimeters (cm) (20 in), while all manduvi trees greater than 100 cm (39 in) DBH contain suitable nest cavities. However, there is low recruitment of manduvi trees in classes greater than 5 cm (2 in) DBH, a strong reduction in the occurrence of trees greater than 50 cm (20 in) DBH, and very few trees greater than 110 cm (43 in) DBH (Santos Jr. *et al.* 2007, p. 128). Only 5 percent of the existing adult manduvi trees (trees with a DBH greater than 50 cm (20 in)) in south-central Pantanal (Guedes 1993, in Johnson *et al.* 1997, p. 186) and 11 percent in southern Pantanal (van der Meer 2013, p. 16) contain suitable cavities for hyacinth macaws. Thus, potential nesting sites are rare and will become increasingly rare in the future (Santos Jr. *et al.* 2007, p. 128).

Impacts of Deforestation: Because the hyacinth macaw has highly specialized diet and nesting requirements, it is particularly vulnerable to the loss of these resources (Faria *et al.* 2008, p. 766; Pizo 2008, p. 795; Munn *et al.* 1989, pp. 407–409; Johnson *et al.* 1997, p. 186). The loss of tree species used by hyacinth macaws negatively impacts the species by reducing availability of food resources, creating a shortage of suitable nesting sites, increasing competition, and resulting in lowered recruitment and a reduction in population size (Lee 2010, pp. 2, 6, 12; Santos Jr. *et al.* 2007, p. 128; Johnson *et al.* 1997, p. 188).

Its specialized diet makes the hyacinth macaw vulnerable to changes in food availability. Inadequate nutrition can contribute to poor health and reduced reproduction in parrots generally (McDonald 2003, in Lee 2010, p. 6). Changes in palm fruit availability decreases reproduction in hyacinth macaws (Guedes 2009, pp. 42–43, 44). In Pará and the Gerais region, where food sources are threatened, persistence of the species is a concern given that one of the major factors thought to have contributed to the critically endangered status of the Lear's macaw (*Anodorhynchus leari*) is the loss of its specialized food source, *Syagrus* sp. (licuri palm) stands, to cattle grazing (Collar *et al.* 1992, p. 257).

Hyacinth macaws can tolerate a certain degree of human disturbance at their breeding sites (Pinho and Noguiera 2003, p. 36). However, the number of usable cavities increases with the age of the trees in the forest (Newton 1994, p. 266), and clearing land for agriculture and cattle ranching, cattle trampling and foraging, and burning of forest habitat result in the loss of mature trees with natural cavities of sufficient size and a reduction in recruitment of native species that could eventually provide nesting cavities.

A shortage of nest sites can jeopardize the persistence of the hyacinth macaw by constraining breeding density, resulting in lower recruitment and a gradual reduction in population size (Santos Jr. *et al.* 2007, p. 128; Johnson *et al.* 1997, p. 188; Guedes and Harper 1995, p. 405; Newton 1994, p. 265). This reduction may lead to long-term effects on the viability of the hyacinth macaw population, especially in Pará and the Pantanal where persistence of nesting trees is compromised (Santos Jr. *et al.* 2007, p. 128; Santos Jr. *et al.* 2006, p. 181). Although a species may survive the initial deforestation, the resulting lack of food resources and breeding sites may reduce the viability of the population and make the species vulnerable to extinction (Sodhi *et al.* 2009, p. 517).

In response to the loss of its nesting tree in the Gerais region, hyacinth

macaws now use rock crevices for nesting. Hyacinth macaws have been reported in various trees species and even on cliffs on the border of the Pantanal, although the majority of their nests are in Brazil nut (in Pará) and manduvi (in the Pantanal) (see *Essential Needs of the Species,* above). We do not know if the hyacinth macaws in the Pantanal will respond in the same way to the loss of nesting trees as those in the Gerais region; however, it is possible that if these primary nesting trees become scarcer, hyacinth macaws may adapt to using cliff faces or cavities of other trees (van der Meer 2013, p. 3). Deforestation in these regions would likely impact any alternative nesting trees and food sources, resulting in the same negative effect on the hyacinth macaw. Furthermore, competition for limited nesting sites and food would continue.

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

Hunting

In Pará and the Gerais region, hunting removes individual hyacinth macaws vital to the already small populations (Brouwer 2004, unpaginated; Collar *et al.* 1992, p. 257; Munn *et al.* 1989, p. 414). Hyacinth macaws in Pará are hunted for subsistence and the feather trade by some Indian groups (Brouwer 2004, unpaginated; Munn *et al.* 1989, p. 414). Because the hyacinth macaw is the largest species of macaw, it may be targeted by subsistence hunters, especially by settlers along roadways (Collar *et al.* 1992, p. 257). The Gerais region is poor, and animal protein is not as abundant as in other regions; therefore, meat of any kind, including the large hyacinth macaw, is sought as a protein source (Collar *et al.* 1992, p. 257; Munn *et al.* 1989, p. 414). Additionally, increased commercial sale of feather art by Kayapo Indians of Gorotire may be of concern given that 10 hyacinth macaws are required to make a single headdress (Collar *et al.* 1992, p. 257).

Because the hyacinth macaw populations in Pará and the Gerais region are estimated at only 1,000–1,500 individuals combined, the removal of any individuals from these small populations has a negative effect on reproduction and the ability of the species to recover. Any continued hunting for either meat or for the sale of feather art is likely to contribute to the decline of the hyacinth macaw in these regions, particularly when habitat conversion is also taking place.

Hunting, capture, and trade of animal species are prohibited without authorization throughout the range of the hyacinth macaw (Clayton 2011, p. 4; Snyder *et al.* 2000, p. 119; Environmental Crimes Law (Law No. 9605/98); Stattersfield and Capper 1992, p. 257; Munn *et al.* 1989, p. 415; Official List of Brazilian Endangered Animal Species (Order No. 1.522/1989) (IBAMA 1989); Brazilian Constitution (title VIII, chapter VI, 1988); Brazilian Law No. 5197/1967; UNEP, n.d., unpaginated). However, continued hunting in some parts of its range is evidence that existing laws are not being adequately enforced. Without greater enforcement of laws, hunting will continue to impact the hyacinth macaw (see Factor D discussion, below).

Pet Trade

In the 1970s and 1980s, substantial trade in hyacinth macaws was reported, but actual trade was likely significantly greater given the amount of smuggling, routing of birds through countries not parties to CITES, and internal consumption in South America (Collar *et al.* 1992, p. 256; Munn *et al.* 1989, pp. 412–413). Trade in parrots in the 1980s was particularly high due to a huge demand from developed countries, including the United States, which was the main consumer of parrot species at that time (Rosales *et al.* 2007, pp. 85, 94; Best *et al.* 1995, p. 234). In the late 1980s and early 1990s, reports of hyacinth macaw trapping included one trapper who worked an area for 3 years removing 200–300 wild hyacinth macaws a month during certain seasons and another trapper who caught 1,000 hyacinth macaws in 1 year and knew of other teams operating at similar levels (Silva (1989a) and Smith (1991c) in Collar *et al.* 1992, p. 256). More than 10,000 hyacinth macaws are estimated to have been taken from the wild in the 1980s (Smith 1991c, in Collar *et al.* 1992, p. 256; Munn *et al.* 1987, in Guedes 2009, p. 12). In the years following the enactment of the WBCA, studies found lower poaching levels than in prior years, suggesting that import bans in developed countries reduced poaching levels in exporting countries (Wright *et al.* 2001, pp. 715, 718).

TABLE 4—CITES TRADE DATABASE: APPROXIMATE NUMBER OF IMPORTS/EXPORTS OF HYACINTH MACAW WITH IDENTIFIED SOURCES AND PURPOSES OF TRADE

Source	Approximate number of birds		Purpose	Approximate number of birds	
	Importer reported quantity	Exporter reported quantity		Importer reported quantity	Exporter reported quantity
Live Total	1,488	1,435	Breeding in Captivity or Artificial Propagation.	688	827
Live/Captive Source	1,342	1,356	Educational	29	25
Live/Wild Source	37	14	Hunting Trophy	1	0
Live/Pre-Convention	20	22	Law Enforcement, Judicial, Forensic	0	3
Live/Unknown Source	13	7	Medical	1	31
Live/Confiscated	32	3	Reintroduction into Wild	4	0
Live/No Source Identified	44	33	Personal	361	123
Total Specimens	1,661	1,756	Circus or Travelling Exhibition	3	7
			Scientific	35	244
			Commercial	336	348
			Zoo	138	49
			Not Reported	65	99
			Total Specimens	1,661	1,756

The data in Table 4 are based on CITES trade data obtained from the CITES Trade Database (accessed on January 12, 2018), from 1987 through 2015. Because there may be a lag time in the data reported relative to when the hyacinth macaw was uplisted to Appendix I in CITES (October 22, 1987), a few entries in the database between 1987 and 2015 categorize the hyacinth macaw as Appendix II. There are differences in the manner in which the importing and exporting countries report their trade, and some data may be contradictory or incorrectly reported.

We found little additional information on illegal trade of this species in international markets. One study found that illegal pet trade in Bolivia continues to involve CITES-listed species; the authors speculated that similar problems exist in Peru and Brazil (Herrera and Hennessey 2007, p. 298). In that same study, 11 hyacinth macaws were found for sale in a Santa Cruz market from 2004 to 2007 (10 in 2004, and 1 in 2006) (Herrera and Hennessey 2009, pp. 233–234). Larger species, like the hyacinth macaw, were frequently sold for transport outside of the country, mostly to Peru, Chile, and Brazil (Herrera and Hennessey 2009, pp. 233–234). During a study conducted from 2007 to 2008, no hyacinth macaws were recorded in 20 surveyed Peruvian wildlife markets (Gastañaga *et al.* 2010, pp. 2, 9–10). We found no other data on the presence of hyacinth macaws in illegal trade.

Although illegal trapping for the pet trade occurred at high levels during the 1980s, trade has decreased significantly from those levels. International trade of parrots was significantly reduced during the 1990s as a result of tighter enforcement of CITES regulations, stricter measures under European Union legislation, and adoption of the WBCA, along with adoption of national legislation in various countries (Snyder *et al.* 2000, p. 99) (see Factor D discussion, below). We found no information indicating trade is currently impacting the hyacinth macaw.

Factor C. Disease or Predation

In the Pantanal, predation and disease are factors affecting reproductive success of the hyacinth macaw (Guedes 2009, pp. 5, 8, 42; Guedes 2004b, p. 7). Predation accounted for 52 percent of lost eggs during the incubation period in a 10-year study in the Miranda region of the Pantanal (Guedes 2009, pp. 5, 74). Of the nests that produced chicks, 38 percent of chicks were lost due to predation by species such as carnivorous ants (*Solenopsis* sp.), other insects, collared forest falcon (*Micrastur semitorquatus*), and spectacled owl (*Pulsatrix perspicillata*). The toco toucan (*Ramphastos toco*) and great horned owl (*Bubo virginianus*) are also suspected of chick predation, but this has not yet been confirmed (Guedes 2009, pp. 6, 79–81; Pizo *et al.* 2008, p. 795). Of 582 eggs monitored over 6 years in the Nhecolândia region of the Pantanal, approximately 24 percent (n = 138 eggs) were lost to predators (Pizo *et al.* 2008, pp. 794, 795). Several species preyed upon hyacinth macaw eggs, including toco toucans, purplish jays (*Cyanocorax cyanomelas*), white-eared opossums (*Didelphis albiventris*), and coatis (*Nasua nasua*) (Guedes 2009, pp. 5, 23, 46, 58, 74–75; Pizo *et al.* 2008, p. 795). The toco toucan was the main predator, responsible for 12.4 percent of the total eggs lost and 53.5 percent of the eggs lost annually in the Nhecolândia region (Pizo *et al.* 2008, pp. 794, 795). Most predators leave some sort of evidence behind; however, toco toucans swallow hyacinth macaw eggs whole, leaving no evidence behind. This ability may lead to an underestimate of nest predation by toucans (Pizo *et al.* 2008, p. 793).

Incidence of disease, such as hoof-and-mouth disease and brucellosis, and of ectoparasites, has been observed in hyacinth macaws (Arima and Uhl, 1997, p. 446; Allgayer *et al.* 2009, p. 974). Pará ranchers and technicians concurred that there's a lower incidence of disease (*e.g.,* hoof-and-mouth disease, brucellosis) and ectoparasites in Pará than in central and south Brazil (Arima and Uhl, 1997, p. 446). A study of free-living nestlings from the Pantanal detected ectoparasites in 3 percent and scars in 6 percent of birds, suggesting the occurrence of parasitism. The ectoparasites were identified as *Philornis* sp. (Diptera: Muscidae). However, the absence of blood and intestinal parasites in samples collected for 4 consecutive years indicates that there is a low prevalence of parasitism in hyacinth macaw nestlings (Allgayer *et al.* 2009, pp. 974, 977).

Factor D. Inadequacy of Existing Regulatory Mechanisms

Brazil

Hunting, capture, and trade of animal species are prohibited without authorization (Environmental Crimes Law (Law No. 9605/98)). In general, wildlife species and their nests, shelters, and breeding grounds are subject to Brazilian laws designed to provide protection (Clayton 2011, p. 4; Snyder *et al.* 2000, p. 119; Environmental Crimes Law (Law No. 9605/98); Stattersfield and Capper 1992, p. 257; IBAMA 1989; Brazilian Constitution (title VIII, chapter VI, 1988); Brazilian Law No. 5197/1967; United Nations Environment Programme (UNEP), n.d., unpaginated). The forests of Brazil are specifically subject to several Brazilian laws designed to protect them. Destruction and damaging of forest reserves, cutting trees in forest reserves, and causing fire in forests, among other actions, without authorization are prohibited (Clayton 2011, p. 5; Environmental Crimes Law (Law No. 9605/98); UNEP, n.d., unpaginated).

Protected Areas: The main biodiversity protection strategy in Brazil is the creation of Protected Areas (National Protected Areas System) (Federal Act 9.985/00) (Santos Jr. 2008, p. 134). Various regulatory mechanisms (Law No. 11.516, Act No. 7.735, Decree No. 78, Order No. 1, and Act No. 6.938) in Brazil direct Federal and State agencies to promote conservation of the country's natural resources through protection of lands and the establishment and management of protected areas (ECOLEX 2007, pp. 5–7). These mechanisms generally aim to protect endangered wildlife and plant species, genetic resources, overall biodiversity, and native ecosystems on Federal, State, and privately owned lands (*e.g.,* Law No. 9.985, Law No. 11.132, Resolution No. 4, and Decree No. 1.922). Brazil's Protected Areas were established in 2000, and may be categorized as ''strictly protected'' or ''sustainable use'' based on their overall management objectives. Strictly protected areas include national parks, biological reserves, ecological stations, natural monuments, and wildlife refuges protected for educational and recreational purposes and scientific research. Protected areas of sustainable use (national forests, environmental protection areas, areas of relevant ecological interest, extractive reserves, fauna reserves, sustainable development reserves, and private natural heritage reserves) allow for different types and levels of human use with conservation of biodiversity as a secondary objective. As of 2005, Federal and State governments strictly protected 478 areas totaling 37,019,697 ha (14,981,340 ac) in Brazil (Rylands and Brandon 2005, pp. 615–616). Other types of areas contribute to the Brazilian Protected Areas System, including indigenous reserves and areas managed and owned by municipal governments, nongovernmental organizations, academic institutions, and private sectors (Rylands and Brandon 2005, p. 616).

The Amazon contains a balance of strictly prohibited protected areas (49

percent of protected areas) and sustainable use areas (51 percent) (Rylands and Brandon 2005, p. 616). We found no information on the occurrence of the hyacinth macaw in any protected areas in Pará. The Cerrado biome is one of the most threatened biomes and is underrepresented among Brazilian protected areas; only 2.25 percent of the original extent of the Cerrado is protected (Marini *et al.* 2009, p. 1559; Klink and Machado 2005, p. 709; Siqueira and Peterson 2003, p. 11). Within the Cerrado, the hyacinth macaw is found within the Araguaia National Park in Goiás and the Parnaíba River Headwaters National Park (BLI 2014b; Ridgely 1981, p. 238). In 2000, the Pantanal was designated as a Biosphere Reserve by the United Nations Educational, Scientific and Cultural Organization (UNESCO) (Santos Jr. 2008, p. 134). Only 4.5 percent of the Pantanal is categorized as protected areas (Harris *et al.* 2006, pp. 166–167), including strictly protected areas and indigenous areas (Klink and Machado 2005, p. 709). Within these, the hyacinth macaw occurs only within the Pantanal National Park (Collar *et al* 1992; Ridgely 1981, p. 238). The distribution of Federal and State protected areas are uneven across biomes, yet all biomes need substantially more area to be protected to meet the recommendations established in priority-setting workshops held by Brazil's Ministry of the Environment. These workshops identified 900 areas for conservation of biodiversity and all biomes, including the Amazon, Cerrado, and Pantanal (Rylands and Brandon 2005, pp. 615–616).

The Ministry of Environment is working to increase the amount of protected areas in the Pantanal and Cerrado regions; however, the Ministry of Agriculture is looking at using an additional 1 million km^2 (386,102 mi^2) for agricultural expansion, which will speed up deforestation (Harris *et al.* 2006, p. 175). These competing priorities make it difficult to enact and enforce regulations that protect the habitat of this species. Additionally, after the creation of protected areas, a delay in implementation or a lack of local management commitment often occurs, staff limitations make it difficult to monitor actions, and a lack of acceptance by society or a lack of funding make administration and management of the area difficult (Santos Jr. 2008, p. 135; Harris *et al.* 2006, p. 175). Furthermore, ambiguity in land titles allows illegal occupation and clearing of forests in protected areas, such as federal forest reserves (Schiffman 2015, unpaginated). The designation of the Pantanal as a Biosphere Reserve is almost entirely without merit because of a lack of commitment by public officials (Santos Jr. 2008, p. 134).

Awareness of the urgency in protecting the biodiversity of the Cerrado biome is increasing (Klink and Machado 2005, p. 710). The Brazilian Ministry of the Environment's National Biodiversity Program and other government-financed institutes, such as the Brazilian Environmental Institute, Center for Agriculture Research in the Cerrado, and the National Center for Genetic Resources and Biotechnology, are working together to safeguard the existence and viability of the Cerrado. Additionally, nongovernmental organizations such as Fundaço Pró-Natureza, Instituto Sociedade População e Natureza, and World Wildlife Fund have provided valuable assessments and are pioneering work in establishing extractive reserves (Ratter *et al.* 1997, pp. 228–229). Other organizations are working to increase the area of federal Conservation Units, a type of protected area, that currently represent only 1.5 percent of the biome (Ratter *et al.* 1997, p. 229).

The Brazilian government, under its Action Plan for the Prevention and Control of Deforestation and Burning in the Cerrado—Conservation and Development (PPCerrado) (2010), committed to recuperating at least 8 million ha (20 million ac) of degraded pasture by the year 2020, reducing deforestation by 40 percent in relation to the average recorded between 1999 and 2008, decreasing forest fires, expanding sustainable practices, and monitoring remaining natural vegetation. It also planned to expand the areas under protection in the Cerrado to 2.1 million ha (5 million ac) (Ribeiro *et al.* 2012, p. 11; WWF–UK 2011b, p. 4). This plan is based off the success of the Plan of Action for Prevention and Control of Deforestation in the Legal Amazon (PPCDAm), which has reduced the deforestation rate by approximately 80 percent in relation to the 2004 rate (Department of Policies to Combat Deforestation 2016, p. 6).

Both plans since their inception have achieved important results. The PPCDAm started in 2004 and PPCerrado in 2010. Results achieved for the PPCDAm include, but are not limited to: 50 million ha (124 million ac) of protected areas; sustainable agriculture—low carbon agriculture; improvements of the monitoring systems; strengthening inspection with integrated actions between IBAMA, Federal Police, Army and National Force of Public Security; and a moratorium of soybean production in illegally deforested areas in the Amazon (Department of Policies to Combat Deforestation 2016, pp. 11–12). Results achieved by the PPCerrado include: Development (in progress) of land-cover monitoring systems to guide the preparation of public policies and support enforcement actions for this biome; development of a rural environmental registry; integrated fire management in conservation units; development of monitoring systems for burned areas and deforestation; sustainable agriculture—low carbon agriculture; environmental inspection, with 20,000 embargoed areas and $75 million of fines, including 287 inspection operations in protected areas, indigenous lands, highways, and steel industries; and training of 2,400 families for forest and community management (Department of Policies to Combat Deforestation 2016, pp. 8–9). Moreover, the plan has influenced and guides a series of public policies, programs, and projects implemented in the Cerrado, including international cooperation projects in line with the objectives of the PPCerrado. In 2015, the third phase of the PPCDAm (2012–2015) and the second phase of the PPCerrado (2014–2015) was completed. The next phase of the PPCerrado will guide federal actions in the period 2016–2020, with the main indicator as the annual deforestation rate in the Cerrado biome (Department of Policies to Combat Deforestation 2016, p. 16).

We do not have information on the deforestation rate in the Cerrado biome in relation to the implementation of the PPCerrado. However, Brazil has obtained significant reduction of the deforestation rate after 12 years of the PPCDAm and 6 years of PPCerrado, with most of the reduction occurring within the Amazon basin. Challenges persist, along with the need for strengthened and innovative actions (Department of Policies to Combat Deforestation 2016, p. 7).

Many challenges limit the effectiveness of the protected areas system. Brazil is faced with competing priorities of encouraging development for economic growth and resource protection. In the past, the Brazilian government, through various regulations, policies, incentives, and subsidies, has actively encouraged settlement of previously undeveloped lands, which facilitated the large-scale habitat conversions for agriculture and cattle-ranching that occurred throughout the Amazon, Cerrado, and Pantanal biomes (WWF–UK 2011b, p. 2; WWF

2001, unpaginated; Arima and Uhl, 1997, p. 446; Ratter *et al.* 1997, pp. 227–228). The risk of intense wild fires may increase in areas, such as protected areas, where cattle are removed and the resulting accumulation of plant biomass serves as fuel (Santos Jr. 2013, pers. comm.; Tomas *et al.* 2011, p. 579).

The states where the hyacinth macaw occurs contain 53 protected areas (Parks.it, n.d., unpaginated). However, the species occurs in only three National Parks within those protected areas; none of these areas is effectively protected (BLI 2014b, unpaginated; Collar *et al.* 1992, p. 257; Rogers 2006, unpaginated; Ridgely 1981, p. 238). The hyacinth macaw continues to be hunted in Pará and the Gerais region, and habitat loss due to agricultural expansion and cattle ranching is occurring in all three regions. Therefore, it appears that Brazil's protected areas system does not adequately protect the hyacinth macaw or its habitat, either because the species is found outside the protected areas or not adequately protected within them.

Farmland Environmental Registry: The Ministry of Environment and The Nature Conservancy have worked together to implement the Farmland Environmental Registry to curb illegal deforestation in the Amazon, which in turn would reduce impacts to species such as the hyacinth macaw that are negatively affected by deforestation. This program was launched in the states of Mato Grosso and Pará; it later became the model for the Rural Environmental Registry that monitors all of Brazil for compliance with the Forest Code (see discussion below). This plan helped Paragominas, a municipality in Pará, be the first in Brazil to come off the government's blacklist of top Amazon deforesters. After 1 year, 92 percent of rural properties in Paragominas had been entered into the registry, and deforestation was cut by 90 percent (Dias and Ramos 2012, unpaginated; Vale 2010, unpaginated). In response to this success, Pará launched its Green Municipalities Program in 2011. The purpose of this project is to reduce deforestation in Pará by 80 percent by 2020, and strengthen sustainable rural production. To accomplish this goal, the program seeks to create partnerships between local communities, municipalities, private initiatives, IBAMA, and the Federal Public Prosecution Service and to focus on local pacts, deforestation monitoring, implementation of the Rural Environmental Registry, and structuring municipal management (Veríssimo *et al.* 2013, pp. 3, 6, 12–13). The program aims to show how it is possible to develop a new model for an activity identified as a major cause of deforestation (Dias and Ramos 2012, unpaginated; Vale 2010, unpaginated).

Forest Code: Brazil's Forest Code, passed in 1965, is a central component of the nation's environmental legislation; it dictates the minimum percentage and type of woodland that farmers, timber companies, and others must leave intact on their properties (Barrionuevo 2012, unpaginated; Boadle 2012, unpaginated). Since 2001, the Forest Code has required landowners to conserve native vegetation on their rural properties. This requirement includes setting aside a Legal Reserve that comprises 80 percent of the property if it is located in the Amazon and 20 percent in other biomes. The Forest Code also designated environmentally sensitive areas as Areas of Permanent Preservation (APPs) to conserve water resources and prevent soil erosion; APPs include Riparian Preservation Areas to protect riverside forest buffers and Hilltop Preservation Areas to protect hilltops, high elevations, and steep slopes (Soares-Filho *et al.* 2014, p. 363).

For years, this law was widely ignored by landowners and not enforced by the government, as evidenced by the high deforestation rates (Leahy 2011, unpaginated; Pearce 2011, unpaginated; Ratter *et al.* 1997, p. 228). However, as deforestation rates increased in the early 2000s, Brazil began cracking down on illegal deforesters and used satellite imagery to track deforestation, resulting in decreased deforestation rates (Soares-Filho *et al.* 2014, p. 363; Barrionuevo 2012, unpaginated; Boadle 2012, unpaginated; Darlington 2012, unpaginated). Efforts to strengthen enforcement of the Forest Code increased pressure on the farming sector, which resulted in a backlash against the Forest Code and industry's proposal of a new Forest Code (Soares-Filho *et al.* 2014, p. 363).

In 2011, reforms to Brazil's Forest Code were debated in the Brazilian Senate. The reforms were favored by the agricultural industry but were greatly opposed by conservationists. At that time, the expectation of the bill being passed resulted in a spike in deforestation (Darlington 2012, unpaginated; Moukaddem 2011, unpaginated; WWF–UK 2011a, unpaginated). A new Forest Code was passed in 2012, and although the new reforms were an attempt at a compromise between farmers and environmentalists, many claim the new bill reduces the total amount of land required to be maintained as forest and will increase deforestation, especially in the Cerrado (Soares-Filho *et al.* 2014, p. 364; Boadle 2012, unpaginated; Darlington 2012, unpaginated; Do Valle 2012, unpaginated; Greenpeace 2012, unpaginated).

Stakeholders in favor of stronger conservation opposed the new law due to the complexity of the rule, challenges in implementation, and a lack of adequate protection of Brazil's forests. The new Forest Code carries over conservation requirements for Legal Reserves and Riparian Preservation Areas. However, changes in the definition of Hilltop Preservation Areas reduced their total area by 87 percent. Additionally, due to more flexible protections and differentiation between conservation and restoration requirements, Brazil's environmental debt (areas of Legal Reserve and Riparian Preservation Areas deforested illegally before 2008 that, under the previous Forest Code, would have required restoration at the landowner's expense) was reduced by 58 percent (Soares-Filho *et al.* 2014, p. 363). The legal reserve debt was forgiven for ''small properties,'' which ranged from 20 ha (49 ac) in southern Brazil to 440 ha (1,087 ac) in the Amazon; this provision has resulted in approximately 90 percent of Brazilian rural properties qualifying for amnesty from the restoration requirement.

Further reductions in the environmental debt resulted from: (1) Reducing the Legal Reserve restoration requirement from 80 percent to 50 percent in Amazonian municipalities that are predominately occupied by protected areas; (2) including Riparian Preservation Areas in the calculation of the Legal Reserve area (total area they are required to preserve); and (3) relaxing Riparian Preservation Area restoration requirements on small properties. These new provisions effectively reduced the total amount of land farmers are required to preserve and municipalities and landowners are required to restore. Reductions were uneven across states and biomes, with the Amazon and Cerrado biomes being two of the three biomes most affected and vulnerable to deforestation.

Altogether, provisions of the new Forest Code have reduced the total area to be restored from approximately 50 million ha (124 million ac) to approximately 21 million ha (52 million ac) (Soares-Filho *et al.* 2014, p. 363; Boadle 2012, unpaginated). Furthermore, the old and new Forest Codes allow legal deforestation of an additional 88 million ha (217 million ac) on private properties deemed to constitute an ''environmental surplus,'' which are areas that are not conserved

by the Legal Reserve and Riparian Preservation Area conservation requirements. The Cerrado alone contains approximately 40 million ha (99 million ac) of habitat designated as environmental surplus that could be legally deforested (Soares-Filho *et al.* 2014, p. 364).

Although the Forest Code reduces restoration and preservation requirements, which in turn increases the threat to the hyacinth macaw, it introduces new mechanisms to address fire management, forest carbon, and payments for ecosystem services, which could reduce deforestation and result in environmental benefits to the hyacinth macaw. The most important mechanism may be the Environmental Reserve Quota (ERQ). The ERQ is a tradable legal title to areas with intact or regenerating native vegetation exceeding the Forest Code requirements. It provides the opportunity for landowners who, as of July 2008, did not meet the area-based conservation requirements of the law, to instead ''compensate'' for their legal reserve shortages by purchasing surplus compliance obligations from properties that would then maintain native vegetation in excess of the minimum legal reserve requirements. This mechanism could provide forested lands with monetary value, creating a trading market. The ERQ could potentially reduce 56 percent of the Legal Reserve debt (Soares-Filho *et al.* 2014, p. 364).

The new Forest Code requires landowners to take part in a mapping and registration system for rural properties that serves as a means for landowners to report their compliance with the code in order to remain eligible for state credit and other government support. On May 6, 2014, the Ministry for the Environment published a regulation formally implementing the mapping system and requiring all rural properties be enrolled by May 2015. However, on May 5, 2015, the deadline was extended to May 4, 2016. According to information provided by the Ministry for the Environment, at that time 1,407,206 rural properties had been registered since the new code became effective. This number covers an area of 196,767,410 ha (486,222,859 ac) and represents 52 percent of all rural areas in Brazil for which registration is mandatory (Filho *et al.* 2015, unpaginated). This system could facilitate the market for ERQs and payments for ecosystem services.

It is unclear whether the Brazilian Government will be able to effectively enforce the new law (Barrionuevo 2012, unpaginated; Boadle 2012, unpaginated; Greenpeace 2012, unpaginated). The original code was largely ignored by landowners and not enforced, leading to Brazil's high rates of deforestation (Boadle 2012, unpaginated). Although Brazil's deforestation rates declined between 2005 and 2010, 2011 marked the beginning of an increase in rates due to the expectation of the new Forest Code being passed. Another slight increase occurred in 2013, then doubled over 6 months (Schiffman 2015, unpaginated). Corruption in the government, land fraud, and lack of penalties for infractions have contributed to increases in illegal deforestation (Schiffman 2015, unpaginated). Additionally, amnesty afforded by the new Forest Code has led to the perception that illegal deforesters are unlikely to be prosecuted or could be exonerated in future law reforms (Schiffman 2015, unpaginated; Soares-Filho *et al.* 2014, p. 364). Enforcement is often nonexistent in Brazil as IBAMA is underfunded and understaffed. Only 1 percent of the fines imposed on individuals and corporations for illegal deforestation is actually collected (Schiffman 2015, unpaginated). In Pará, one of two states where most of the clearing is occurring, 78 percent of logging between August 2011 and July 2012 was illegal (Schiffman 2015, unpaginated). Furthermore, while much logging is being conducted illegally, there is concern that even if regulations are strictly adhered to, the development is not sustainable (Schiffman 2015, unpaginated). Some level of deforestation is highly likely to continue and will continue to compromise the status of the species.

Additional Regulatory Mechanisms: To protect the main breeding habitat of the hyacinth macaw, Mato Grosso State Senate passed State Act 8.317 in 2005, which prohibits the cutting of manduvi trees, but not others. Although this law protects nesting trees, other trees around nesting trees are cut, exposing the manduvi tree to winds and storms. Manduvi trees end up falling or breaking, rendering them useless for the hyacinth macaws to nest in (Santos Jr. 2008, p. 135; Santos Jr. *et al.* 2006, p. 186).

International Laws

The hyacinth macaw is protected under CITES, an international agreement between governments to ensure that the international trade of CITES-listed plant and animal species does not threaten species' survival in the wild. Under this treaty, CITES Parties (member countries or signatories) regulate the import, export, and re-export of specimens, parts, and products of CITES-listed plant and animal species. Trade must be authorized through a system of permits and certificates that are provided by the designated CITES Management Authority of each CITES Party. Brazil, Bolivia, and Paraguay are Parties to CITES.

The hyacinth macaw was listed in Appendix I of CITES on October 22, 1987. An Appendix-I listing includes species threatened with extinction whose trade is permitted only under exceptional circumstances, which generally precludes commercial trade. The import of an Appendix-I species generally requires the issuance of both an import and export permit. Import permits for Appendix-I species are issued only if findings are made that the import would be for purposes that are not detrimental to the survival of the species and that the specimen will not be used for primarily commercial purposes (CITES Article III(3)). Export permits for Appendix-I species are issued only if findings are made that the specimen was legally acquired and trade is not detrimental to the survival of the species, and if the issuing authority is satisfied that an import permit has been granted for the specimen (CITES Article III(2)).

The import of hyacinth macaws into the United States is also regulated by the Wild Bird Conservation Act (WBCA), which was enacted on October 23, 1992. The purpose of the WBCA is to promote the conservation of exotic birds by ensuring that all imports of exotic birds to the United States are biologically sustainable and not detrimental to the species in the wild. The WBCA generally restricts the importation of most CITES-listed live or dead exotic birds. Import of dead specimens is allowed for scientific purposes and museum specimens. Permits may be issued to allow import of listed birds for various purposes, such as scientific research, zoological breeding or display, or personal pets, when certain criteria are met. The Service may approve cooperative breeding programs and subsequently issue import permits under such programs. Wild-caught birds may be imported into the United States if certain standards are met and they are subject to a management plan that provides for sustainable use. At this time, the hyacinth macaw is not part of a Service-approved cooperative breeding program, and wild-caught birds have not been approved for importation.

The Lacey Act was originally passed in 1900, and was the first Federal law protecting wildlife. Today, it provides

civil and criminal penalties for the illegal trade of animals and plants. Under the Lacey Act, in part, it is unlawful to import, export, transport, sell, receive, acquire, or purchase any fish, or wildlife taken, possessed, transported, or sold: (1) In violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law; or (2) in interstate or foreign commerce, any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law. Therefore, for example, because the take of wild-caught hyacinth macaws would be in violation of Brazil's Environmental Crimes Law (9605/98), the subsequent import of hyacinth macaws into the United States would be in violation of the Lacey Act. Similarly, under the Lacey Act it is unlawful to import, export, transport, sell, receive, acquire, or purchase specimens of these species traded contrary to CITES.

Although illegal trapping for the pet trade occurred at high levels during the 1980s, trade has decreased significantly from those levels. International trade of parrots was significantly reduced during the 1990s as a result of tighter enforcement of CITES regulations, stricter measures under European Union legislation, and adoption of the WBCA, along with adoption of national legislation in various countries (Snyder et al. 2000, p. 99). We found no information indicating trade is currently impacting the hyacinth macaw population.

Habitat loss for the hyacinth macaw continues despite regulatory mechanisms intended to protect Brazil's forests. The lack of supervision and resources prevent these laws from being properly implemented (Guedes 2012, p. 3), as evidenced by ongoing deforestation in the Amazon, Cerrado, and Pantanal. As described above, the hyacinth macaw's food and nesting trees are removed for agriculture and cattle ranching, and fire is used to clear land and maintain pastures. Therefore, without greater enforcement of laws, deforestation will continue to impact the hyacinth macaw and its food and nesting resources.

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

Climate Change

Changes in Brazil's climate and associated changes to the landscape may result in additional habitat loss for the hyacinth macaw. Across Brazil, temperatures are projected to increase and precipitation to decrease (Carabine and Lemma 2014, p. 11; Siqueira and Peterson 2003, p. 2). The latest Intergovernmental Panel on Climate Change assessment estimates temperature changes in South America by 2100 to range from 1.7 to 6.7 degrees Celsius (°C) (3.06 to 12.06 degrees Fahrenheit (°F)) under medium and high emission scenarios and 1 to 1.5 °C (1.8 to 2.7 °F) under a low emissions scenario (Magrin *et al.* 2014, p. 1502; Carabine and Lemma 2014, p. 10). Projected changes in rainfall in South America vary by region. Reductions are estimated for northeast Brazil and the Amazon (Magrin *et al.* 2014, p. 1502; Carabine and Lemma 2014, pp. 10–11). At a national level, climate change may induce significant reductions in forestland in all Brazilian regions (Féres *et al.* 2009, pp. 12, 15).

Temperature increases in Brazil are expected to be greatest over the Amazon rainforest, where Pará is located, with models indicating a strong warming and drying of this region during the 21st century, particularly after 2040 (Marengo *et al.* 2011, pp. 8, 15, 27, 39, 48; Féres *et al.* 2009, p. 2). Estimates of temperature changes in Amazonia are 2.2 °C (4 °F) under a low greenhouse gas emission scenario and 4.5 °C (8 °F) under a high-emission scenario by the end of the 21st century (2090–2099) (Marengo *et al.* 2011, p. 27). Several models indicate Amazonia is at a high risk of forest loss and more frequent wildfires (Magrin *et al.* 2007, p. 596). Some leading global circulation models suggest extreme weather events, such as droughts, will increase in frequency or severity due to global warming. As a result, droughts in Amazonian forests could become more severe in the future (Marengo *et al.* 2011, p. 48; Laurance *et al.* 2001, p. 782). For example, the 2005 drought in Amazonia was a 1-in-20-year event; however, those conditions may become a 1-in-2-year event by 2025, and a 9-in-10-year event by 2060 (Marengo *et al.* 2011, p. 28). Impacts of deforestation are greater under drought conditions as fires set for forest clearances burn larger areas (Marengo *et al.* 2011, p. 16). Additionally, drought increases the vulnerability of seasonal forests of the Amazon, such as those found in eastern Amazonia, to wildfires during droughts (Laurance *et al.* 2001, p. 782).

Previous work has indicated that, under increasing temperature and decreasing rainfall conditions, the rainforest of the Amazon could be replaced with different vegetation. Some models have predicted a change from forests to savanna-type vegetation over parts of, or perhaps the entire, Amazon in the next several decades (Magrin *et al.* 2014, p. 1523; Marengo *et al.* 2011, pp. 11, 18, 29, 43; Magrin *et al.* 2007, pp. 583, 596). In the regions where the hyacinth macaw occurs, the climate features a dry season, which prevents the growth of an extensive closed-canopy tropical forest. Therefore, the transition of the Amazon rainforests could provide additional suitable habitat for the hyacinth macaw. However, we do not know how the specific food and nesting resources the hyacinth macaw uses will be impacted if there is an increase in the dry season. Furthermore, there are uncertainties in this modeling, and the projections are not definitive outcomes. In fact, some models indicate that conditions are likely to get wetter in Amazonia in the future (Marengo *et al.* 2011, pp. 28–29). These uncertainties make it challenging to predict the likely effects of continued climate change on the hyacinth macaw.

Temperatures in the Cerrado, which covers the Gerais region, are also predicted to increase; the maximum temperature in the hottest month may increase by 4 °C (7.2 °F) and by 2100 may increase to approximately 40 °C (104 °F) (Marini *et al.* 2009, p. 1563). Along with changes in temperature, other models have predicted a decrease in tree diversity and range sizes for birds in the Cerrado.

Projections based on a 30-year average (2040–2069) indicate serious effects to Cerrado tree diversity in coming decades (Marini *et al.* 2009, p. 1559; Siqueira and Peterson 2003, p. 4). In a study of 162 broad-range tree species, the potential distributional area of most trees was projected to decline by more than 50 percent. Using two climate change scenarios, 18–56 species were predicted to go extinct in the Cerrado, while 91–123 species were predicted to decline by more than 90 percent in the potential distributional area (Siqueira and Peterson 2003, p. 4).

Of the potential impacts of predicted climate-driven changes on bird distribution, extreme temperatures seemed to be the most important factor limiting distribution, revealing their physiological tolerances (Marini *et al.* 2009, p. 1563). In a study on changes in range sizes for 26 broad-range birds in the Cerrado, range sizes are expected to decrease over time, and significantly so as soon as 2030 (Marini *et al.* 2009, p. 1564). Changes ranged from a 5-percent increase to an 80-percent decrease under two dispersal scenarios for 2011–2030, 2046–2065, and 2080–2099 (Marini *et al.* 2009, p. 1561). The largest potential loss in range size is predicted to occur among grassland and forest-dependent species in all timeframes (Marini *et al.* 2009, p. 1564). These

species will likely have the most dire future conservation scenarios because these habitat types are the least common (Marini *et al.* 2009, p. 1559). Although this study focused on broad-range bird species, geographically restricted birds, such as hyacinth macaw, are predicted to become rarer (Marini *et al.* 2009, p. 1564).

Whether species will or will not adapt to new conditions is difficult to predict; synergistic effects of climate change and habitat fragmentation, or other factors, such as biotic interactions, may hasten the need for conservation even more (Marini *et al.* 2009, p. 1565). Although there are uncertainties in the climate-change modeling discussed above, the overall trajectory is one of increased warming under all scenarios. Species like the hyacinth macaw, whose habitat is limited, population is reduced, are large in physical size, and are highly specialized are more vulnerable to climatic variations and at a greater risk of extinction (Guedes 2009, p. 44).

We do not know how the habitat of the hyacinth macaw may change under these conditions, but we can assume some change will occur. The hyacinth macaw is experiencing habitat loss due to widespread expansion of agriculture and cattle ranching. Climate change has the potential to further decrease the specialized habitat needed by the hyacinth macaw; the ability of the hyacinth macaw to cope with landscape changes due to climate change is questionable given the specialized needs of the species. Furthermore, one of the factors that affected reproductive rates of hyacinth macaws in the Pantanal was variations in temperature and rainfall (Guedes 2009, p. 42). Hotter, drier years, as predicted under different climate change scenarios, could result in greater impacts to hyacinth macaw reproduction due to impacts on palm fruit and thereby foraging success, and could increase competition with other bird and mammal species for limited resources.

Low Reproductive Rates and Competition

The specialized nature and reproductive biology of the hyacinth macaw contribute to low recruitment of juveniles and decrease the ability to recover from reductions in population size caused by anthropogenic disturbances (Faria *et al.* 2008, p. 766; Wright *et al.* 2001, p. 711). This species' vulnerability to extinction is further heightened by deforestation that negatively affects the availability of essential food and nesting resources. In addition to direct impacts on food and nesting resources and hyacinth macaws themselves, several other factors affect the reproductive success of the hyacinth macaw. In the Pantanal, competition, predation, disease, destruction or flooding of nests, and climatic conditions and variations are factors affecting reproductive success of the hyacinth macaw (Guedes 2009, pp. 5, 8, 42; Guedes 2004b, p. 7).

In the Pantanal, competition for nesting sites is intense. The hyacinth macaw nests almost exclusively in manduvi trees; however, 17 other bird species, small mammals, and honey bees (*Apis mellifera*) also use manduvi cavities (Guedes and Vicente 2012, pp. 148, 157; Guedes 2009, p. 60; Pizo *et al* 2008, p. 792; Pinho and Nogueira 2003, p. 36). Bees are even known to occupy artificial nests that could be used by hyacinth macaws (Pinho and Nogueira 2003, p. 33; Snyder *et al.* 2000, p. 120). Manduvi is a key species for the hyacinth macaw; these cavities are already limited and there is evidence of decreased recruitment of this species of tree (Santos Jr. *et al.* 2006, p. 181). Competition for nesting cavities is exacerbated because manduvi trees must be at least 60 years old, and on average 80 years old, to produce cavities large enough to be used by the hyacinth macaw (Guedes 2009, pp. 59–60; Pizo *et al.* 2008, p. 792; Santos Jr. *et al.* 2006, p. 185). Given that there is currently a limited number of manduvi trees in the Pantanal of adequate size capable of accommodating the hyacinth macaw, evidence of reduced recruitment of these sized manduvi, and numerous species that also use this tree, competition will certainly increase as the number of manduvi decreases, further affecting reproduction by limiting tree cavities available to the hyacinth macaw for nesting (Guedes 2009, p. 60). Furthermore, a shortage of suitable nesting sites could lead to increased competition resulting in an increase in infanticide and egg destruction by other hyacinth macaws and other macaw species (Lee 2010, p. 2). Black vultures (*Coragyps atratus*), collared forest falcons, and red-and-green macaws (*Ara chloropterus*) break hyacinth macaw eggs when seeking nesting cavities (Guedes 2009, p. 75).

A 10-year study conducted in the Miranda region of the Pantanal concluded that the majority of hyacinth macaw nests (63 percent) failed, either partially or totally, during the egg phase. While predation accounted for 52 percent of lost eggs during incubation (see Factor C discussion, above), the remaining eggs lost during the 10-year study of the Miranda region did not hatch due to infertility, complications during embryo development, inexperience of young couples that accidentally smash their own eggs while entering and exiting the nest, breaking by other bird and mammal species wanting to occupy the nesting cavity, and broken trees and flooding of nests (Guedes 2009, p. 75). Of the 320 nests that saw eggs hatch and chicks born, 49 percent experienced a total or partial loss of chicks (Guedes 2009, pp. 68). From the chicks that were born, on average 37 percent (n=183) failed before leaving the nest because of mortality or predation (Guedes 2009, pp. 66, 78). Of these chicks that did not survive, 62 percent (n=114) were lost due to starvation, low temperature, disease or infestation by ectoparasites, flooding of nests, and breaking of branches; the other 38 percent (n=69) were lost to predation (Guedes 2009, pp. 79).

Variations in temperature and rainfall may also affect reproduction of the hyacinth macaw in the Pantanal (Guedes 2009, p. 42). Years with higher temperatures and lower rainfall experience decreased production of fruits and foraging, leading to a decrease in reproduction of hyacinth macaws the following year (Guedes 2009, pp. 42–44). This decrease is especially problematic for a species that relies on only two species of palm nuts as a source of food. Competition with other bird and mammal species may also increase during low food years. Acuri are available year round, even during times of fruit scarcity, making it a resource many other species also depend on during unfavorable periods (Guedes 2009, p. 44). Additionally, the El Niño event during the 1997–98 breeding season caused hotter, wetter conditions favoring breeding pairs, but survival of the chicks was reduced. In 1999, a longer breeding period was observed following drier, colder conditions caused by the La Niña that same year; however, 54 percent of the eggs were lost that year (Guedes 2009, p. 43).

Conservation Measures

A network of nongovernmental organizations, Rede Cerrado, has been established to promote local sustainable-use practices for natural resources (Klink and Machado 2005, p. 710). Rede Cerrado provided the Brazilian Ministry of the Environment recommendations for urgent actions for the conservation of the Cerrado. As a result, a conservation program was established to integrate actions for conservation in regions where agropastoral activities, which is agriculture practice of growing crops and raising livestock, were especially intense and damaging (Klink and

Machado 2005, p. 710). Conservation International, The Nature Conservancy, and World Wildlife Fund have worked to promote alternative economic activities, such as ecotourism, sustainable use of fauna and flora, and medicinal plants, to support the livelihoods of local communities (Klink and Machado 2005, p. 710). Although these programs demonstrate awareness of the need for protection and efforts in protecting the Cerrado, we have no details on the specific work or accomplishments of these programs, or how they would affect, or have affected, the hyacinth macaw and its habitat.

In 1990, the Hyacinth Macaw Project (Projecto Arara Azul) began with support from the University for the Development of the State (Mato Grosso do Sul) and the Pantanal Region (Brouwer 2004, unpaginated; Guedes 2004b, p. 28; Pittman 1999, p. 39). This program works with local landowners, communities, and tourists to monitor the hyacinth macaw, study the biology of this species, manage the population, and promote its conservation and ensure its protection in the Pantanal (Santos Jr. 2008, p. 135; Harris *et al.* 2005, p. 719; Brouwer 2004, unpaginated; Guedes 2004a, p. 281). Studies have addressed feeding, reproduction, competition, habitat survival, chick mortality, behavior, nests, predation, movement, and threats contributing to the reduction in the wild population (Guedes 2009, p. xiii; Guedes 2004a, p. 281). Because there are not enough natural nesting sites in this region, the Hyacinth Macaw Project began installing artificial nest boxes; more than 180 have been installed. Hyacinth macaws have adapted to using the artificial nests, leading to more reproducing couples and successful fledging of chicks. Species that would otherwise compete with hyacinth macaws for nesting sites have also benefitted from the artificial nests as a result of reduced competition for natural nesting sites. Hyacinth macaws reuse the same nest for many years; eventually the nests start to decay or become unviable. The Hyacinth Macaw Project also repairs these nests (natural and artificial) so they are not lost. In areas where suitable cavities are scarce, the loss of even one nest could have substantial impacts on the population. Additionally, wood boards are used to make cavity openings too small for predators, while still allowing hyacinth macaws to enter (Brouwer 2004, unpaginated; Guedes 2004a, p. 281; Guedes 2004b, p. 8).

In nests with a history of unsuccessful breeding, the Hyacinth Macaw Project has also implemented chick management, with the approval of the Committee for Hyacinth Macaw Conservation coordinated by IBAMA. Hyacinth macaw eggs are replaced with chicken eggs, and the hyacinth eggs are incubated in a field laboratory. After hatching, chicks are fed for a few days, and then reintroduced to the original nest or to another nest with a chick of the same age. This process began to increase the number of chicks that survived and fledged each year (Brouwer 2004, unpaginated; Guedes 2004a, p. 281; Guedes 2004b, p. 9).

Awareness has also been raised with local cattle ranchers. Attitudes have begun to shift, and ranchers are proud of having macaw nests on the property. Local inhabitants also served as project collaborators (Guedes 2004a, p. 282; Guedes 2004b, p. 10). This shift in attitude has also diminished the threat of illegal trade in the Hyacinth Macaw Project area (Brouwer 2004, unpaginated).

The Hyacinth Macaw Project has contributed to the increase of the hyacinth population in the Pantanal since the 1990s (Harris *et al.* 2005, p. 719). Nest and chick management implemented by the Hyacinth Macaw Project has led to an increase in the Pantanal population; for every 100 couples that reproduce, 4 juveniles survive and are added to the population. Additionally, hyacinth macaws have expanded to areas where the species previously disappeared, as well as new areas (Guedes 2012, p. 1; Guedes 2009, pp. 4–5, 8, 35–36, 39, 82).

Nest boxes can have a marked effect on breeding numbers of many species on a local scale (Newton 1994, p. 274), and having local cattle ranchers appreciate the presence of the hyacinth macaw on their land helps diminish the effects of habitat destruction and illegal trade. However, the Hyacinth Macaw Project area does not encompass the entire Pantanal region. Active management has contributed to the increase in the hyacinth population, and farmers have begun to protect hyacinth macaws on their property, but land conversion for cattle ranching continues to occur in the Pantanal. If cattle grazing and trampling of manduvi saplings, as well as the burning of pastures for maintenance continues, the hyacinth's preferred natural cavities will be severely limited and the species will completely rely on the installation of artificial nest boxes, which is currently limited to the Hyacinth Macaw Project area. Furthermore, survival of hyacinth macaw eggs and chicks are being impacted by predation, competition, climate variations, and other natural factors. Even with the assistance of the Hyacinth Macaw Project, only 35 percent of eggs survive to the juvenile stage.

Finding

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. As required by the Act, we conducted a review of the status of the species and considered the five factors in assessing whether the hyacinth macaw is in danger of extinction throughout all or a significant portion of its range (endangered) or likely to become endangered within the foreseeable future throughout all or a significant portion of its range (threatened). We examined the best scientific and commercial information available regarding factors affecting the status of the hyacinth macaw. We reviewed the petition, information available in our files, information provided by peer review and public comments, and other available published and unpublished information.

In considering what factors may constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to the factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine if it may drive or contribute to the risk of extinction of the species such that the species warrants listing as an endangered or threatened species as those terms are defined by the Act.

Across its range, the hyacinth macaw is losing habitat, including those essential food and nesting resources, to expanding agriculture and cattle ranching. Pará has long been the epicenter of illegal deforestation primarily caused by cattle ranching. Large-scale forest conversion for colonization and cattle ranching due to state subsidies, infrastructure development, favorable climate in Pará, lower prices for land, and expansion of soy cultivation in other areas has led to displacement of pastures into parts of Pará. Although deforestation rates decreased between 2005 and 2012, Amazon deforestation rates increased in 2013, 2015, and 2016 (see Table 1, above).

In the Gerais region, more than 50 percent of the original Cerrado vegetation has been lost due to conversion to agriculture and pasture. Although annual deforestation rates have decreased, the amount of remaining hyacinth macaw habitat continues its slow and steady decrease. Remaining Cerrado vegetation continues to be lost to conversion for soy plantations and extensive cattle ranching. Projections for coming decades show the largest increase in agricultural production occurring in the Cerrado.

The greatest cause of habitat loss in the Pantanal is the expansion of cattle ranching. Only 6 percent of the Pantanal landscape is cordilleras, higher areas where the manduvi occur. These upland forests, including potential nesting trees, are often removed and converted to pastures for grazing during the flooding season; however, palm species used by hyacinth macaws for food are usually left because cattle also feed on the palm nuts. Fire is a common method for renewing pastures, controlling weeds, and controlling pests in the Pantanal, although uncontrolled fires are known to impact patches of manduvi. Fires can help in the formation of cavities, but too frequent fires can prevent trees from surviving to a size capable of providing suitable cavities and can cause a high rate of tree loss. Five percent of manduvi trees are lost each year due to deforestation, fires, and storms.

In addition to the direct removal of trees and the impact of fire on forest establishment, cattle impact forest recruitment. Intense livestock activity can affect seedling recruitment via trampling and grazing. Cattle also compact the soil such that regeneration of forest species is severely reduced. This type of repeated disturbance can lead to an ecosystem dominated by invasive trees, grasses, bamboo, and ferns. Manduvi, which contain the majority of hyacinth macaw nests, are already limited in the Pantanal; only 5 percent of the existing adult manduvi trees in south-central Pantanal and 11 percent in the southern Pantanal contain suitable cavities for hyacinth macaws. Evidence of severely reduced recruitment of manduvi trees suggests that this species of tree, of adequate size to accommodate the hyacinth macaw, is not only scarce now but likely to become increasingly scarce in the future.

Deforestation for agriculture and cattle ranching, cattle trampling and foraging, and burning of forest habitat result in the loss of mature trees with natural cavities of sufficient size and a reduction in recruitment of native species that could eventually provide nesting cavities. A shortage of nest sites can jeopardize the persistence of the hyacinth macaw by constraining breeding density, resulting in lower recruitment and a gradual reduction in population size. This situation may lead to long-term effects on the viability of the hyacinth macaw population, especially in Pará and the Pantanal where persistence of nesting trees is compromised. While the Hyacinth Macaw Project provides artificial nest alternatives, such nests are only found within the project area.

Loss of essential tree species also negatively impacts the hyacinth macaw by increasing competition for what is already a shortage of suitable nest sites. In the Pantanal, the hyacinth macaw nests almost exclusively in manduvi trees. The number of manduvi large enough to provide suitable cavities is already limited. Additionally, 17 other bird species, small mammals, and honey bees also use manduvi cavities. Competition has been so fierce that hyacinth macaws were unable to reproduce, and it resulted in an increase in egg destruction and infanticide. As the number of suitable trees is further limited, competition for adequate cavities to accommodate the hyacinth macaw will certainly increase, reducing the potential for hyacinth macaws to reproduce. In the Gerais region, hyacinth macaws mostly nest in rock crevices, most likely a response to the destruction of nesting trees; we do not know if the hyacinth macaws in the Pantanal will respond in the same way to the loss of nesting trees. Although it is possible that hyacinth macaws could use alternative nesting trees in Pará and the Pantanal, deforestation in these regions would impact alternative nesting trees, as well as food sources, resulting in the same negative effect on the hyacinth macaw. Furthermore, competition for limited nesting and food resources would continue.

Deforestation also reduces the availability of food resources. The species' specialized diet makes it vulnerable to changes in food availability. Another *Anodorhynchus* species, the Lear's macaw, is critically endangered due, in part, to the loss of its specialized food source (licuri palm stands). Inadequate nutrition can contribute to poor health and is known to have reduced reproduction in hyacinth macaws. In Pará and the Gerais region, where food sources are being removed, persistence of the species is a concern.

In addition to direct impacts on food and nesting resources and hyacinth macaws themselves, several other factors affect the reproductive success of the hyacinth macaw. Information indicates that hyacinth macaws in Pará and Gerais are hunted as a source of protein and for feathers to be used in local handicrafts. Although we do not have information on the numbers of macaws taken for these purposes, given the small populations in these two regions, any loss of potentially reproducing individuals could have a devastating effect on the ability of those populations to increase. Additionally, in the Pantanal, predation, variations in temperature and rainfall, and ectoparasites all contribute to loss of eggs and chicks, directly affecting the reproductive rate of hyacinth macaws.

Brazil has various laws to protect its natural resources. Despite these laws and plans to significantly reduce deforestation, expanding agriculture and cattle ranching has contributed to increases in deforestation rates in some years, and the total deforested area continues to increase each year. However, Brazil has obtained significant reduction of the deforestation rate after 12 years of the PPCDAm and 6 years of PPCerrado, with most of the reduction occurring within the Amazon basin. Additionally, hunting continues in some parts of the hyacinth macaw's range despite laws prohibiting this activity. Without effective implementation and enforcement of environmental laws, deforestation and hunting will continue to the detriment of hyacinth macaws.

Climate change models have predicted increasing temperatures and decreasing rainfall throughout most of Brazil. There are uncertainties in this modeling, and the projections are not definitive outcomes. How a species may adapt to changing conditions is difficult to predict. We do not know how the habitat of the hyacinth macaw may vary under these conditions, but we can assume some change will occur. The hyacinth macaw is experiencing habitat loss due to widespread expansion of agriculture and cattle ranching. Effects of climate change have the potential to further decrease the specialized habitat needed by the hyacinth macaw; the ability of the hyacinth macaw to cope with landscape changes due to climate change is questionable given the specialized needs of the species. Furthermore, hotter, drier years, as predicted under different climate change scenarios, could result in greater impacts to hyacinth macaw reproduction due to impacts on palm fruit and thereby foraging success, and could increase competition with other

bird and mammal species for limited resources.

Based on the long-term trends of continued loss of habitat and associated loss of essential resources (nest sites and food sources) throughout the hyacinth macaws range, declines in the species remaining habitat and in its population are expected to continue into the foreseeable future. Pará is one of the states where most of Brazil's agriculture expansion is taking place. Modeled future deforestation is concentrated in this area. The Cerrado is the most desirable biome for agribusiness expansion and contains approximately 40 million ha (99 million ac) of ''environmental surplus'' that could be legally deforested; therefore, this region will likely continue to suffer deforestation. Ninety-five percent of the Pantanal is privately owned, 80 percent of which is used for cattle ranches. Clearing land to establish pasture is perceived as the economically optimal land use, while land not producing beef is often perceived as unproductive. Continued loss of remaining habitat will lead to long-term effects on the viability of the hyacinth macaw. Additionally, any factors that contribute to the loss of eggs and chicks ultimately reduce reproduction and recruitment of juveniles into the population and the ability of those populations to recover. Therefore, long-term survival of this species is a concern.

In total, there are approximately 6,500 hyacinth macaws left in the wild, dispersed among three populations. Two of the populations, Pará and Gerais, contain 1,000–1,500 individuals combined; the Pantanal population contains 5,000 individuals. The current overall population trend for the hyacinth macaw is reported as decreasing, although there are no reports of extreme fluctuations in the number of individuals. The hyacinth macaw population has grown in the Pantanal; however, the growth is not sufficient to counter the continued and predicted future anthropogenic disturbances. Hyacinth macaws have a naturally low reproductive rate; not all hyacinth macaw chicks fledge; and due to the long period of chick dependence, hyacinth macaws breed only every 2 years. In the Pantanal population, which is the largest population of hyacinth macaws, only 15–30 percent of adults attempt to breed each year; it may be that as small or an even smaller percentage in Pará and Gerais attempt to breed. This relatively low recruitment of juveniles decreases the ability of a population to recover from reductions caused by anthropogenic disturbances. Thus, hyacinth macaws may not have a high enough reproduction rate and may not survive in areas where nest sites and food sources are destroyed. Because the hyacinth macaw has specialized food and nest site needs, it is at higher risk of extinction from the anthropogenic stressors described above.

Section 3 of the Act defines an ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range,'' and a ''threatened species'' as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' After analyzing the species' status in light of the five factors discussed above, we find the hyacinth macaw is a ''threatened species'' as a result of the following: Continued deforestation and reduced recruitment of forests (Factor A), hunting (Factor B), predation and disease (Factor C), low reproduction rate and competition (Factor E), and effects of climate change (Factor E). Furthermore, despite regulatory mechanisms to protect the hyacinth macaw and the forests it depends on, deforestation and hunting for sustenance continues.

In our 2012 proposed rule (77 FR 39965; July 6, 2012), we found that the hyacinth macaw was in danger of extinction (an endangered species) based on estimates indicating the original vegetation of the Amazon, Cerrado, and Pantanal, including the hyacinth macaw's habitat, would be lost between the years 2030 and 2050 due to deforestation, combined with its naturally low reproductive rate, highly specialized nature, hunting, competition, and effects of climate change. While deforestation rates between 2002 and 2014 indicate a decrease in the annual deforestation rate, and there has been a decrease in deforestation compared to historical rates, there continues to be a slow and steady increase in the total area deforested. Deforestation rates in Pará decreased by 20 percent between 2013 and 2014, increased by 14 percent in 2015, and increased by 41 percent in 2016. However, the PPCDAm has reduced the deforestation rate by approximately 80 percent in relation to the 2004 rate in the Legal Amazon. Recent estimates of deforestation indicate annual deforestation rates in the Cerrado and Pantanal have decreased by approximately 40 and 37 percent, respectively, although within two states in the Cerrado, Tocantins and Maranhão, deforestation increased in 2016 by 40 and 25 percent, respectively. We recognize that deforestation rates may fluctuate annually, with some years having a higher rate than other years. However, because the annual rate of deforestation is decreasing over the long term, the loss of all native habitat from these areas, including the species of trees needed by the hyacinth macaw for food and nesting, is not as immediate as initially predicted. Therefore, even with the additional habitat loss that is imminent, we do not find that the hyacinth macaw is currently in danger of extinction.

The hyacinth macaw remains a species particularly vulnerable to extinction due to the interaction between continued habitat loss within the foreseeable future and its highly specialized needs for food and nest trees. The term ''foreseeable future'' describes the extent to which we can reasonably rely on the predictions about the future in making determinations about the future conservation status of the species. Based on the best available scientific studies and information assessing land-use trends, lack of enforcement of laws, predicted landscape changes under climate-change scenarios, the persistence of essential food and nesting resources, and predictions about how those threats may impact the hyacinth macaw or similar species, we conclude that the species is likely to be in danger of extinction in the foreseeable future throughout all of its range. On the basis of the best scientific and commercial information, we find that the hyacinth macaw meets the definition of a ''threatened species'' under the Act, and we are listing the hyacinth macaw as threatened throughout its range.

Significant Portion of its Range

Under the Act and our implementing regulations, a species warrants listing if it is endangered or threatened. The Act defines ''endangered species'' as any species that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)), and ''threatened species'' as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). Because we have determined that the hyacinth macaw is threatened throughout all of its range, under the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species and ''Threatened Species'' (79 FR 37578; July 1, 2014) (SPR Policy), if a species warrants listing throughout all of its range, no portion of the species' range can be a ''significant'' portion of its range. The SPR policy is applied to all status

determinations, including analyses for the purposes of making listing, delisting, and reclassification determinations. The procedure for analyzing whether any portion is an SPR is similar, regardless of the type of status determination we are making.

While under the SPR Policy no further analysis of ''significant portion of its range'' in this circumstance is required, we recognize that the SPR Policy is currently under judicial review, so we also took the additional step of considering whether there could be any significant portions of the species' range where the species is in danger of extinction. We evaluated whether there is substantial information indicating that there are any portions of the species' range: (1) That may be ''significant,'' and (2) where the species may be in danger of extinction. In practice, a key part of identifying portions appropriate for further analysis is whether the threats are geographically concentrated. For the hyacinth macaw, the primary driver of its status is habitat destruction. This threat is affecting the species throughout its entire range and is of similar magnitude throughout its range; therefore, there is not a meaningful geographical concentration of threats to the hyacinth macaw. As a result, even if we were to undertake a detailed SPR analysis, there would not be any portions of the species' range where the threats are harming the species to a greater degree such that it is in danger of extinction in that portion.

4(d) Rule

When a species is listed as endangered, certain actions are prohibited under section 9 of the Act and our regulations at 50 CFR 17.21. These include, among others, prohibitions on take within the United States, within the territorial seas of the United States, or upon the high seas; import; export; and shipment in interstate or foreign commerce in the course of a commercial activity. Exceptions to the prohibitions for endangered species may be granted in accordance with section 10 of the Act and our regulations at 50 CFR 17.22.

The Act does not specify particular prohibitions and exceptions to those prohibitions for threatened species. Instead, under section 4(d) of the Act, the Secretary, as well as the Secretary of Commerce depending on the species, was given the discretion to issue such regulations as deemed necessary and advisable to provide for the conservation of such species. The Secretary also has the discretion to prohibit by regulation with respect to any threatened species any act prohibited under section 9(a)(1) of the Act. For the hyacinth macaw, the Service is exercising our discretion to issue a 4(d) rule. By adopting the 4(d) rule, we are incorporating all prohibitions and provisions of 50 CFR 17.31 and 17.32, except that import and export of certain hyacinth macaws into and from the United States and certain acts in interstate commerce are allowed without a permit under the Act, as explained below.

Import and Export

The 4(d) rule imposes a prohibition on imports and exports (by incorporating 50 CFR 17.31), but creates exceptions for certain hyacinth macaws. The 4(d) rule largely adopts the existing conservation regulatory requirements of CITES and the WBCA as the appropriate regulatory provisions for the import and export of certain hyacinth macaws. The import and export of birds into and from the United States, taken from the wild after the date this species is listed under the Act; conducting an activity that could take or incidentally take hyacinth macaws; and foreign commerce must meet the requirements of 50 CFR 17.31 and 17.32, including obtaining a permit under the Act. However, the 4(d) rule allows a person to import or export without a permit issued under the Act if the specimen either: (1) Was held in captivity prior to the date this species is listed under the Act; or (2) is a captive-bred specimen, provided the export under either of these scenarios is authorized under CITES and the import is authorized under CITES and the WBCA. If a specimen was taken from the wild and held in captivity prior to the date this species is listed under the Act, the importer or exporter must provide documentation to support that status, such as a copy of the original CITES permit indicating when the bird was removed from the wild or museum specimen reports. For captive-bred birds, the importer must provide either a valid CITES export/re-export document issued by a foreign Management Authority that indicates that the specimen was captive bred by using a source code on the face of the permit of either ''C,'' ''D,'' or ''F.'' Exporters of captive-bred birds must provide a signed and dated statement from the breeder of the bird confirming its captive-bred status, and documentation on the source of the breeder's breeding stock. The source codes of C, D, and F for CITES permits and certificates are as follows:

(C) Animals bred in captivity in accordance with Resolution Conf. 10.16 (Rev.), as well as parts and derivatives thereof, exported under the provisions of Article VII, paragraph 5 of the Convention.

(D) Appendix-I animals bred in captivity for commercial purposes in operations included in the Secretariat's Register, in accordance with Resolution Conf. 12.10 (Rev. CoP15), and Appendix-I plants artificially propagated for commercial purposes, as well as parts and derivatives thereof, exported under the provisions of Article VII, paragraph 4, of the Convention.

(F) Animals born in captivity (F1 or subsequent generations) that do not fulfill the definition of ''bred in captivity'' in Resolution Conf. 10.16 (Rev.), as well as parts and derivatives thereof.

The 4(d) rule's provisions regarding captive-bred birds apply to birds bred in the United States and abroad. The terms ''captive-bred'' and ''captivity'' used in the 4(d) rule are defined in the regulations at 50 CFR 17.3 and refer to wildlife produced in a controlled environment that is intensively manipulated by man from parents that mated or otherwise transferred gametes in captivity. Although the 4(d) rule requires a permit under the Act to ''take'' (including harm and harass) a hyacinth macaw, our regulations at 50 CFR 17.3 establish that ''take,'' when applied to captive wildlife, does not include generally accepted animal husbandry practices, breeding procedures, or provisions of veterinary care for confining, tranquilizing, or anesthetizing, when such practices are not likely to result in injury to the wildlife.

We assessed the conservation needs of the hyacinth macaw in light of the broad protections provided to the species under CITES and the WBCA. The hyacinth macaw is listed in Appendix I under CITES, a treaty which contributes to the conservation of the species by monitoring international trade and ensuring that trade in Appendix I species is not detrimental to the survival of the species (see *Conservation Status,* above*).* The purpose of the WBCA is to promote the conservation of exotic birds and to ensure that imports of exotic birds into the United States do not harm them (see Factor D discussion, above). The best available commercial data indicate that legal and illegal trade of hyacinth macaws is not currently occurring at levels that are affecting the populations of the hyacinth macaw in its three regions. Accordingly, we find that the import and export requirements of the 4(d) rule provide the necessary and advisable conservation measures that are needed for this species. This 4(d) rule streamlines the permitting

process by deferring to existing laws that are protective of hyacinth macaws in the course of import and export and not requiring permits under the Act for certain types of activities.

Interstate Commerce

Under the 4(d) rule, a person may deliver, receive, carry, transport, or ship a hyacinth macaw in interstate commerce in the course of a commercial activity, or sell or offer to sell in interstate commerce a hyacinth macaw without a permit under the Act. At the same time, the prohibitions on take under 50 CFR 17.21 as extended to threatened species under 50 CFR 17.31 will apply under this 4(d) rule, and any interstate commerce activities that could incidentally take hyacinth macaws or otherwise prohibited acts in foreign commerce will require a permit under 50 CFR 17.32.

Persons in the United States have imported and exported captive-bred hyacinth macaws for commercial purposes and for scientific purposes, but trade has been very limited (UNEP–WCMC 2011, unpaginated). We have no information to suggest that interstate commerce activities are associated with threats to the hyacinth macaw or would negatively affect any efforts aimed at the recovery of wild populations of the species; therefore, we are not placing into effect any prohibitions on interstate commerce of hyacinth macaw within the United States. Because the species is otherwise protected in the course of interstate commercial activities under the take provisions and foreign commerce provisions contained in 50 CFR 17.31, and international trade of this species is regulated under CITES, we find that this 4(d) rule contains all the prohibitions and authorizations necessary and advisable for the conservation of the hyacinth macaw.

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that we do not need to prepare an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted under Section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A list of all references cited in this document is available at *http://www.regulations.gov,* Docket No. FWS–R9–ES–2012–0013, or upon request from the U.S. Fish and Wildlife Service, Ecological Services, Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are staff members of the Branch of Foreign Species, Ecological Services Program, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for ''Macaw, hyacinth'' in alphabetical order under BIRDS to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
BIRDS				
*	*	*	*	*
Macaw, hyacinth	*Anodorhynchus hyacinthinus.*	Wherever found	T	83 FR [insert **Federal Register** page where the document begins], 8/13/2018; 50 CFR 17.41(c) [4d].
*	*	*	*	*

■ 3. Amend § 17.41 by revising paragraph (c) introductory text, paragraph (c)(1), and paragraph (c)(2)(ii) introductory text, and by adding paragraph (c)(2)(ii)(D) to read as follows:

§ 17.41 Special rules—birds.

* * * * *

(c) The following species in the parrot family: Salmon-crested cockatoo *(Cacatua moluccensis),* yellow-billed parrot *(Amazona collaria),* white cockatoo (*Cacatua alba*), and hyacinth macaw (*Anodorhynchus hyacinthinus*).

(1) Except as noted in paragraphs (c)(2) and (c)(3) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 of this part apply to these species.

(2) * * *

(ii) *Specimens held in captivity prior to certain dates:* You must provide documentation to demonstrate that the specimen was held in captivity prior to the dates specified in paragraphs (c)(2)(ii)(A), (B), (C), or (D) of this section. Such documentation may include copies of receipts, accession or veterinary records, CITES documents, or wildlife declaration forms, which must be dated prior to the specified dates.

* * * * *

(D) For *hyacinth macaws:* September 12, 2018 (the date this species was listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*)).

* * * * *

Dated: July 2, 2018.

James W. Kurth,

Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2018–17319 Filed 8–10–18; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register
Vol. 83, No. 156
Monday, August 13, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[Document Number AMS–FV–14–0088, SC–18–328]

United States Standards for Grades of Processed Vegetables

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) proposes to revise the U.S. Standards for Grades of Canned Lima Beans, U.S. Standards for Grades of Canned Mushrooms, U.S. Standards for Grades of Pickles, and U.S. Standards for Grades of Green Olives. AMS is proposing to replace the term ''midget'' with ''petite'' in the canned lima bean, canned mushroom, and pickle standards, and to remove ''midget'' completely from the green olive standards as there is an alternative term. AMS is also proposing to replace the two-term grading system (dual nomenclature) with a single term to describe each quality level in the canned lima bean, canned mushroom, and green olive standards. Editorial changes would also be made to the grade standards that conform to recent changes made in other grade standards.

DATES: Comments must be submitted on or before October 12, 2018.

ADDRESSES: Interested persons are invited to submit written comments to the USDA, Specialty Crops Inspection Division, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406; fax: (540) 361–1199; or at *www.regulations.gov.* Comments should reference the dates and page number of this issue of the **Federal Register**. Comments will be posted without change, including any personal information provided. All comments received within the comment period will become part of the public record maintained by the Agency and will be made available to the public via *www.regulations.gov.* Comments will be made available for public inspection at the above address during regular business hours or can be viewed at: *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lindsay H. Mitchell at the address above, by phone (540) 361–1120; fax (540) 361–1199; or, email *lindsay.mitchell@ams.usda.gov.* Copies of the proposed U.S. Standards for Grades of Canned Lima Beans, U.S. Standards for Grades of Canned Mushrooms, U.S. Standards for Grades of Pickles, and U.S. Standards for Grades of Green Olives are available at *http://www.regulations.gov.* Copies of the current U.S. Standards for Grades of Canned Lima Beans, U.S. Standards for Grades of Canned Mushrooms, U.S. Standards for Grades of Pickles, and U.S. Standards for Grades of Green Olives are available on the Specialty Crops Inspection Division website at *www.ams.usda.gov/grades-standards/vegetables.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.''

The Agricultural Marketing Service (AMS) is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The U.S. Standards for Grades of Fruits and Vegetables that no longer appear in the Code of Federal Regulations are maintained by AMS at: *http://www.ams.usda.gov/grades-standards.* AMS is proposing revisions to these U.S. Standards for Grades using the procedures that appear in part 36 of Title 7 of the Code of Federal Regulations (7 CFR part 36).

Background

AMS continually reviews all fruit and vegetable grade standards to ensure their usefulness to the industry, modernize language, and remove duplicative terminology. On May 13, 2013, AMS received a petition from the Little People of America stating they ''are trying to raise awareness around and eliminate the use of the word midget.'' The petition further stated, ''Though the use of the word midget by the USDA when classifying certain food products is benign, Little People of America, and the dwarfism community, hopes that the USDA would consider phasing out the term midget.''

AMS determined that six grade standards contained the term ''midget''—U.S. Standards for Grades of Canned Lima Beans, U.S. Standards for Grades of Canned Mushrooms, U.S. Standards for Grades of Pickles, U.S. Standards for Grades of Green Olives, U.S. Standards for Grades of Processed Raisins, and U.S. Standards for Grades of Shelled Pecans. The shelled pecans and processed raisins were separated out and are covered in two rules due to additional changes being made.

Before developing these proposed revisions, AMS solicited comments and suggestions about the grade standards from the Grocery Manufacturers Association, U.S. Dry Bean Council, American Mushroom Institute, Pickle Packers International, Inc., and the California Olive Committee. The consensus from the U.S. Dry Bean Council, American Mushroom Institute, and Pickle Packers International, Inc. was to proceed with replacing ''midget'' with ''petite'' in each of the three standards. The California Olive Committee stated there would be no issue with removing the term ''midget'' completely from the standards as that would leave ''petite'' for the size designation.

In addition to replacing ''midget'' with ''petite'' or removing ''midget,'' AMS is also proposing to remove dual nomenclature in U.S. Standards for Grades of Canned Lima Beans, U.S. Standards for Grades of Canned Mushrooms, and U.S. Standards for Grades of Green Olives. More recently developed standards use a single term, such as ''U.S. Grade A'' or ''U.S. Grade B,'' to describe each level of quality within a grade standard. Older grade standards used dual nomenclature, such as ''U.S. Grade A or U.S. Fancy,'' ''U.S. Grade B or U.S. Extra Standard,'' or ''U.S. Grade B or U.S. Choice,'' and ''U.S. Grade C or U.S. Standard,'' to describe the same level of quality. The terms ''U.S. Fancy,'' ''U.S. Extra

Standard'' or ''U.S. Choice,'' and ''U.S. Standard'' would be removed and the terms ''U.S. Grade A,'' ''U.S. Grade B,'' and ''U.S. Grade C'' would be used exclusively.

Finally, AMS is proposing editorial changes to these grade standards, *i.e.,* updating the name of a table to better reflect content, removing specific address for viewing or obtaining color standards, updating a grade designation in a scoresheet to align with language used throughout standard, and updating the Code of Federal Regulations (CFR) references where applicable. Information on obtaining color standards is available in the Fresh and Processed Equipment Catalog on the AMS website at *https://www.ams.usda.gov/grades-standards/how-purchase-equipment-and-visual-aids.* These revisions will provide a format that is consistent with those of other grade standards (75 FR 43141). The following table summarizes the changes currently under consideration by AMS.

U.S. standards for grades of	Effective date	Remove or replace ''midget''	Other proposed revisions
Canned Lima Beans	3/20/60	Replace with ''Petite'' in Table II in Sizes of canned lima beans section.	Change level of quality designations to single terms in the Grades of canned lima beans and Color sections. Correct CFR citation for standard of identity to 21 CFR 155.200 in the Identity section. Replace Processed Products information and address with ''USDA Headquarters in Washington, DC'' in the General section.
Canned Mushrooms	4/7/62	Replace with ''petite'' in the Sizes of canned mushrooms in the styles of whole and buttons section.	Change level of quality designations to single terms in the Grades of canned mushrooms section. Correct CFR citation for standard of identity to 21 CFR 155.200 in the Product description section.
Green Olives	9/8/67	Remove from Table I in the Sizes of whole style green olives section.	Change level of quality designations to single terms in the Grades of green olives and Uniformity of size sections and Tables IV and V in the Absence of defects section. Change ''D'' to ''Sstd'' in the Score sheet for green olives section.
Pickles	4/22/91	Replace with ''Petite'' in Table II in the Sizes of whole pickles section and Table VI in the Requirements for grade section.	Change the title of Table III from ''Recommended Pickle Ingredients All Styles Except Relish'' to ''Recommended Minimum Quantity of Pickle Ingredients All Styles Except Relish.''

The proposed revisions to these grade standards would provide a common language for trade and better reflect the current marketing of fruits and vegetables.

A 60-day comment period is provided for interested persons to submit comments on the proposed revised grade standards. Copies of the proposed revised standards are available at *http://www.regulations.gov.* After the 60-day comment period, AMS will move forward in accordance with 7 CFR 36.3(a)(1 through 3).

Authority: 7 U.S.C. 1621–1627.

Dated: August 8, 2018.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2018–17283 Filed 8–10–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0707; Product Identifier 2018–NM–067–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. 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 Fokker Services B.V. Model F28 airplanes. This proposed AD was prompted by reports that certain T-unions with an integral filter in the landing gear hydraulic control system disconnected from their housing and, in some cases, migrated. This proposed AD would require replacing certain T-unions with an integral filter with T-unions without an integral filter. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by September 27, 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 Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* internet *http://www.myfokkerfleet.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–2018–0707; 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 NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

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–2018–0707; Product Identifier 2018–NM–067–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2018–0076, dated April 6, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Fokker Services B.V. Model F28 airplanes. The MCAI states:

> With [Fokker Service Bulletins] SBF100–32–095 and SBF28–32–154, Fokker Services introduced the option of installing a T-union with an integral filter into the landing gear hydraulic control system. On some F28 Mark 0070 and Mark 0100 aeroplanes, the affected part was installed on the production line. Since introduction, occurrences were reported where the T-union filter disconnected from its housing, and in some cases migrated. In one occurrence, the migrated filter caused a flow reduction and inability to retract one of the main landing gear (MLG) legs.
>
> This condition, if not corrected, could lead to flow reduction along the hydraulic circuit and inability to completely extend one of the MLG legs, possibly resulting in damage to the aeroplane during landing, and consequent injury to occupants.
>
> To address this potential unsafe condition, Fokker Services issued the applicable SB [Fokker Service Bulletin SBF28–32–166; and Fokker Service Bulletin SBF100–32–170] to provide instructions to replace the affected parts with improved parts. Fokker Services also cancelled the SBs that introduced the affected parts.
>
> For the reason described above, this [EASA] AD requires replacement of the affected parts with T-unions without an integral filter. This [EASA] AD also prohibits the installation of affected parts.

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–2018–0707.

Related Service Information Under 1 CFR Part 51

Fokker Services B.V. has issued Service Bulletin SBF28–32–166, dated February 21, 2018; and Service Bulletin SBF100–32–170, dated February 21, 2018. This service information describes procedures for removal of certain T-unions with an integral filter and installation of T-unions without an integral filter. These documents are distinct since they apply to different airplane models in different configurations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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 the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 4 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
10 work-hours × $85 per hour = $850	$1,038	$1,888	$7,552

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):

Fokker Services B.V.: Docket No. FAA–2018–0707; Product Identifier 2018–NM–067–AD.

(a) Comments Due Date

We must receive comments by September 27, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model F28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by reports that certain T-unions with an integral filter in the landing gear hydraulic control system disconnected from their housing and, in some cases, migrated. We are issuing this AD to prevent flow reduction along the hydraulic circuit and the possible inability to completely extend one or both of the main landing gear legs, which could result in damage to the airplane during landing, and consequent injury to occupants.

(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) inclusive apply.

(1) An affected part is any hydraulic T-union with an integral filter installed, having part number (P/N) QA07596 or P/N QA07597, installed on the production line or introduced in-service by Fokker Service Bulletin SBF100–32–095 or Fokker Service Bulletin SBF28–32–154, as applicable.

(2) Group 1 airplanes are those that have an affected part installed.

(3) Group 2 airplanes are those that do not have an affected part installed.

(h) Required Actions

For Group 1 airplanes, within 24 months after the effective date of this AD, modify the airplane in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF28–32–166, dated February 21, 2018; or Fokker Service Bulletin SBF100–32–170, dated February 21, 2018, as applicable. The corresponding part numbers of affected (old) parts and replacement (new) parts are specified in figure 1 to paragraph (h) of this AD.

Figure 1 to paragraph (h) of this AD – *Affected and replacement part numbers*

Airplane Model	Affected T-union P/N	Replacement T-union P/N
F28 Mark 1000, Mark 2000, Mark 3000 and Mark 4000 (all variants)	P/N QA07597	P/N A71051-027
F28 Mark 0070 and Mark 0100	P/N QA07597	P/N A71051-027
	P/N QA07596	P/N AS1005D060608

(i) Parts Installation Prohibition

No person may install an affected part on any airplane, as of the time specified in paragraph (i)(1) or (i)(2) of this AD, as applicable.

(1) For Group 1 airplanes: After modification of the airplane as required by paragraph (h) of this AD.

(2) For Group 2 airplanes: From the effective date of this AD.

(j) 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 (k)(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 Fokker Services B.V.'s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2018–0076, dated April 6, 2018, 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–2018–0707.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

(3) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* internet *http://www.myfokkerfleet.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 August 5, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–17322 Filed 8–10–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR part 774

[Docket No. 180227222–8222–01]

Commerce Control List: Request for Comments Regarding Controls on Certain Spraying or Fogging Systems and ''Parts'' and ''Components'' Therefor

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: The Bureau of Industry and Security (BIS), Department of Commerce, maintains the Export Administration Regulations, including the Commerce Control List (CCL). Certain items identified on the CCL are controlled for chemical/biological (CB) reasons, because they are identified on one of the common control lists maintained by the Australia Group (AG), which is a multilateral forum of countries (plus the European Union) that maintain export controls on specified chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons (CBW) program. Among the items subject to these CB controls are spraying or fogging systems described in Export Control Classification Number (ECCN) 2B352.i on the CCL. Through this notice, BIS is seeking public comments as part of a review of the effectiveness of its controls on these systems, and ''parts'' and ''components'' therefor, to ensure that the descriptions of these items on the CCL are clear, do not inadvertently control items in normal commercial use, accurately reflect CB-related technological capabilities and developments, and are consistent with the principal objective of the AG, which is to ensure that exports of certain chemicals, biological agents, and dual-use chemical and biological manufacturing facilities and equipment, do not contribute to the spread of chemical and biological weapons (CBW). This notice also requests public comments on potential alternatives to the current controls in ECCN 2B352.i.

DATES: Comments must be received by BIS no later than October 12, 2018.

ADDRESSES: Comments may be submitted via the Federal eRulemaking Portal (*http://www.regulations.gov*). You can find this notice by searching on its *regulations.gov* docket number, which is BIS–2018–0013. Comments may also be submitted via email to *publiccommments@bis.doc.gov* or on paper to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW, Washington, DC 20230. Please refer to RIN 0694–XC042 in all comments and in the subject line of email comments. All comments (including any personally identifying information) will be made available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: For questions on the CB controls that apply to spraying or fogging systems described in ECCN 2B352.i, contact Richard P. Duncan, Ph.D., Director, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–3343, Email: *Richard.Duncan@bis.doc.gov.* For questions on the submission of comments in response to this notice of inquiry, contact Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS), Department of Commerce, maintains the Export Administration Regulations (EAR) (15 CFR parts 730–774), including the Commerce Control List (CCL) (Supplement No. 1 to part 774 of the EAR). Through this notice, BIS is seeking public comments as part of a review of the effectiveness of its controls on spraying or fogging systems, and ''parts'' and ''components'' therefor, that are described in paragraph (i) of Export Control Classification Number (ECCN) 2B352 on the CCL. The items controlled by ECCN 2B352.i are subject to chemical/biological (CB) controls on the CCL, because they are identified on one of the common control lists maintained by the Australia Group (AG), specifically, the AG ''Control List of Dual-Use Biological Equipment and Related Technology and Software.'' The AG is a multilateral forum consisting of 42 participating countries and the European Union that maintain export controls on specified chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program.

Current EAR Controls on Spraying or Fogging Systems

Currently, ECCN 2B352.i controls complete spraying or fogging systems, spray booms, and arrays of aerosol generating units that are: (1) ''specially designed'' or modified for fitting to aircraft, ''lighter than air vehicles,'' or ''unmanned aerial vehicles'' (''UAVs''); and (2) capable of delivering, from a liquid suspension, an initial droplet volume median diameter ('VMD') of less than 50 microns at a flow rate of greater than 2 liters per minute. This ECCN also controls aerosol generating units that are ''specially designed'' for fitting to the aforementioned equipment.

The Technical Notes immediately following ECCN 2B352.i clarify the scope of these controls and provide guidance on how to evaluate certain characteristics (*e.g.,* droplet size) to determine whether specific equipment is controlled under this ECCN. *Technical Note 1* states that aerosol generating units, for purposes of the controls in ECCN 2B352.i, are devices ''specially designed'' or modified for fitting to ''aircraft'' and include nozzles, rotary drum atomizers and similar devices. *Technical Note 2* clarifies the scope of ECCN 2B352 by indicating that this ECCN does not control spraying or fogging systems and ''parts'' and ''components'' therefor, as described in 2B352.i, that are demonstrated not to be

capable of delivering biological agents in the form of infectious aerosols. *Technical Note 3* provides guidance on how to measure 'VMD' for droplets produced by spray equipment or nozzles ''specially designed'' for use on ''aircraft'' or ''UAVs,'' indicating that, pending the adoption of internationally accepted standards, 'VMD' should be measured using either of the following methods: (1) Doppler ''laser'' method; or (2) forward ''laser'' diffraction method.

The control text in ECCN 2B352.i, as described above, is consistent with the corresponding controls described in the AG ''Control List of Dual-Use Biological Equipment and Related Technology and Software,'' which were established to address a very specific threat, *i.e.,* the dissemination of biological agents from the air.

Proposed Alternatives to the Current Controls in ECCN 2B352.i

As part of its review of the ECCN 2B352.i controls on spraying or fogging systems, and ''parts'' and ''components'' therefor, BIS is considering expanding the scope of these controls to include: (1) Systems for the dissemination of chemicals controlled by ECCN 1C350 or 1C355 (currently, CB controls apply only to systems for the dissemination of biological agents controlled by ECCN 1C351); and (2) ground-based systems (currently, CB controls apply only to airborne systems). These changes are being considered because potential chemical/biological warfare (CBW) threats are likely to include the dissemination of chemical agents, as well as the dissemination of biological agents, and may well involve ground-based methods of dissemination, as well as airborne means of dissemination.

Consequently, BIS is considering one or more of the following options with respect to the EAR controls on spraying or fogging systems, and ''parts'' and ''components'' therefor.

(1) Removing the criterion in ECCN 2B352.i that currently limits CB controls to those systems that are ''specially designed'' or modified for fitting to ''aircraft,'' ''lighter than air vehicles,'' or ''UAVs.'' The rationale for this change is that the ability of such systems to produce an aerosol is not determined by whether the systems are ground-based or airborne.

(2) Removing the criterion in ECCN 2B352.i based on initial droplet size (*i.e.,* an initial droplet 'VMD' of less than 50 microns). The rationale for this change is that initial droplet size is not necessarily a feature that is measured (or otherwise addressed) by all manufacturers of these systems. In addition, the initial droplet size currently indicated in ECCN 2B352.i is based solely on the airborne dissemination of biological agents (*i.e.,* those controlled by ECCN 1C351) and would not necessarily apply to systems for the airborne dissemination of chemicals (*i.e.,* those controlled by ECCN 1C350 or 1C355) or the ground-based dissemination of such chemicals or biological agents.

(3) Lowering the flow rate at which spraying or fogging systems are controlled under ECCN 2B352.i. Currently, ECCN 2B352.i specifies a flow rate of ''greater than 2 liters per minute.'' However, BIS acknowledges that this change would involve determining a lower flow rate that would not catch typical commercial systems (*e.g.,* systems designed for agricultural use), except when deemed necessary to ensure the continued effectiveness of CB controls on spraying or fogging systems.

(4) Developing a control that would apply to spraying or fogging systems ''specially designed'' for the dissemination or dispersion of chemicals controlled by ECCN 1C350 or 1C355 or biological agents controlled by ECCN 1C351 in a manner likely to cause significant harm to humans or livestock or serious damage to crops.

With respect to option #4 described above, note that paragraph (a)(1) of the definition of ''specially designed'' in Section 772.1 of the EAR states that an item is ''specially designed'' if, as a result of ''development,'' it ''has properties peculiarly responsible for achieving or exceeding the performance levels, characteristics, or functions in the relevant ECCN or U.S. Munitions List (USML) paragraph.'' Therefore, if the term ''specially designed'' were used in the control text for spraying or fogging systems in ECCN 2B352.i, the only systems that would be captured by these controls would be those that are peculiarly responsible for achieving the dissemination or dispersion of chemicals controlled by ECCN 1C350 or 1C355 or biological agents controlled by ECCN 1C351 in a manner likely to cause significant harm to humans or livestock or serious damage to crops (*i.e.,* properties that would distinguish these systems from typical commercial systems, such as those designed for agricultural applications). Consequently, under option #4, the controls in ECCN 2B352.i would not apply to spraying or fogging systems designed for commercial use that have performance levels, characteristics, or functions that are capable of, but not peculiarly responsible for, achieving the dissemination or dispersion of chemicals controlled by ECCN 1C350 or 1C355 or biological agents controlled by ECCN 1C351 in the manner described above.

Request for Comments

BIS is publishing this notice of inquiry to obtain public comments as part of a review of the effectiveness of the EAR controls on spraying or fogging systems, and ''parts'' and ''components'' therefor, as currently described in ECCN 2B352.i. Specifically, BIS is seeking comments that address whether the descriptions of these items on the CCL: (1) Are clear; (2) do not inadvertently control items in normal commercial use; (3) accurately reflect CB-related technological capabilities and developments; and (4) are consistent with the principal objective of the AG, which is to ensure that exports of certain chemicals, biological agents, and dual-use chemical and biological manufacturing facilities and equipment do not contribute to the spread of chemical and biological weapons (CBW).

The public comments submitted in response to this notice of inquiry should address specific aspects of the current controls in ECCN 2B352.i in relation to the four criteria described above. For example, if the current control text is not sufficiently clear or does not accurately reflect CB-related technological capabilities and developments, please identify the specific aspects in which the current controls fall short with respect to these criteria. In addition, please indicate: (1) The extent to which the existing controls in ECCN 2B352.i would apply to any spraying or fogging systems that are currently being manufactured and/or sold; or (2) if the existing controls do not apply to any current systems, what specific aspects (*e.g.,* flow rate or 'VMD') would differentiate such systems from the systems described in ECCN 2B352.i. Also, if applicable, describe the manner in which your company evaluates spraying or fogging equipment, and ''parts'' and ''components'' therefor, consistent with *Technical Note 2* to ECCN 2B352 as described above, which states that this ECCN does not control items specified in 2B352.i if they are ''demonstrated not to be capable of delivering biological agents in the form of infectious aerosols.''

In addition, BIS encourages the public to submit comments on the aforementioned options to modify the current controls in ECCN 2B352.i. Comments on these options should focus on the extent to which they would satisfy the four criteria described above and also address the potential impact of

these alternative controls on specific types of spraying or fogging systems (including ''parts,'' ''components,'' ''accessories,'' and ''attachments'' therefor) that are currently being manufactured and/or sold or that are likely to be manufactured and/or sold in the foreseeable future. Comments on option #4 (where the ECCN 2B352.i control text would include the term ''specially designed'') should not only address this option with reference to the four criteria described above, but also identify any performance levels, characteristics, or functions that clearly distinguish commercial spraying or fogging systems from those systems having properties that are peculiarly responsible for achieving the dissemination or dispersion of chemicals controlled by ECCN 1C350 or 1C355 or biological agents controlled by ECCN 1C351 in a manner likely to cause significant harm to humans or livestock or serious damage to crops.

Dated: August 6, 2018.

Richard E. Ashooh,

Assistant Secretary for Export Administration.

[FR Doc. 2018–17249 Filed 8–10–18; 8:45 am]

BILLING CODE 3510–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 39 and 140

RIN 3038–AE65

Exemption From Derivatives Clearing Organization Registration

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission) is proposing amendments to its regulations to establish a regulatory framework within which the Commission may exempt a clearing organization that is organized outside of the United States (hereinafter referred to as ''non-U.S. clearing organization'') from registration as a derivatives clearing organization (DCO) in connection with the clearing organization's clearing of swaps. In addition, the Commission is proposing certain amendments to its delegation provisions in its regulations.

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

ADDRESSES: You may submit comments, identified by ''Exemption from Derivatives Clearing Organization Registration'' and RIN number 3038–AE65, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, Deputy Director, 202–418–5096, *edonovan@cftc.gov;* Parisa Abadi, Associate Director, 202–418–6620, *pabadi@cftc.gov;* Eileen R. Chotiner, Senior Compliance Analyst, 202–418–5467, *echotiner@cftc.gov;* Abigail S. Knauff, Special Counsel, 202–418–5123, *aknauff@cftc.gov;* Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

[1] 17 CFR 145.9. Commission regulations referred to herein are found at 17 CFR chapter I (2018), and are accessible on the Commission's website at *https://www.cftc.gov/LawRegulation/CommodityExchangeAct/index.htm.*

SUPPLEMENTARY INFORMATION:

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I. Background

A. Project KISS

The Commission is engaging in an agency-wide review of its rules, regulations, and practices to make them simpler, less burdensome, and less costly, and to make progress on G–20 regulatory reforms. This initiative is called Project KISS, which stands for ''Keep It Simple, Stupid.'' [2] The Commission is proposing to adopt regulations that would codify the policies and procedures that the Commission is currently following with respect to granting exemptions from DCO registration in order to make such policies and procedures transparent to all potential applicants.

B. Statutory and Regulatory Framework for Swaps Execution and Clearing

The Commodity Exchange Act (CEA) [3] provides that a clearing organization may not ''perform the functions of a [DCO]'' [4] with respect to swaps unless

[2] *See* Remarks of Acting Chairman J. Christopher Giancarlo before the 42nd Annual International Futures Industry Conference in Boca Raton, FL, Mar. 15, 2017, available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-20.* On February 24, 2017, President Donald J. Trump issued Executive Order 13777: Enforcing the Regulatory Reform Agenda (E.O. 13777). E.O. 13777 directs federal agencies, among other things, to designate a Regulatory Reform Officer and establish a Regulatory Reform Task Force. Although the CFTC, as an independent federal agency, is not bound by E.O. 13777, the Commission is nevertheless engaging in an agency-wide review of its rules, regulations, and practices to make them simpler, less burdensome, and less costly. *See* Request for Information, 82 FR 23756 (May 24, 2017).

[3] 7 U.S.C. 1 *et seq.*

[4] The term ''derivatives clearing organization'' is statutorily defined to mean a clearing organization in general. However, for purposes of the discussion herein, the term ''DCO'' refers to a Commission-

Continued

the clearing organization is registered with the Commission.[5] However, the CEA also permits the Commission to conditionally or unconditionally exempt a clearing organization from registration for the clearing of swaps if the Commission determines that the clearing organization is subject to ''comparable, comprehensive supervision and regulation'' by appropriate government authorities in the clearing organization's home country.[6]

To date, the Commission has exempted four non-U.S. clearing organizations from DCO registration. The Commission is proposing to adopt regulations that would codify the policies and procedures that the Commission is currently following with respect to granting exemptions from DCO registration and would make such policies and procedures transparent to all potential applicants.

C. Statutory and Regulatory Requirements for Registration and Operation of DCOs

As previously noted, the CEA requires a clearing organization that clears swaps to be registered with the Commission as a DCO. However, in order to be registered and maintain registration as a DCO, a clearing organization must comply with the core principles for DCOs set forth in the CEA (DCO Core Principles) [7] and all applicable Commission regulations.[8]

The Commission may conditionally or unconditionally exempt a clearing organization from registration for the clearing of swaps if the Commission determines that the clearing organization is subject to ''comparable, comprehensive supervision and regulation'' by the clearing organization's home country regulator(s). The Commission has construed ''comparable, comprehensive supervision and regulation'' to mean that the home country's supervisory and regulatory framework should be consistent with, and achieve the same outcome as, the statutory and regulatory requirements applicable to registered DCOs. This outcomes-based approach reflects the Commission's recognition that a foreign jurisdiction's supervisory and regulatory scheme applicable to its clearing organizations may differ from the Commission's in certain respects, but nevertheless may achieve the same underlying goals. This approach also supports the Commission's effort to strike an appropriate balance by focusing on the risk implications to the United States, while promoting global harmonization.

Further, the Commission has deemed a supervisory and regulatory framework that conforms to the Principles for Financial Market Infrastructures (PFMIs) [9] to be comparable to, and as comprehensive as, the supervisory and regulatory requirements applicable to registered DCOs.[10] Notably, the Commission was a key contributor to the joint efforts of the Committee on Payments and Market Infrastructures (CPMI) [11] and the Technical Committee of the International Organization of Securities Commissions (IOSCO) to develop the PFMIs, which apply to clearing organizations.[12] In addition to contributing to the development of the PFMIs, the Commission serves as a member of the CPMI–IOSCO task force that monitors implementation of the PFMIs. The PFMIs are comparable to the DCO Core Principles and applicable Commission regulations in purpose and scope. Both address major elements critical to the safe and efficient operations of clearing organizations, such as risk management, adequacy of financial resources, default management, margin, settlement, and participation requirements.[13] In light of the foregoing, the Commission believes that a supervisory and regulatory framework that adheres to the framework under the PFMIs achieves outcomes that are comparable to that of the supervisory and regulatory requirements applicable to registered DCOs. Accordingly, the Commission proposes to continue to use the PFMI framework as the benchmark for making a comparability determination with respect to a foreign jurisdiction's supervisory and regulatory scheme.

II. Proposed Amendments to Part 39

A. Regulation 39.1—Scope

The Commission is proposing to amend Regulation 39.1 to state that the provisions of subpart A of part 39 apply to any registered DCO or, as applicable, any entity applying to be registered as a DCO or applying to be exempt from DCO registration. Regulation 39.3, which is contained in subpart A and is not proposed to be amended, sets forth procedures for DCO registration. Proposed Regulation 39.6, which also would be contained in subpart A, would set forth the requirements for an exemption from DCO registration, as discussed below.

B. Regulation 39.2—Definitions

In connection with the proposed exemption regulations, the Commission is proposing to add five definitions to Regulation 39.2, for purposes of part 39 only.

The Commission proposes to define the term ''exempt derivatives clearing organization'' to mean a derivatives clearing organization that the Commission has exempted from registration under section 5b(a) of the CEA, pursuant to section 5b(h) of the CEA and Regulation 39.6.

The Commission proposes to define the term ''good regulatory standing'' to mean, with respect to a non-U.S. clearing organization that is authorized to act as a clearing organization in its home country, that either there has been no finding by the home country

registered DCO, the term ''exempt DCO'' refers to a derivatives clearing organization that is exempt from registration, and the term ''clearing organization'' refers to a clearing organization that: (a) Is neither registered nor exempt from registration with the Commission as a DCO; and (b) falls within the definition of ''derivatives clearing organization'' under section 1a(15) of the CEA, 7 U.S.C. 1a(15), and ''clearing organization or derivatives clearing organization'' under Regulation 1.3, 17 CFR 1.3.

[5] Section 5b(a) of the CEA, 7 U.S.C. 7a–1(a).

[6] Section 5b(h) of the CEA, 7 U.S.C. 7a–1(h). Section 5b(h) also permits the Commission to exempt from DCO registration a securities clearing agency registered with the Securities and Exchange Commission; however, the Commission is not proposing to exempt securities clearing agencies at this time.

[7] 7 U.S.C. 7a–1(c)(2)(A).

[8] *See* 17 CFR parts 1—190 including, in particular, part 39, which implements the DCO Core Principles.

[9] *See* CPMI–IOSCO, Principles for financial market infrastructures (Apr. 2012), available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377-PFMI.pdf.* The PFMIs define a ''financial market infrastructure'' as a ''multilateral system among participating institutions, including the operator of the system, used for the purposes of clearing, settling, or recording payments, securities, derivatives, or other financial transactions.'' *See* PFMIs, paragraph 1.8. Additionally, the PFMIs are ''broadly designed to apply to all systemically important [financial market infrastructures].'' *See* PFMIs, paragraph 1.20.

[10] This conclusion is consistent with previous Commission determinations. *See, e.g.,* Regulation 50.52(b)(4)(i)(E), 17 CFR 50.52(b)(4)(i)(E) (permitting eligible affiliate counterparties that are located in certain jurisdictions to satisfy a condition to electing the exemption by clearing the swap through a DCO or a clearing organization that is subject to supervision by appropriate government authorities in the clearing organization's home country and that has been assessed to be in compliance with the PFMIs).

[11] CPMI was formerly the Committee on Payment and Settlement Systems; it was renamed effective September 1, 2014. *See http://www.bis.org/press/p140901.htm.*

[12] In order to promote effective and consistent global regulation of swaps, section 752 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) directs the Commission to consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of swaps, among other things. Section 752 of the Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010), codified at 15 U.S.C. 8325.

[13] *See, e.g.,* Derivatives Clearing Organizations and International Standards, 78 FR 72476 (Dec. 2, 2013) (adopting final rules).

regulator of material non-observance of the PFMIs or other relevant home country legal requirements, or there has been such a finding by the home country regulator, but it has been or is being resolved to the satisfaction of the home country regulator by means of corrective action taken by the clearing organization. The Commission believes that this is a workable definition from the standpoint of both the Commission and the home country regulator in that it establishes a basis for providing the Commission with a high degree of assurance as to the clearing organization's observance of the PFMIs, while only seeking from the home country regulator a representation that it can reasonably make.

The Commission proposes to define the term ''home country'' to mean, with respect to a non-U.S. clearing organization, the jurisdiction in which the clearing organization is organized.

The Commission proposes to define the term ''home country regulator,'' with respect to a non-U.S. clearing organization, as an appropriate government authority which licenses, regulates, supervises, or oversees the clearing organization's clearing activities in the home country. The proposed definition is consistent with section 5b(h) of the CEA, which provides, in relevant part, that the Commission may exempt a clearing organization from registration for the clearing of swaps if the Commission determines that the clearing organization is subject to comparable, comprehensive supervision and regulation by the appropriate government authorities in the home country of the clearing organization. Use of the term ''an appropriate government authority'' rather than ''the appropriate government authority'' is intended to recognize that in some foreign jurisdictions there may be more than one government authority that supervises and regulates a clearing organization.

The Commission proposes to define the term ''Principles for Financial Market Infrastructures'' as the PFMIs published by CPMI–IOSCO in April 2012, as updated, revised, or otherwise amended.[14]

[14] The Commission proposes to include this language to recognize that CPMI–IOSCO could offer further interpretation of or guidance on the PFMIs. *See, e.g.,* CPMI–IOSCO, Resilience of central counterparties: Further guidance on the PFMI (July 2017), available at *https://www.bis.org/cpmi/publ/d163.pdf.*

C. Regulation 39.6—Exemption Provisions

Proposed Regulation 39.6 would implement section 5b(h) of the CEA by setting forth the regulatory framework within which the Commission may exempt a clearing organization from DCO registration in connection with the clearing of swaps. After section 5b(h) was enacted in 2010, clearing organizations outside the United States began inquiring as to how they could go about obtaining an exemption. Because the Commission had not yet developed a framework for granting exemptions, the Commission's Division of Clearing and Risk (DCR) began granting time-limited no-action relief to these clearing organizations which permit them to engage in swap clearing activity that would otherwise require registration as a DCO.[15] After careful consideration of the issues involved, DCR staff presented initial thoughts on granting exemptions at a May 2014 meeting of the Commission's Global Markets Advisory Committee. Finally, in November 2014, DCR sent a letter to those clearing organizations that had received no-action relief, advising them on how to petition the Commission for an exemption. In response to petitions submitted in accordance with the terms of the letter, the Commission issued orders of exemption from DCO registration to ASX Clear (Futures) Pty Limited (ASX), Korea Exchange, Inc. (KRX), Japan Securities Clearing Corporation (JSCC), and OTC Clearing Hong Kong Limited (OTC Clear).[16] Proposed Regulation 39.6 would codify the policies and procedures that the Commission is currently following with respect to granting exemptions from DCO registration and would make such policies and procedures transparent to all potential applicants for an exemption.

1. Eligibility for Exemption

Proposed Regulation 39.6(a) would provide that the Commission may exempt, conditionally or unconditionally, a non-U.S. clearing organization from registration as a DCO for the clearing of swaps for certain U.S. persons,[17] and thereby exempt such clearing organization from compliance with the provisions of the CEA and Commission regulations applicable to DCOs, if the Commission determines that all of the eligibility requirements listed in proposed Regulation 39.6(a)(1) and (a)(2) are met, and the clearing organization satisfies the conditions set forth in Regulation 39.6(b).[18] Each of these requirements is described below.

Proposed Regulation 39.6(a)(1) would codify the statutory requirement that the Commission may only exempt a clearing organization from DCO registration for the clearing of swaps if the Commission determines that the clearing organization is subject to comparable, comprehensive supervision and regulation. Proposed Regulation 39.6(a)(1)(i) would require that, in order to be eligible for an exemption from DCO registration, a clearing organization must be organized in a jurisdiction in which a home country regulator applies to the clearing organization, on an ongoing basis, statutes, rules, regulations, policies, or a combination thereof that, taken together, are consistent with the PFMIs.[19] Under proposed Regulation 39.6(a)(1)(ii) and

[15] *See, e.g.,* CFTC Letter No. 16–56 (May 31, 2016) (granting no-action relief to Shanghai Clearing House); CFTC Letter No. 14–107 (Aug. 18, 2014) (granting no-action relief to Clearing Corporation of India Ltd.); CFTC Letter No. 14–87 (June 26, 2014) (granting no-action relief to Korea Exchange, Inc.); CFTC Letter No. 14–68 (May 7, 2014) (granting no-action relief to OTC Clearing Hong Kong Limited and certain of its clearing members); CFTC Letter No. 14–07 (Feb. 6, 2014) (granting no-action relief to ASX Clear (Futures) Pty Limited); and CFTC Letter No. 12–56 (Dec. 17, 2012) (granting no-action relief to Japan Securities Clearing Corporation and certain of its clearing participants).

[16] *See* ASX Amended Order of Exemption from Registration (Jan. 28, 2016), available at *http://www.cftc.gov/idc/groups/public/@otherif/documents/ifdocs/asxclearamdorderdcoexemption.pdf;* KRX Order of Exemption from Registration (Oct. 26, 2015), available at *http://www.cftc.gov/idc/groups/public/@otherif/documents/ifdocs/krxdcoexemptorder10-26-15.pdf;* JSCC Order of Exemption from Registration (Oct. 26, 2015), available at *http://www.cftc.gov/idc/groups/public/@otherif/documents/ifdocs/jsccdcoexemptorder10-26-15.pdf;* OTC Clear Order of Exemption from Registration (Dec. 21, 2015), available at *http://www.cftc.gov/idc/groups/public/@otherif/documents/ifdocs/otccleardcoexemptorder12-21-15.pdf.*

[17] The Commission proposes to use the definition of ''U.S. person'' as set forth in the Commission's Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 FR 45292, 45316–45317 (July 26, 2013), as such definition may be amended or superseded by a definition of the term ''U.S. person'' that is adopted by the Commission and applicable to this proposed regulation.

[18] The eligibility requirements listed in proposed Regulation 39.6(a)(1) and (a)(2) and the conditions set forth in proposed Regulation 39.6(b) would be pre-conditions to the Commission's issuance of any order exempting a clearing organization from the DCO registration requirements of the CEA and Commission regulations. Additional conditions that are unique to the facts and circumstances specific to a particular clearing organization could be imposed upon that clearing organization in the Commission's order of exemption, as permitted by section 5b(h) of the CEA.

[19] The Commission notes that the regulatory framework of a particular jurisdiction may consist of one or multiple sources of authority. In particular, the inclusion of ''policies'' is intended to accommodate a jurisdiction in which a policy has the force of law, and a set of policies may, on its own, represent the jurisdiction's regulatory framework that is consistent with the PFMIs.

(iii), a clearing organization would be required to observe the PFMIs in all material respects and be in good regulatory standing in its home country. As previously noted, the Commission believes that operating within a regulatory framework consistent with the PFMIs would meet the CEA's requirement in section 5b(h) that, in order to qualify for an exemption, a clearing organization must be subject to comparable, comprehensive supervision and regulation by the appropriate government authorities in its home country.[20]

Proposed Regulation 39.6(a)(2) would provide that, in order for a clearing organization to be eligible for an exemption from DCO registration, a memorandum of understanding (MOU) or similar arrangement satisfactory to the Commission must be in effect between the Commission and the clearing organization's home country regulator,[21] pursuant to which, among other things, the home country regulator agrees to provide to the Commission any information that the Commission deems necessary to evaluate the clearing organization's initial and continued eligibility for exemption or to review compliance with any conditions of such exemption. The Commission has customarily entered into MOUs or similar arrangements in connection with the supervision of non-U.S. clearing organizations that are registered as DCOs. In the context of exempt DCOs, satisfactory MOUs or similar arrangements with the home country regulator would include provisions for information sharing and cooperation, as well as for notification upon the occurrence of certain events, but the Commission would not expect to conduct routine site visits to exempt DCOs.

2. Conditions of Exemption

Proposed Regulation 39.6(b) sets forth conditions to which an exempt DCO would be subject. These conditions are consistent with the conditions that the Commission has imposed on each of the clearing organizations to which it has previously issued orders of exemption.

Under proposed Regulation 39.6(b)(1)(i), a U.S. person that is a clearing member of an exempt DCO would be permitted to clear swaps for itself and those persons identified in the definition of ''proprietary account'' set forth in Regulation 1.3. This provision is intended to permit a U.S. clearing member to clear for affiliates (including a parent or subsidiary) that are either U.S. or non-U.S. persons. The Commission recognizes that in some foreign jurisdictions, affiliates are considered to be ''customers'' and their positions are held in customer accounts. Clearing for affiliates under these circumstances would be permissible even if the affiliate positions are not held in an account that is an analogue to a proprietary account under the Commission's regulations.

Similarly, proposed Regulation 39.6(b)(1)(ii) would provide that a non-U.S. person that is a clearing member of an exempt DCO may clear swaps for any affiliated U.S. person identified in the definition of ''proprietary account'' in Regulation 1.3. This complements the standard in paragraph (b)(1)(i) by clarifying that an exempt DCO may clear for affiliated entities when one or more of those entities is a U.S. person, even if the clearing member itself is not a U.S. person.

Proposed Regulation 39.6(b)(1)(iii) would provide that a futures commission merchant (FCM) may be a clearing member of an exempt DCO, or maintain an account with an affiliated broker that is a clearing member, for the purpose of clearing swaps for the FCM itself and those persons identified in the definition of ''proprietary account'' in Regulation 1.3. Again, this provision is intended to permit what would be considered clearing of ''proprietary'' positions under the Commission's regulations, even if the positions would qualify as ''customer'' positions under the laws and regulations of an exempt DCO's home country. This provision would clarify that an exempt DCO may clear positions for FCMs if the positions are not ''customer'' positions under the Commission's regulations.

The effect of proposed Regulation 39.6(b)(1) is to prohibit the clearing of FCM customer positions at an exempt DCO. Section 4d(f)(1) of the CEA makes it unlawful for any person to accept money, securities, or property (*i.e.,* funds) from a swaps customer to margin a swap cleared through a DCO unless the person is registered as an FCM.[22] Any swaps customer funds held by a DCO are also subject to the segregation requirements of section 4d(f)(2) of the CEA, and in order for a swaps customer to receive protection under this regime, particularly in an insolvency context, its funds must be carried by an FCM and deposited with a registered DCO.[23] Absent that chain of registration, the swaps customer's funds may not be treated as customer property under the U.S. Bankruptcy Code [24] and the Commission's regulations. Because of this, it has been the Commission's policy to allow exempt DCOs to clear only proprietary positions of U.S. persons and FCMs. The proposed regulations would codify this approach.

Proposed Regulation 39.6(b)(2) would codify the ''open access'' requirements of section 2(h)(1)(B) of the CEA with respect to swaps cleared by an exempt DCO to which one or more of the counterparties is a U.S. person.[25] Paragraph (b)(2)(i) would require an exempt DCO to maintain rules providing that all such swaps with the same terms and conditions (as defined by product specifications established under the exempt DCO's rules) submitted to the exempt DCO for clearing are economically equivalent and may be offset with each other, to the extent that offsetting is permitted by the exempt DCO's rules. Paragraph (b)(2)(ii) would require an exempt DCO to maintain rules providing for non-discriminatory clearing of such a swap executed either bilaterally or on or subject to the rules of an unaffiliated electronic matching platform or trade execution facility, *e.g.,* a swap execution facility.

Proposed Regulation 39.6(b)(3) would provide that an exempt DCO must

[20] In addition to the principles applicable to central counterparties and other FMIs, the PFMIs provide that central banks, market regulators, and other relevant authorities should observe five responsibilities. Consistent with this, the Commission expects that, in order to meet the standard of being subject to comparable, comprehensive supervision and regulation, a clearing organization's home country regulator will observe these responsibilities. In particular, Responsibility D Explanatory Note 4.4.1 provides that the home country regulator should adopt the PFMIs, and, ''[w]hile the precise means through which the principles are applied may vary from jurisdiction to jurisdiction, all [CPMI] and IOSCO members are expected to apply the principles to the relevant FMIs in their jurisdictions to the fullest extent allowed by the legal framework in their jurisdiction.'' PFMIs, paragraph 4.4.1. Therefore, the Commission would not find a home country regulator's statement that it requires a clearing organization to observe the PFMIs to be sufficient to meet the above standard for exemption, if the home country regulator has not itself adopted a regulatory framework that is consistent with the PFMIs.

[21] In foreign jurisdictions where more than one regulator supervises and regulates a clearing organization, the Commission would expect to enter into an MOU or similar arrangement with more than one regulator.

[22] 7 U.S.C. 6d(f)(1). This provision establishes a customer protection regime for swaps customers that is broadly similar to the regime for futures customers and options on futures customers under sections 4d(a) and (b) of the CEA. 7 U.S.C. 6d(a) and (b).

[23] *See* Section 761(2) of the Bankruptcy Code, 11 U.S.C. 761(2) (defining a ''clearing organization'' as a derivatives clearing organization registered under the CEA), and Regulation 190.01(f), 17 CFR 190.01(f) (stating that for purposes of the part 190 bankruptcy rules, ''clearing organization'' has the same meaning as that set forth in section 761(2) of the Bankruptcy Code).

[24] 11 U.S.C. 761–767.

[25] 7 U.S.C. 2(h)(1)(B).

consent to jurisdiction in the United States and designate an agent in the United States, for notice or service of process, pleadings, or other documents issued by or on behalf of the Commission or the U.S. Department of Justice in connection with any actions or proceedings against, or any investigations relating to, the exempt DCO or any U.S. person or FCM that is a clearing member or that clears swaps through an affiliated clearing member. The name of the designated agent would be submitted as part of the clearing organization's application for exemption. If an exempt DCO appoints another agent to accept such notice or service of process, the exempt DCO would be required to promptly inform the Commission of this change. This is consistent with requirements currently imposed in the registration orders of DCOs that are organized outside of the United States as well as in each of the orders of exemption that the Commission has issued.

Proposed Regulation 39.6(b)(4) is a general provision that would require an exempt DCO to comply, and demonstrate compliance as requested by the Commission, with any condition of the exempt DCO's order of exemption.

Proposed Regulation 39.6(b)(5) would require an exempt DCO to make all documents, books, records, reports, and other information related to its operation as an exempt DCO (books and records) open to inspection and copying by any Commission representative, and to promptly make its books and records available and provide them directly to Commission representatives, upon the request of a Commission representative. This condition of exemption is consistent with section 5b(h) of the CEA, which provides that the Commission may exempt a DCO from registration with conditions that may include requiring that the DCO be available for inspection by the Commission and make available all information requested by the Commission.[26] The Commission notes that it does not anticipate conducting routine site visits to exempt DCOs. However, the Commission may request an exempt DCO to provide books and records related to its operation as an exempt DCO in order for the Commission to ensure that, among other things, the exempt DCO continues to meet the eligibility requirements for an exemption as well as the conditions of its exemption.[27]

Proposed Regulation 39.6(b)(6) would require that the exempt DCO provide an annual certification that it continues to observe the PFMIs in all material respects, within 60 days following the end of its fiscal year. Proposed Regulation 39.6(b)(7) would require that the Commission receive an annual written representation from a home country regulator that the exempt DCO is in good regulatory standing, within 60 days following the end of the exempt DCO's fiscal year. These requirements would help the Commission to assess an exempt DCO's continued eligibility for an exemption.

3. Reporting Requirements

Proposed Regulation 39.6(c) and (d) would require an exempt DCO to meet certain reporting requirements, which are consistent with the reporting requirements exempt DCOs currently meet.

a. General Reporting Requirements

Proposed Regulation 39.6(c)(1) sets forth general reporting requirements pursuant to which an exempt DCO must provide certain information directly to the Commission: (1) On a periodic basis (daily or quarterly); and (2) after the occurrence of a specified event, each in accordance with the submission requirements of Regulation 39.19(b).[28] Such information may be used by the Commission, among other things, for the purposes of the Commission evaluating the continued eligibility of the exempt DCO for exemption, reviewing the exempt DCO's compliance with any conditions of its exemption, or conducting oversight of U.S. persons and their affiliates, and the swaps that they clear through the exempt DCO.

Proposed Regulation 39.6(c)(2)(i) would require an exempt DCO to compile a report as of the end of each trading day, and submit it to the Commission by 10:00 a.m. U.S. Central time on the following business day, containing with respect to swaps: (A) Initial margin requirements and initial margin on deposit for each U.S. person; and (B) daily variation margin, separately listing the mark-to-market amount collected from or paid to each U.S. person. However, if a clearing member margins on a portfolio basis its own positions and the positions of its affiliates, and either the clearing member or any of its affiliates is a U.S. person, the exempt DCO would be required to report initial margin requirements and initial margin on deposit for all such positions on a combined basis for each such clearing member and to separately list the mark-to-market amount collected from or paid to each such clearing member, on a combined basis. These requirements are similar to certain reporting requirements in Regulation 39.19(c)(1) that apply to registered DCOs.[29] These reports would provide the Commission with information regarding the cash flows associated with U.S. persons clearing swaps through exempt DCOs in order to analyze the risks presented by such U.S. persons and to assess the extent to which U.S. business is being cleared by each exempt DCO.

Proposed Regulation 39.6(c)(2)(ii) would require an exempt DCO to compile a report as of the last day of each fiscal quarter, and submit the report to the Commission no later than 17 business days after the end of the fiscal quarter, containing: (A) The aggregate clearing volume of U.S. persons during the fiscal quarter, and (B) the average open interest of U.S. persons during the fiscal quarter. If a clearing member is a U.S. person, this data would include the transactions and positions of the clearing member and all affiliates for which the clearing member clears; if a clearing member is not a U.S. person, the data would only have to include the transactions and positions of affiliates that are U.S. persons. Paragraph (C) of proposed Regulation 39.6(c)(2)(ii) would require that an exempt DCO's quarterly report to the Commission contain a list of U.S.

[26] *See also* Regulation 1.31, 17 CFR 1.31 (requiring, among other things, that books and records of DCOs and other registered entities be made available for inspection by Commission representatives).

[27] Although an MOU or similar arrangement would provide for information sharing whereby the home country regulator agrees to provide to the Commission any information that the Commission deems necessary to evaluate the clearing organization's initial and continued eligibility for exemption or to review compliance with any conditions of such exemption, the Commission would retain the authority to access books and records directly from an exempt DCO.

[28] Regulation 39.19(b), 17 CFR 39.19(b), requires that a DCO submit reports electronically and in a format and manner specified by the Commission, defines the term ''business day,'' and establishes the relevant time zone for any stated time, unless otherwise specified by the Commission. The Commission has specified that U.S. Central time will apply with respect to the daily reports that must be filed by exempt DCOs pursuant to proposed Regulation 39.6(c)(2)(i).

[29] Specifically, Regulation 39.19(c)(1) requires registered DCOs to submit daily reports to the Commission, by 10:00 a.m. on the following business day, which contain, among other things, initial margin requirements, initial margin on deposit, and daily variation margin for each clearing member. *See* Regulation 39.19(c)(1)(i)(A) and (c)(1)(i)(B), 17 CFR 39.19(c)(1)(i)(A) and (c)(1)(i)(B). These provisions require such information to be provided for each clearing member by house origin and by each customer origin. This distinction would not apply to an exempt DCO, which will only be permitted to clear transactions that the Commission would treat as ''proprietary.'' *See* discussion of proprietary and customer clearing *supra* section II.C.2.

persons and FCMs [30] that are either clearing members or affiliates of any clearing member, with respect to the clearing of swaps, as of the last day of the fiscal quarter. This information would enable the Commission, in conducting risk surveillance of U.S. persons and swaps markets more broadly, to better understand and evaluate the nature and extent of the cleared swaps activity of U.S. persons.

Paragraphs (c)(2)(iii) through (c)(2)(viii) of proposed Regulation 39.6 each would require an exempt DCO to provide information to the Commission upon the occurrence of certain specified events. Several of the proposed required notifications are intended to provide the Commission with information relevant to the exempt DCO's continued eligibility for an exemption or its compliance with the conditions of its exemption. Proposed Regulation 39.6(c)(2)(iii) would require an exempt DCO to provide prompt notice to the Commission regarding any change in its home country regulatory regime that is material to the exempt DCO's continuing observance of the PFMIs, any requirements set forth in proposed Regulation 39.6, or the order of exemption issued by the Commission. In this regard, the Commission requests comment on whether an exempt DCO should make the determination of whether a change to the home country regulatory regime constitutes a ''material'' change to the exempt DCO's continuing observance of the PFMIs, any requirements set forth in proposed Regulation 39.6, or the Commission's order of exemption. Alternatively, the Commission requests comment on whether the Commission should require an exempt DCO to provide prompt notice of any change in its home country regulatory regime thereby allowing the Commission to determine whether a change is ''material'' to the exempt DCO's continuing observance of the PFMIs, any requirements set forth in proposed Regulation 39.6, or the Commission's order of exemption. Proposed Regulation 39.6(c)(2)(iv) would require an exempt DCO to provide to the Commission, to the extent that it is available to the exempt DCO, any assessment of the exempt DCO's observance (or the home country regulator's observance) of any of the PFMIs by a home country regulator or other national authority, or an international financial institution or international organization.[31] Proposed Regulation 39.6(c)(2)(v) would require an exempt DCO to provide to the Commission, to the extent that it is available to the exempt DCO, any examination report, examination findings, or notification of the commencement of any enforcement or disciplinary action by a home country regulator. Proposed Regulation 39.6(c)(2)(vi) would require an exempt DCO to provide immediate notice to the Commission of any change with respect to its licensure, registration, or other authorization to act as a clearing organization in its home country.

Two of the event-specific required notifications would assist the Commission in its oversight of U.S. persons and FCMs clearing swaps. Proposed Regulation 39.6(c)(2)(vii) would require an exempt DCO to provide immediate notice to the Commission in the event of a default (as defined by the exempt DCO in its rules) by a U.S. person or FCM clearing swaps, including the name of the U.S. person or FCM, a list of the positions held by the U.S. person or FCM, and the amount of the U.S. person's or FCM's financial obligation. Proposed Regulation 39.6(c)(2)(viii) would require an exempt DCO to provide notice of any action that it has taken against a U.S. person or FCM, no later than two business days after the exempt DCO takes such action against a U.S. person or FCM. In particular, these provisions would require such reporting with respect to a default of, or an action taken against, an FCM, which may or may not be a U.S. person, in furtherance of the Commission's supervisory responsibilities with respect to registered FCMs. Proposed paragraphs (c)(2)(vii) and (c)(2)(viii) of Regulation 39.6 are similar to paragraphs (c)(4)(vii) and (c)(4)(xi) of Regulation 39.19, which apply to registered DCOs, respectively.

b. Swap Data Reporting Requirements

Proposed Regulation 39.6(d) would require that if a clearing member clears through an exempt DCO a swap that has been reported to a registered swap data repository (SDR) pursuant to part 45 of the Commission's regulations, the exempt DCO must report to an SDR data regarding the two swaps resulting from the novation of the original swap that had been submitted to the exempt DCO for clearing. In addition, an exempt DCO would be required to report the termination of the original swap accepted for clearing by the exempt DCO to the SDR to which the original swap was reported. Further, in order to avoid duplicative reporting for such transactions, an exempt DCO would be required to have rules that prohibit the part 45 reporting of the two new swaps by the counterparties to the original swap.[32]

4. Application Procedures

Proposed Regulation 39.6(e) would describe the relevant application procedures for a clearing organization that seeks to be exempt from DCO registration, which are consistent with the application procedures the Commission has been using to evaluate petitions for exemption. Specifically, under proposed Regulation 39.6(e)(1), a clearing organization would be required to file an application for exemption with the Secretary of the Commission in the format and manner specified by the Commission. After reviewing the application, the Commission could: (1) Grant the exemption without conditions; (2) grant the exemption with conditions; or (3) deny the application for exemption.[33] This provision mirrors language in Regulation 39.3(a)(1), which addresses the application procedures for registration as a DCO.

Proposed Regulation 39.6(e)(2) would require an applicant to submit a complete application, including all applicable information and documentation as detailed in proposed Regulation 39.6(e)(2) and discussed below. It would provide that the Commission will not commence processing an application unless the application is complete. Proposed Regulation 39.6(e)(2) would further provide that an applicant may file with its completed application additional information that may be necessary or helpful to the Commission in processing the application. This provision is similar to certain provisions of Regulation 39.3(a)(2), which sets forth requirements with respect to applications for registration as a DCO.

[30] Such FCMs may or may not be U.S. persons. The Commission is not proposing to require that exempt DCOs provide daily information regarding initial margin requirements, initial margin on deposit, and daily variation margin, or quarterly aggregate clearing volume or average open interest, with respect to swaps, for FCMs that are not U.S. persons (unless reporting would otherwise be required because such FCMs are affiliates of U.S. persons). However, the Commission has a supervisory interest in receiving information regarding which of its registered FCMs are clearing members or affiliates of clearing members, with respect to the clearing of swaps on an exempt DCO.

[31] Such an international organization may include the International Monetary Fund or World Bank. *See* PFMIs, paragraph 1.33.

[32] While the Commission recognizes that the counterparties to the original swap would otherwise be required to report the two new swaps under part 45 of the Commission's regulations, because an exempt DCO would be required to implement rules to the contrary at the direction of the Commission, such counterparties would be expected to comply with the rules of the exempt DCO in this case.

[33] As noted above, proposed Regulation 39.6(b) sets forth the pre-conditions that would apply to any exemption from registration as a DCO.

Under proposed Regulation 39.6(e)(2)(i), an applicant would be required to submit a cover letter providing general information identifying the applicant, its regulatory licenses or registrations, and relevant contact information. Proposed Regulation 39.6(e)(2)(ii)–(viii) would require an applicant for exemption to submit documents that would establish the applicant's eligibility for exemption under proposed Regulation 39.6(a), and would contain representations that the applicant would comply with the conditions of exemption, the general reporting requirements, and the swap data reporting requirements set forth in proposed Regulation 39.6(b), (c), and (d), respectively, and the terms and conditions of its order of exemption as issued by the Commission.

Additionally, proposed Regulation 39.6(e)(2)(v) would require an applicant to submit to the Commission copies of its most recent disclosures necessary to observe the PFMIs, including the financial market infrastructure (FMI) disclosure template set forth in Annex A to the Disclosure Framework and Assessment Methodology (Disclosure Framework) for the PFMIs.[34] The FMI disclosure template requires a clearing organization to provide a general description of itself and the markets it serves, a description of its general organization, an overview of the relevant legal and regulatory framework, a description of how it processes a transaction, and a summary narrative detailing its approach to observing each of the PFMIs. The Commission expects that the FMI disclosure template provided to the Commission would have been reviewed and updated within the previous two years.[35] The FMI disclosure template is generally required by home country regulators that enforce the PFMIs and is necessary to achieve status as a qualified central counterparty (QCCP).[36]

Proposed Regulation 39.6(e)(3) would provide that, at any time during the Commission's review of an application for exemption from registration as a DCO, the Commission may request that the applicant submit supplemental information in order for the Commission to process the application, and would require that the applicant file such supplemental information in the format and manner specified by the Commission. A similar provision is contained in Regulation 39.3(a)(3), which applies to applications for DCO registration.

Proposed Regulation 39.6(e)(4) would state that an applicant for exemption from registration as a DCO must promptly amend its application if it discovers a material omission or error, or if there is a material change in the information provided to the Commission in the application or other information provided in connection with the application. This provision is virtually identical to Regulation 39.3(a)(4), which addresses amendments to applications for DCO registration.

Proposed Regulation 39.6(e)(5) would identify those sections of an application for exemption from registration that will be made public, including the cover letter required in proposed Regulation 39.6(e)(2)(i); documents demonstrating that the applicant is organized in a jurisdiction in which its home country regulator applies to the applicant statutes, rules, regulations, and/or policies that are consistent with the PFMIs; disclosures necessary to observe the PFMIs;[37] rules that meet the requirements of proposed Regulation 39.6(b)(2) and (d), as applicable; and any other part of the application not covered by a request for confidential treatment, subject to Regulation 145.9. This provision is similar to Regulation 39.3(a)(5), which identifies those portions of an application for registration as a DCO that are made public.

5. Modification of an Exemption

Proposed Regulation 39.6(f) would provide that the Commission may modify the terms and conditions of an order of exemption, either at the request of the exempt DCO or on the Commission's own initiative, based on changes to or omissions in material facts or circumstances pursuant to which the order of exemption was issued, or for any reason in the Commission's discretion. This is a further expression of the Commission's discretionary authority under section 5b(h) of the CEA to exempt a clearing organization from registration ''conditionally or unconditionally,'' and it reflects the Commission's authority to act with flexibility in responding to changed circumstances affecting an exempt DCO.

6. Termination of Exemption Upon Request by an Exempt DCO

Proposed Regulation 39.6(g) would set forth the framework under which an exempt DCO may petition the Commission to terminate its exemption and the applicable procedures. Specifically, pursuant to proposed Regulation 39.6(g)(1), an exempt DCO may request that the Commission terminate its exemption if the exempt DCO: (i) No longer qualifies for an exemption as a result of changed circumstances; (ii) intends to cease clearing swaps for U.S. persons; or (iii) submits a completed Form DCO in order to become a registered DCO in conjunction with its petition. Proposed Regulation 39.6(g)(2) would provide that the petition for termination must include an explanation for the request and describe the exempt DCO's plans for liquidation or transfer of the positions and related collateral of U.S. persons, if applicable. Pursuant to proposed Regulation 39.6(g)(3), the Commission would issue an order of termination within a reasonable time appropriate to the circumstances or in conjunction with the issuance of an order of registration, if applicable.

D. Regulation 39.9—Scope

The Commission is proposing to revise Regulation 39.9 to make it clear that the provisions of subpart B apply to any DCO, as defined under section 1a(15) of the CEA and Regulation 1.3, that is registered with the Commission as a DCO pursuant to section 5b of the CEA, but do not apply to any exempt DCO. This revision would clarify that the subpart B regulations that address compliance with the DCO Core Principles applicable to registered DCOs do not impose any obligations upon exempt DCOs.

III. Proposed Amendments to Part 140—Delegations of Authority

The proposed amendments to Regulation 140.94(c)(4) would delegate

[34] *See* CPMI–IOSCO, Principles for financial market infrastructures: Disclosure framework and Assessment methodology (Dec. 2012), at 82 *et seq.,* available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD396.pdf.*

[35] PFMI Explanatory Note 3.23.7 provides that the Principle 23, Key Consideration 5 standard that responses to the Disclosure Framework should be completed ''regularly'' means that an FMI should review its responses ''[a]t a minimum . . . every two years to ensure continued accuracy and usefulness.'' PFMIs, paragraph 3.23.7.

[36] A QCCP is defined as an entity that (i) is licensed to operate as a central counterparty (CCP) and is permitted by the appropriate regulator to operate as such, and (ii) is prudentially supervised in a jurisdiction where the relevant regulator has established and publicly indicated that it applies to the CCP, on an ongoing basis, domestic rules and regulations that are consistent with the PFMIs. The failure of a CCP to achieve QCCP status could result in significant costs to its bank customers due to certain financial incentives for banks, including their subsidiaries and affiliates, to clear financial derivatives through QCCPs. *See* Basel Committee on Banking Supervision, Capital Requirements for Bank Exposures to Central Counterparties (Apr. 10, 2014), available at *https://www.bis.org/publ/bcbs282.htm.*

[37] The Disclosure Framework contemplates that central counterparties will make public disclosures pursuant to the Disclosure Framework. *See* CPMI–IOSCO, Principles for financial market infrastructures: Disclosure framework and Assessment methodology (Dec. 2012), at 1, available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD396.pdf.*

to the Director of DCR all functions reserved to the Commission under proposed Regulation 39.6 except for the following: (i) Granting an exemption under paragraph (a); (ii) prescribing any conditions to an exemption under paragraph (b); (iii) modifying an exemption under paragraph (f); and (iv) terminating an exemption under paragraph (g)(3). Such delegation would expedite consideration of exemption requests by permitting DCR to more efficiently carry out tasks associated with the processing of an exemption application. Certain technical amendments have also been proposed to Regulation 140.94 in order to adjust the paragraph numbering to accommodate the proposed amendments to Regulation 140.94(c)(4).

IV. Request for Comments

The Commission generally requests comments on all aspects of the proposed rules. Additionally, the Commission requests comments on the following specific issues:

- Exempt DCOs are permitted to clear only proprietary positions of U.S. persons and FCMs. The proposed regulations would codify this approach. Should the Commission consider permitting an exempt DCO to clear swaps for FCM customers?
- Should the Commission impose any additional conditions on an exempt DCO or modify any of the existing conditions?
- Should any of the conditions imposed on an exempt DCO lead to an automatic termination of the exemption if the condition is not met?

V. Consideration of Costs and Benefits

A. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[38] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the Section 15(a) factors.

[38] 7 U.S.C. 19(a).

B. Proposed Regulation 39.6

1. Summary

Section 5b(a) of the CEA requires a clearing organization that clears swaps to be registered with the Commission as a DCO. Section 5b(h) of the CEA, however, permits the Commission to exempt a clearing organization from DCO registration for the clearing of swaps to the extent that the Commission determines that such clearing organization is subject to comparable, comprehensive supervision by appropriate government authorities in the clearing organization's home country. Pursuant to this authority, the Commission has exempted four non-U.S. clearing organizations from DCO registration to clear proprietary swap positions of U.S. persons and FCMs. The proposed regulation would codify the policies and procedures that the Commission is currently following with respect to granting exemptions from DCO registration. Accordingly, the baseline for this consideration of costs and benefits is the current status, where the Commission has implemented a set of conditions and procedures for granting exemptions from DCO registration, but has not codified those conditions and procedures under Commission regulations.

Specifically, the proposed regulation would set forth the process by which a non-U.S. clearing organization could obtain an exemption from DCO registration for the clearing of swaps provided that it meets the specified eligibility standards and can meet the conditions of an exemption. The eligibility standards require, among other things, that a clearing organization applying for exemption must be organized in a jurisdiction in which a home country regulator applies to the clearing organization, on an ongoing basis, statutes, rules, regulations, policies, or a combination thereof that, taken together, are consistent with the PFMIs, and the clearing organization must observe the PFMIs in all material respects. The conditions of exemption describe, among other things, the circumstances in which an exempt DCO would be permitted to clear swaps for U.S. persons. An exempt DCO is and would be permitted to clear only ''proprietary'' positions as defined in Regulation 1.3, and it is not and would not be permitted to clear ''customer'' positions subject to section 4d(f) of the CEA.

2. Benefits

Proposed Regulation 39.6 would provide several benefits. First, an exempt DCO may clear proprietary swap positions for U.S. persons without having to prepare and submit an application for DCO registration, which involves the submission of extensive documentation to the Commission. Similarly, an exempt DCO is not required to comply with Commission regulations applicable to registered DCOs, except as required under Regulation 39.6 or the exempt DCO's order of exemption. Thus, the significantly reduced application and ongoing compliance requirements for exempt DCOs may encourage clearing organizations to seek an exemption from registration. This mitigation of registration-related requirements may also benefit market participants and the public more generally. That is, non-U.S. clearing organizations that are exempt from registration may incur lower compliance costs, which may, in turn, result in lower costs to their clearing members. In addition, U.S. persons (as clearing members or affiliates of clearing members) would likely have access to more clearing organizations in order to clear their proprietary swaps. Access to more clearing organizations may also encourage voluntary clearing of swaps that are not required to be cleared, as certain swaps may not be cleared by any registered DCOs. This may, in turn, serve to diversify the potential risk of cleared swaps, because any such risk would become less concentrated if a larger number of registered and exempt DCOs were clearing swaps for U.S. persons, and the volume of those swaps could become more evenly distributed among those registered and exempt DCOs.

Finally, the proposed regulation may also promote competition among registered and exempt DCOs by encouraging more clearing organizations to seek an exemption, and it would permit exempt DCOs to clear the same types of swap transactions for the proprietary accounts of U.S. persons that may be cleared by registered DCOs.

The Commission requests comment on the potential benefits of proposed Regulation 39.6, including, where possible, quantitative data. More specifically, the Commission requests comment on the potential benefits to clearing organizations that are eligible to become exempt DCOs and thereby clear swaps for U.S. persons and their affiliates, and the potential benefits to other market participants or the financial system as a whole. The Commission further requests comment on any alternative proposals that might achieve the objectives of the proposed regulation, and the benefits associated with any such alternatives.

3. Costs

A clearing organization seeking an exemption incurs some costs in preparing an application for exemption. If a clearing organization were not able to seek an exemption, however, it would be required to register with the Commission and to submit a Form DCO.[39] While the Form DCO and the FMI disclosure template set forth in Annex A to the Disclosure Framework require certain similar types of information to be provided to the Commission, the Form DCO would require the clearing organization to provide additional documentation that is not required pursuant to the Disclosure Framework. Moreover, a clearing organization is likely to have already prepared the FMI disclosure template in order to comply with the requirements of its home country regulator, which must be consistent with the PFMIs, and to achieve QCCP status.[40] Therefore, the costs involved in applying for an exemption are less than the costs involved in applying for registration, and the proposed regulation would not change this. Based on the Commission's Paperwork Reduction Act estimates, the cost burden to submit Form DCO is approximately $100,000 per entity,[41] while that for submitting an application for exemption is approximately $10,500 per entity.[42] Thus, there is an estimated cost savings associated with submitting an application for exemption rather than Form DCO of approximately $89,500 per entity, and the proposed regulation would codify the procedures for submitting an application for exemption. The Commission seeks comment about whether these cost estimates are reasonable.

Other potential administrative costs associated with maintaining an exemption from DCO registration are minimal. For example, an exempt DCO would be required to make its books and records relating to its operation as an exempt DCO available for inspection by Commission staff upon request. This condition of exemption is consistent with section 5b(h) of the CEA, which provides that the Commission may exempt a DCO from registration with conditions that may include requiring that the DCO be available for inspection by the Commission and make available all information requested by the Commission. In addition, this requirement is imposed on registered DCOs; as a result, an exempt DCO would be held to this requirement even if it were to choose to register as a DCO. The Commission notes that there would be no costs imposed on an exempt DCO in connection with this condition unless and until the Commission requests to inspect its books and records. Furthermore, an exempt DCO's home country regulator is and would be required to provide to the Commission an annual written representation that the exempt DCO is in good regulatory standing. The Commission believes that the costs associated with this requirement are minimal, as home country regulators typically provide a standard letter and are required to provide it only once a year.

Lastly, exempt DCOs would be held to certain reporting requirements, the costs of which are limited to providing them to the Commission on either a regular or event-specific basis. The Commission has previously considered the costs of regular and event-specific reporting requirements when adopting Regulation 39.19(c) for registered DCOs.[43] The reporting requirements for exempt DCOs are substantially less extensive than those specified in Regulation 39.19(c). The Commission believes the costs of the exempt DCO reporting requirements are not significant but welcomes comment on such costs, particularly from existing exempt DCOs.

An exempt DCO may incur costs related to establishing and maintaining connections to an SDR in order to report the swap data that would be required by proposed Regulation 39.6(d). In connection with the analysis required by the Paperwork Reduction Act, the Commission has estimated an initial cost of $85,478 per exempt DCO to establish an SDR connection, and an annual cost of $93,750 to maintain this connection.

As discussed in section VI.B below, an exempt DCO would likely realize some administrative cost savings with respect to its ongoing compliance obligations with the Commission. The Commission acknowledges that it is difficult to differentiate the ongoing costs of complying with a home country's regulatory requirements from those of complying with the CEA and Commission regulations given that there may be costs common to both. Furthermore, the Commission lacks reliable data upon which to base many of these cost estimates, which it acknowledges could vary greatly among clearing organizations. Thus, the Commission seeks comment about such costs.

C. Section 15(a) Factors

1. Protection of Market Participants and the Public

The proposed amendments to Part 39 would protect market participants and the public by requiring, among other things, that an exempt DCO: (i) May only clear swaps for U.S. persons for their proprietary accounts, and not for ''swaps customers'' within the meaning of the CEA and Commission regulations; (ii) must be organized in a jurisdiction in which it is subject to supervision and regulation by a government authority that applies to the clearing organization statutes, rules, regulations, policies, or a combination thereof that, taken together, are consistent with the PFMIs; (iii) must submit to the Commission the FMI disclosure template set forth in Annex A to the Disclosure Framework required to observe the PFMIs establishing that it does observe the PFMIs, and must provide information to the Commission, upon request, that the Commission deems necessary to evaluate its continued eligibility for exemption or to review its compliance with any conditions of exemption; and (iv) must be licensed, registered, or otherwise authorized to act as a clearing organization in its home country, and its home country regulator must not have made any findings of material non-observance of the PFMIs or other relevant home country legal requirements that have not resulted in corrective action. Furthermore, the proposed amendments to part 39 would provide additional market safeguards through requiring an MOU or other similar arrangement with the home country regulator that would enable the Commission to obtain any information that the Commission deems necessary to evaluate the initial and continued eligibility of the DCO for exemption from registration or to review its compliance with any conditions of such exemption.

These requirements would protect market participants and the public by ensuring that U.S. ''swaps customers'' would remain subject to the customer protection regime established in the CEA and Commission regulations, and that exempt DCOs would be subject to the internationally recognized PFMI standards.

[39] For purposes of this analysis, it is assumed that any clearing organization that is not granted an exemption will be required to register as a DCO if it clears swaps for any U.S. person. This assumption, however, is not intended to be a legal conclusion that, with respect to the particular facts and circumstances of any particular clearing organization, the CEA would require registration with the Commission as a DCO.

[40] *See supra* section II.C.4 for more detail.

[41] *See* Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69410 (Nov. 8, 2011).

[42] *See infra* section VI.B for more detail.

[43] Derivatives Clearing Organization General Provisions and Core Principles, 76 FR at 69426.

2. Efficiency, Competitiveness, and Financial Integrity

Proposed Regulation 39.6 would promote efficiency in the design of an exempt DCO's settlement and clearing arrangements, operating structure and procedures, scope of products cleared, and use of technology because it would permit an exempt DCO to clear proprietary transactions for U.S. persons through observance of the PFMIs, subject to supervision and regulation by a home country regulator. Moreover, the use of a single set of standards to determine eligibility, namely the internationally recognized PFMIs, would promote operational efficiency because it would (i) permit a non-U.S. clearing organization to obtain an exemption from registration that would mitigate duplicative compliance requirements and (ii) facilitate uniformity in supervision and regulation of both registered and exempt DCOs.

Proposed Regulation 39.6 may also promote competition among registered and exempt DCOs because it would permit exempt DCOs to clear the same types of swap transactions for the proprietary accounts of U.S. persons that may be cleared by registered DCOs. Unlike their foreign counterparts, U.S.-based DCOs would still be required to register with the Commission in order to clear proprietary swap positions for U.S. persons and would not be eligible for an exemption under the proposed regulation (or under section 5b(h) of the CEA). Potentially, this different treatment may create a competitive disadvantage for U.S.-based DCOs, which would be subject to the requirements of the CEA and Commission regulations. However, exempt DCOs would be subject to a foreign supervisory and regulatory framework that is consistent with the internationally recognized standards set forth in the PFMIs.

Proposed Regulation 39.6 would be expected to maintain the financial integrity of clearing organizations that clear proprietary transactions for U.S. persons because exempt clearing organizations would be subject to supervision and regulation by a home country regulator within a legal framework that is consistent with the PFMIs. Such supervision and regulation is comparable to that applicable to DCOs under the CEA and Commission regulations, and is sufficiently comprehensive. In addition, the proposed regulation may contribute to the financial integrity of the broader financial system by spreading the potential risk of particular cleared swaps among a greater number of registered and exempt DCOs.

3. Price Discovery

Price discovery is the process by which prices for underlying instruments may be determined by, or inferred from, prices of derivative contracts. The Commission has not identified any impact that proposed Regulation 39.6 would have on price discovery.

4. Sound Risk Management Practices

Proposed Regulation 39.6 would contribute to the sound risk management practices of clearing organizations that provide clearing services to U.S. persons for their proprietary transactions because exempt DCOs would be subject to the risk management standards that are included in the PFMIs. Although the risk management requirements of the CEA and the Commission regulations applicable to registered DCOs would not be binding upon exempt DCOs, the risk management standards in the PFMIs are substantially similar.

5. Other Public Interest Considerations

The Commission notes the public interest in access to clearing organizations outside the United States in light of the international nature of many swap transactions. The proposed amendments to part 39 would codify the exemption process for non-U.S. clearing organizations that would permit them to clear proprietary swap transactions for certain U.S. persons, when such clearing organizations meet the eligibility requirements and conditions of the proposed rule. Having a more open and transparent process for obtaining an exemption from registration may encourage more non-U.S. clearing organizations to seek an exemption, providing greater harmonization of the U.S. and global financial markets.

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis on the impact.[44] The regulations proposed by the Commission will affect only clearing organizations. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[45] The Commission has previously determined that clearing organizations are not small entities for the purpose of the RFA.[46] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)[47] provides that Federal agencies, including the Commission, may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number from the Office of Management and Budget (OMB). This proposed rulemaking contains reporting requirements that are collections of information within the meaning of the PRA. Although the Commission anticipates that fewer than ten persons will be subject to these requirements, which is below the ''ten or more persons'' threshold for PRA compliance, the PRA applies to any recordkeeping, reporting, or disclosure requirement contained in a rule of general applicability.[48] The Commission is proposing to revise Information Collection 3038–0076, which contains the requirements for applications for registration as a DCO, and Information Collection 3038–0096, which contains swap data reporting requirements, to include the collection of information in proposed Regulation 39.6. The responses to the collection of information would be necessary to obtain the requested exemption from DCO registration.

1. Application for Exemption and Ongoing Reporting Obligations Under Proposed Regulation 39.6

The number of potential respondents was estimated based on the number of non-U.S. clearing organizations that have already applied for, or been granted, an exemption from DCO registration by the Commission. Based on its experience in addressing petitions for exemption, the Commission anticipates receiving one or two applications for exemption per year. Burden hours and costs were estimated based on existing information collections for DCO registration and reporting, adjusted to reflect the significantly lower burden of the proposed regulations. The number of

[44] 5 U.S.C. 601 *et seq.*

[45] 47 FR 18618 (Apr. 30, 1982).

[46] *See* 66 FR 45604, 45609 (Aug. 29, 2001).

[47] 44 U.S.C. 3501 *et seq.*

[48] 5 CFR 1320.3(c)(4)(i).

respondents for the daily and quarterly reporting and annual certification requirements is conservatively estimated at a maximum of seven, based on the number of existing exempt DCOs and the number of pending petitions. Reporting of specific events and termination of an exemption are expected to occur infrequently. The burden is estimated conservatively at two per year for event-specific reporting and at one per year for reporting of an exemption termination. The Commission has estimated the burden hours for this proposed collection of information as follows:

Application for exemption
Estimated number of respondents: 2
Estimated number of reports per respondent: 1
Average number of hours per report: 32
Estimated gross annual reporting burden: 64
Information requested by the Commission
Estimated number of respondents: 2
Estimated number of reports per respondent: 1
Average number of hours per report: 3
Estimated gross annual reporting burden: 6
Daily reporting
Estimated number of respondents: 7
Estimated number of reports per respondent: 250
Average number of hours per report: 0.1
Estimated gross annual reporting burden: 175
Quarterly reporting
Estimated number of respondents: 7
Estimated number of reports per respondent: 4
Average number of hours per report: 2
Estimated gross annual reporting burden: 56
Event-specific reporting
Estimated number of respondents: 2
Estimated number of reports per respondent: 1
Average number of hours per report: 0.5
Estimated gross annual reporting burden: 1
Annual certification
Estimated number of respondents: 7
Estimated number of reports per respondent: 1
Average number of hours per report: 1.5
Estimated gross annual reporting burden: 21
Termination of exemption by request of clearing organization
Estimated number of respondents: 1
Estimated number of reports per respondent: 1
Average number of hours per report: 2
Estimated gross annual reporting burden: 2
Notice to clearing members of termination of exemption
Estimated number of respondents: 1
Estimated number of reports per respondent: 22
Average number of hours per report: 0.1
Estimated gross annual reporting burden: 2.2

2. Reporting by Exempt DCOs in Accordance With Part 45

Proposed Regulation 39.6(d) would require an exempt DCO to report data regarding the two swaps resulting from the novation of an original swap to a registered SDR, if the original swap had been reported to a registered SDR pursuant to part 45 of the Commission's regulations. The Commission is proposing to revise the information collection for part 45 to add exempt DCOs as an additional category of reporting entity. The burden for exempt DCOs reporting in accordance with part 45 is estimated to be approximately one-quarter of the burden for registered DCOs with respect to both non-recurring and recurring costs because exempt DCOs will not be required to report all swaps, only those that result from the novation of original swaps that have been reported to an SDR.[49] Consequently, the burden hours for the proposed collection of information in this rulemaking have been estimated as follows:

Reporting in accordance with part 45
Estimated number of respondents: 7
Estimated number of reports per respondent: 1,987
Average number of hours per report: 0.1
Estimated gross annual reporting burden: 1,393

List of Subjects

17 CFR Part 39

Commodity futures, Default rules and procedures, Exemption, Risk management, Settlement procedures, System safeguards.

17 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

[49] Details of the estimated burden related to non-recurring and recurring costs under part 45 are discussed in the part 45 adopting release. *See* Swap Data Recordkeeping and Reporting Requirements, 77 FR at 2171–2176.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR chapter I as follows:

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

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

Authority: 7 U.S.C. 2, 7a–1, and 12a; 12 U.S.C. 5464; 15 U.S.C. 8325.

■ 2. Revise § 39.1 to read as follows:

§ 39.1 Scope.

The provisions of this subpart A apply to any derivatives clearing organization, as defined under section 1a(15) of the Act and § 1.3 of this chapter, that is registered or is required to register with the Commission as a derivatives clearing organization pursuant to section 5b(a) of the Act, or that is applying for an exemption from registration pursuant to section 5b(h) of the Act.

■ 3. In § 39.2, add the following definitions in alphabetical order to read as follows:

§ 39.2 Definitions.

* * * * *

Exempt derivatives clearing organization means a derivatives clearing organization that the Commission has exempted from registration under section 5b(a) of the Act, pursuant to section 5b(h) of the Act and § 39.6.

Good regulatory standing means, with respect to a derivatives clearing organization that is organized outside of the United States, and is licensed, registered, or otherwise authorized to act as a clearing organization in its home country, that either:

(1) There has been no finding by the home country regulator of material non-observance of the Principles for Financial Market Infrastructures or other relevant home country legal requirements, or

(2) There has been a finding by the home country regulator of material non-observance of the Principles for Financial Market Infrastructures or other relevant home country legal requirements but any such finding has been or is being resolved to the satisfaction of the home country regulator by means of corrective action taken by the derivatives clearing organization.

Home country means, with respect to a derivatives clearing organization that is organized outside of the United States, the jurisdiction in which the derivatives clearing organization is organized.

Home country regulator means, with respect to a derivatives clearing organization that is organized outside of the United States, an appropriate government authority which licenses, regulates, supervises, or oversees the derivatives clearing organization's clearing activities in the home country.

* * * * *

Principles for Financial Market Infrastructures means the Principles for Financial Market Infrastructures jointly published by the Committee on Payments and Market Infrastructures and the Technical Committee of the International Organization of Securities Commissions in April 2012, as updated, revised, or otherwise amended.

* * * * *

■ 4. Add § 39.6 to read as follows:

§ 39.6 Exemption from derivatives clearing organization registration.

(a) *Eligibility for exemption.* The Commission may exempt, conditionally or unconditionally, a derivatives clearing organization that is organized outside of the United States, from registration as a derivatives clearing organization for the clearing of swaps for U.S. persons, and thereby exempt such derivatives clearing organization from compliance with provisions of the Act and Commission regulations applicable to derivatives clearing organizations, if:

(1) The derivatives clearing organization is subject to comparable, comprehensive supervision and regulation by a home country regulator as demonstrated by the following:

(i) The derivatives clearing organization is organized in a jurisdiction in which a home country regulator applies to the derivatives clearing organization, on an ongoing basis, statutes, rules, regulations, policies, or a combination thereof that, taken together, are consistent with the Principles for Financial Market Infrastructures;

(ii) The derivatives clearing organization observes the Principles for Financial Market Infrastructures in all material respects; and

(iii) The derivatives clearing organization is in good regulatory standing in its home country; and

(2) A memorandum of understanding or similar arrangement satisfactory to the Commission is in effect between the Commission and the derivatives clearing organization's home country regulator, pursuant to which, among other things, the home country regulator agrees to provide to the Commission any information that the Commission deems necessary to evaluate the initial and continued eligibility of the derivatives clearing organization for exemption from registration or to review its compliance with any conditions of such exemption.

(b) *Conditions of exemption.* An exemption from registration as a derivatives clearing organization shall be subject to any conditions the Commission may prescribe including, but not limited to:

(1) *Clearing by or for U.S. persons and futures commission merchants.* The exempt derivatives clearing organization shall maintain rules that limit swaps clearing services for U.S. persons and futures commission merchants to the following circumstances:

(i) A U.S. person that is a clearing member of the exempt derivatives clearing organization may clear swaps for itself and those persons identified in the definition of ''proprietary account'' set forth in § 1.3 of this chapter;

(ii) A non-U.S. person that is a clearing member of the exempt derivatives clearing organization may clear swaps for any affiliated U.S. person identified in the definition of ''proprietary account'' set forth in § 1.3 of this chapter; and

(iii) An entity that is registered with the Commission as a futures commission merchant may be a clearing member of the exempt derivatives clearing organization, or otherwise maintain an account with an affiliated broker that is a clearing member, for the purpose of clearing swaps for itself and those persons identified in the definition of ''proprietary account'' set forth in § 1.3 of this chapter.

(2) *Open access.* The exempt derivatives clearing organization shall maintain rules with respect to swaps to which one or more of the counterparties is a U.S. person. Such rules shall:

(i) Provide that all swaps with the same terms and conditions, as defined by product specifications established under the exempt derivatives clearing organization's rules, submitted to the exempt derivatives clearing organization for clearing are economically equivalent within the exempt derivatives clearing organization and may be offset with each other within the exempt derivatives clearing organization, to the extent offsetting is permitted by the exempt derivatives clearing organization's rules; and

(ii) Provide that there shall be non-discriminatory clearing of a swap executed bilaterally or on or subject to the rules of an unaffiliated electronic matching platform or trade execution facility.

(3) *Consent to jurisdiction; designation of agent for service of process.* The exempt derivatives clearing organization shall:

(i) Consent to jurisdiction in the United States;

(ii) Designate, authorize, and identify to the Commission, an agent in the United States who shall accept any notice or service of process, pleadings, or other documents, including any summons, complaint, order, subpoena, request for information, or any other written or electronic documentation or correspondence issued by or on behalf of the Commission or the United States Department of Justice to the exempt derivatives clearing organization, in connection with any actions or proceedings brought against, or investigations relating to, the exempt derivatives clearing organization or any U.S. person or futures commission merchant that is a clearing member, or that clears swaps through an affiliated clearing member, of the exempt derivatives clearing organization; and

(iii) Promptly inform the Commission of any change in its designated and authorized agent.

(4) *Compliance.* The exempt derivatives clearing organization shall comply, and shall demonstrate compliance as requested by the Commission, with any condition of its exemption.

(5) *Inspection of books and records.* The exempt derivatives clearing organization shall make all documents, books, records, reports, and other information related to its operation as an exempt derivatives clearing organization open to inspection and copying by any representative of the Commission; and in response to a request by any representative of the Commission, the exempt derivatives clearing organization shall, promptly and in the form specified, make the requested books and records available and provide them directly to Commission representatives.

(6) *Observance of the Principles for Financial Market Infrastructures.* On an annual basis, within 60 days following the end of its fiscal year, the exempt derivatives clearing organization shall provide to the Commission a certification that it continues to observe the Principles for Financial Market Infrastructures in all material respects.

(7) *Representation of good regulatory standing.* On an annual basis, within 60 days following the end of its fiscal year, the Commission shall receive from a home country regulator, at the request of the exempt derivatives clearing organization, a written representation that the exempt derivatives clearing organization is in good regulatory standing.

(c) *General reporting requirements.* (1) An exempt derivatives clearing organization shall provide to the Commission the information specified in this paragraph and any other information that the Commission deems necessary, including, but not limited to, information for the purpose of the Commission evaluating the continued eligibility of the exempt derivatives clearing organization for exemption from registration, reviewing compliance by the exempt derivatives clearing organization with any conditions of the exemption, or conducting oversight of U.S. persons and their affiliates, and the swaps that are cleared by such persons through the exempt derivatives clearing organization. Information provided to the Commission under this paragraph shall be submitted in accordance with § 39.19(b).

(2) Each exempt derivatives clearing organization shall provide to the Commission the following information:

(i) A report compiled as of the end of each trading day and submitted to the Commission by 10:00 a.m. U.S. Central time on the following business day, containing:

(A) Initial margin requirements and initial margin on deposit for each U.S. person, with respect to swaps; *provided, however,* if a clearing member margins on a portfolio basis its own positions and the positions of its affiliates, and either the clearing member or any of its affiliates is a U.S. person, the exempt derivatives clearing organization shall report initial margin requirements and initial margin on deposit for all such positions on a combined basis for each such clearing member; and

(B) Daily variation margin, separately listing the mark-to-market amount collected from or paid to each U.S. person, with respect to swaps; *provided, however,* if a clearing member margins on a portfolio basis its own positions and the positions of its affiliates, and either the clearing member or any of its affiliates is a U.S. person, the exempt derivatives clearing organization shall separately list the mark-to-market amount collected from or paid to each such clearing member, on a combined basis.

(ii) A report compiled as of the last day of each fiscal quarter of the exempt derivatives clearing organization and submitted to the Commission no later than 17 business days after the end of the exempt derivatives clearing organization's fiscal quarter, containing the following information:

(A) The aggregate clearing volume of U.S. persons during the fiscal quarter, with respect to swaps. If a clearing member is a U.S. person, the volume figure shall include the transactions of the clearing member and all affiliates. If a clearing member is not a U.S. person, the volume figure shall include only transactions of affiliates that are U.S. persons.

(B) The average open interest of U.S. persons during the fiscal quarter, with respect to swaps. If a clearing member is a U.S. person, the open interest figure shall include the positions of the clearing member and all affiliates. If a clearing member is not a U.S. person, the open interest figure shall include only positions of affiliates that are U.S. persons.

(C) A list of U.S. persons and futures commission merchants that are either clearing members or affiliates of any clearing member, with respect to the clearing of swaps, as of the last day of the fiscal quarter.

(iii) Prompt notice regarding any change in the home country regulatory regime that is material to the exempt derivatives clearing organization's continuing observance of the Principles for Financial Market Infrastructures or with any of the requirements set forth in this section or in the order of exemption issued by the Commission;

(iv) As available to the exempt derivatives clearing organization, any assessment of the exempt derivatives clearing organization's or the home country regulator's observance of the Principles for Financial Market Infrastructures, or any portion thereof, by a home country regulator or other national authority, or an international financial institution or international organization;

(v) As available to the exempt derivatives clearing organization, any examination report, examination findings, or notification of the commencement of any enforcement or disciplinary action by a home country regulator;

(vi) Immediate notice of any change with respect to the exempt derivatives clearing organization's licensure, registration, or other authorization to act as a derivatives clearing organization in its home country;

(vii) In the event of a default by a U.S. person or futures commission merchant clearing swaps, with such event of default determined in accordance with the rules of the exempt derivatives clearing organization, immediate notice of the default including the name of the U.S. person or futures commission merchant, a list of the positions held by the U.S. person or futures commission merchant, and the amount of the U.S. person's or futures commission merchant's financial obligation; and

(viii) Notice of action taken against a U.S. person or futures commission merchant by an exempt derivatives clearing organization, no later than two business days after the exempt derivatives clearing organization takes such action against a U.S. person or futures commission merchant.

(d) *Swap data reporting requirements.* If a clearing member clears through an exempt derivatives clearing organization a swap that has been reported to a registered swap data repository pursuant to part 45 of this chapter, the exempt derivatives clearing organization shall report to a registered swap data repository data regarding the two swaps resulting from the novation of the original swap that had been submitted to the exempt derivatives clearing organization for clearing. The exempt derivatives clearing organization shall also report the termination of the original swap accepted for clearing by the exempt derivatives clearing organization, to the swap data repository to which the original swap was reported. In order to avoid duplicative reporting for such transactions, the exempt derivatives clearing organization shall have rules that prohibit the reporting, pursuant to part 45 of this chapter, of the two new swaps by the original counterparties to the original swap.

(e) *Application procedures.* (1) An entity seeking to be exempt from registration as a derivatives clearing organization shall file an application for exemption with the Secretary of the Commission in the format and manner specified by the Commission. The Commission will review the application for exemption and may approve or deny the application or, if deemed appropriate, exempt the applicant from registration as a derivatives clearing organization subject to conditions in addition to those set forth in paragraph (b) of this section.

(2) *Application.* An applicant for exemption from registration as a derivatives clearing organization shall submit to the Commission the information and documentation described in this section. Such information and documentation shall be clearly labeled as outlined in this section. The Commission will not commence processing an application unless the applicant has filed a complete application. Upon its own initiative, an applicant may file with its completed application for exemption additional information that may be necessary or helpful to the Commission in processing the application. The application shall include:

(i) A cover letter containing the following information:

(A) Exact name of applicant as specified in its charter, and the name under which business will be conducted (including acronyms);

(B) Address of applicant's principal office;

(C) List of principal office(s) and address(es) where clearing activities are/will be conducted;

(D) A list of all regulatory licenses or registrations of the applicant (or exemptions from any licensing requirement) and the regulator granting such license or registration;

(E) Date of the applicant's fiscal year end;

(F) Contact information for the person or persons to whom the Commission should address questions and correspondence regarding the application; and

(G) A signature and date by a duly authorized representative of the applicant.

(ii) A description of the applicant's business plan for providing clearing services as an exempt derivatives clearing organization, including information as to the classes of swaps that will be cleared and whether the swaps are subject to a clearing requirement issued by the Commission or the applicant's home country regulator;

(iii) Documents that demonstrate that applicant is organized in a jurisdiction in which its home country regulator applies to the applicant, on an ongoing basis, statutes, rules, regulations, policies, or a combination thereof that, taken together, are consistent with the Principles for Financial Market Infrastructures;

(iv) A written representation from the applicant's home country regulator that the applicant is in good regulatory standing;

(v) Copies of the applicant's most recent disclosures that are necessary to observe the Principles for Financial Market Infrastructures, including the financial market infrastructure disclosure template set forth in Annex A to the Disclosure Framework and Assessment Methodology for the Principles for Financial Market Infrastructures, any other such disclosure framework issued under the authority of the International Organization of Securities Commissions that is required for observance of the Principles for Financial Market Infrastructures, and the URL to the specific page(s) on the applicant's website where such disclosures may be found;

(vi) A representation that the applicant will comply with each of the requirements and conditions of exemption set forth in paragraphs (b), (c), and (d) of this section, and the terms and conditions of its order of exemption as issued by the Commission;

(vii) A copy of the applicant's rules that meet the requirements of paragraphs (b)(2) and (d) of this section, as applicable; and

(viii) The applicant's consent to jurisdiction in the United States, and the name and address of the applicant's designated agent in the United States, pursuant to paragraph (b)(3) of this section.

(3) *Submission of supplemental information.* At any time during its review of the application for exemption from registration as a derivatives clearing organization, the Commission may request that the applicant submit supplemental information in order for the Commission to process the application, and the applicant shall file such supplemental information in the format and manner specified by the Commission.

(4) *Amendments to pending application.* An applicant for exemption from registration as a derivatives clearing organization shall promptly amend its application if it discovers a material omission or error, or if there is a material change in the information provided to the Commission in the application or other information provided in connection with the application.

(5) *Public information.* The following sections of an application for exemption from registration as a derivatives clearing organization will be public: The cover letter set forth in paragraph (e)(2)(i) of this section; the documentation required in paragraphs (e)(2)(iii) and (e)(2)(v) of this section; rules that meet the requirements of paragraphs (b)(2) and (d) of this section, as applicable; and any other part of the application not covered by a request for confidential treatment, subject to § 145.9 of this chapter.

(f) *Modification of an exemption.* The Commission may, either at the request of the exempt derivatives clearing organization or on its own initiative, modify the terms and conditions of an order of exemption, based on changes to or omissions in material facts or circumstances pursuant to which the order of exemption was issued, or for any reason in its discretion.

(g) *Termination of exemption upon request by an exempt derivatives clearing organization.* (1) An exempt derivatives clearing organization may petition the Commission to terminate its exemption if:

(i) Changed circumstances result in the exempt derivatives clearing organization no longer qualifying for an exemption;

(ii) The exempt derivatives clearing organization intends to cease clearing swaps for U.S. persons; or

(iii) In conjunction with the petition, the exempt derivatives clearing organization submits a completed Form DCO to become a registered derivatives clearing organization pursuant to section 5b(a) of the Act.

(2) The petition for termination of exemption shall include a detailed explanation of the facts and circumstances supporting the request and the exempt derivatives clearing organization's plans for, as may be applicable, the liquidation or transfer of the swaps positions and related collateral of U.S. persons.

(3) The Commission shall issue an order of termination within a reasonable time appropriate to the circumstances or, as applicable, in conjunction with the issuance of an order of registration.

(h) *Notice to clearing members of termination of exemption.* Following the Commission's issuance of an order of termination (unless issued in conjunction with the issuance of an order of registration), the exempt derivatives clearing organization shall provide immediate notice of such termination to its clearing members. Such notice shall include:

(1) A copy of the Commission's order of termination;

(2) A description of the procedures for orderly disposition of any open swaps positions that were cleared for U.S. persons; and

(3) An instruction to clearing members, requiring that they provide the exempt derivatives clearing organization's notice of such termination to all U.S. persons clearing swaps through such clearing members.

■ 5. Revise § 39.9 to read as follows:

§ 39.9 Scope.

The provisions of this subpart B apply to any derivatives clearing organization, as defined under section 1a(15) of the Act and § 1.3 of this chapter, that is registered with the Commission as a derivatives clearing organization pursuant to section 5b of the Act. The provisions of this subpart B do not apply to any exempt derivatives clearing organization, as defined under § 39.2.

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

■ 6. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2(a)(12), 12a, 13(c), 13(d), 13(e), and 16(b).

■ 7. Amend § 140.94 as follows:
■ a. Revise the introductory text of paragraph (c);
■ b. Redesignate paragraphs (c)(4) through (c)(13) as paragraphs (c)(5) through (c)(14); and
■ c. Add new paragraph (c)(4).

The revisions and additions read as follows:

§ 140.94 Delegation of authority to the Director of the Division of Swap Dealer and Intermediary Oversight and the Director of the Division of Clearing and Risk.

* * * * *

(c) The Commission hereby delegates, until such time as the Commission orders otherwise, the following functions to the Director of the Division of Clearing and Risk and to such members of the Commission's staff acting under his or her direction as he or she may designate from time to time:

* * * * *

(4) All functions reserved to the Commission in § 39.6 of this chapter, except for the authority to:

(i) Grant an exemption under § 39.6(a) of this chapter;

(ii) Prescribe conditions to an exemption under § 39.6(b) of this chapter;

(iii) Modify an exemption under § 39.6(f) of this chapter; and

(iv) Terminate an exemption under § 39.6(g)(3) of this chapter.

* * * * *

Issued in Washington, DC, on August 8, 2018, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Exemption From Derivatives Clearing Organization Registration—Commission Voting Summary and Chairman's Statement

Appendix 1—Commission Voting Summary

On this matter, Chairman Giancarlo and Commissioners Quintenz and Behnam voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman J. Christopher Giancarlo

This proposal is part of Project KISS's simple and straightforward efforts to make what has been an internal process public and transparent. Under the Commodity Exchange Act (CEA), the Commission may conditionally or unconditionally exempt a derivatives clearing organization (DCO) from registration for the clearing of swaps if the Commission determines that the clearing organization is subject to ''comparable, comprehensive supervision and regulation'' by appropriate government authorities in the clearing organization's home country. Pursuant to this authority, the Commission has exempted four non-U.S. clearing organizations from DCO registration.

The Commission is proposing to adopt regulations that would codify the policies and procedures that the Commission is currently following with respect to granting exemptions from DCO registration. The proposed regulations are consistent with the policies and procedures that the Commission is currently following, and with the terms and conditions that the Commission has imposed on each of the clearing organizations to which it has previously issued orders of exemption.

The exempt DCO process applies a comparable, outcomes-based approach to reflect the Commission's recognition that a foreign jurisdiction may have different regulations for its central counterparties (CCP) but share the same regulatory goals. Under the proposal, for CCPs in foreign jurisdictions, a framework that conforms to the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) Principles for Financial Market Infrastructures (PFMI) would be deemed comparable to the CFTC's requirements for domestic CCPs.

The proposal is part of the Commission's continued efforts to foster cross-border cooperation and show deference to home country regulation that is deemed comparable to the Commission's regulations. As our regulatory counterparts continue to implement swaps reforms in their markets, it is critical that the Commission endeavor to ensure that its rules do not unnecessarily conflict and fragment the global marketplace. For this reason, the Commission should operate on the basis of comity, not uniformity, with non-U.S. regulators. This avoids the untenable state of overlapping and duplicative regulations. The current proposal reflects this vision.

I support this proposed rule from the Division of Clearing and Risk (DCR). I look forward to hearing comments on the proposal.

[FR Doc. 2018–17335 Filed 8–10–18; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0723]

RIN 1625–AA00

Safety Zone; Delaware River; Penn's Landing; Philadelphia, PA; Fireworks Display

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on a portion of the Delaware River in Philadelphia, PA. This action is necessary to protect the surrounding public and vessels on these navigable waters adjacent to Penn's Landing, Philadelphia, PA, during a fireworks display on September 16, 2018. This proposed rulemaking would prohibit persons and vessels from entering, transiting, or remaining within the safety zone unless authorized by the Captain of the Port Delaware Bay or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before August 28, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0723 using the Federal eRulemaking Portal at *http://www.regulations.gov*. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Thomas Welker, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division; telephone 215–271–4814, email *Thomas.j.welker@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On July 18, 2018, the Mexican Cultural Society notified the Coast

Guard that it will be conducting a fireworks display from 8 to 8:30 p.m. on September 16, 2018, to commemorate Mexican Independence Day. The fireworks are to be launched from a barge in the Delaware River adjacent to Penn's Landing in Philadelphia, PA. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Delaware Bay (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 500-yard radius of the barge.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 500-yard radius of the fireworks barge before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone from 7:30 p.m. through 8:45 p.m. on September 16, 2018. The safety zone would cover all navigable waters within 500 yards of a barge in the Delaware River adjacent to Penn's Landing in Philadelphia, PA. The barge will be anchored in approximate position 39°56′50.35″ N Latitude 075°08′18.27″ W Longitude. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 8 p.m. to 8:30 p.m. fireworks display. No vessel or person would be permitted to enter, transit, or remain within the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Delaware River for 1 hour and 15 minutes during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 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 made a preliminary determination that this action is one of a category of actions that

do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting 1 hour 15 minutes that would prohibit entry within 500 yards of a fireworks barge. Normally such actions are 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 preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0723 to read as follows:

§ 165.T05–0723 Safety Zone; Safety Zone; Delaware River; Penn's Landing; Philadelphia, PA; Fireworks Display.

(a) *Location.* The following area is a safety zone: All waters of the Delaware River within a 500-yard radius of the fireworks barge, which will be anchored in approximate position 39°56′50.35″ N Latitude 075°08′18.27″ W Longitude. All coordinates are based on Datum NAD 1983.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer on board a Coast Guard vessel or on board a federal, state, or local law enforcement vessel assisting the Captain of the Port, Delaware Bay in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part—(a) you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative; and (b) all persons and vessels in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(2) To request permission to enter the safety zone, contact the COTP or the COTP's representative on marine band radio VHF–FM channel 16 (156.8 MHz) or 215–271–4807.

(3) No vessel may take on bunkers or conduct lightering operations within the safety zone during its enforcement period(s).

(4) This section applies to all vessels except those engaged in law enforcement, aids to navigation servicing, and emergency response operations.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by federal, state, and local agencies.

(e) *Enforcement period.* This zone will be enforced from 7:30 p.m. through 8:45 p.m. on September 16, 2018.

Dated: August 8, 2018.

S.E. Anderson,

Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.

[FR Doc. 2018–17333 Filed 8–10–18; 8:45 am]

BILLING CODE 9110–04–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3015

[Docket No. RM2017–1; Order No. 4742]

Competitive Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is revising its previously proposed rules related to the minimum amount that competitive products as a whole are required to contribute to institutional costs annually, based on comments received. The Commission invites public comment on the revised proposed rules.

DATES: *Comments are due:* September 12, 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

On February 8, 2018, the Commission issued a Notice of Proposed Rulemaking (Order No. 4402) proposing that a formula be used to calculate the minimum amount that competitive products as a whole are required to

annually contribute to institutional costs (*i.e.,* the appropriate share).[1] Order No. 4402 was the result of the Commission's second review of the appropriate share, conducted pursuant to 39 U.S.C. 3633(b) in order to determine whether the existing appropriate share requirement of 5.5 percent should be retained, modified, or eliminated. *See* 39 U.S.C. 3633(b); *see also* 39 CFR 3015.7(c). For the reasons discussed below, the Commission proposes modifications to its formula-based approach and related revisions to the proposed rules.

II. Organization of Discussion

Section III of this Revised Notice of Proposed Rulemaking provides an overview of 39 U.S.C. 3633 and a recap of the Commission's two previous decisions concerning competitive products' appropriate share. In addition, section III provides a synopsis of Order No. 4402, including a brief summary of the formula-based approach previously proposed by the Commission and that approach's compliance with the elements set forth in 39 U.S.C. 3633(b). Section III also provides a list of comments received in response to Order No. 4402.

In section IV, the Commission proposes modifications to Order No. 4402's formula-based approach. In conjunction with the proposed modifications, the Commission discusses comments received in response to Order No. 4402 that directly relate to a modification proposed in this Order as well as several comments applicable to aspects of the formula's calculation.[2] As it did in Order No. 4402, the Commission also analyzes its modified proposed formula pursuant to the requirements of 39 U.S.C. 3633(b).

In section V, the Commission affirms its finding in Order No. 4402 pursuant to section 703(d) of the Postal Accountability and Enhancement Act (PAEA).[3]

Section VI takes administrative steps to allow for comments on the modifications to the proposed formula and related revisions to the proposed rules by interested persons.

III. Background

A. Relevant Statutory Requirements

The PAEA requires that competitive products collectively cover what the Commission determines to be an appropriate share of the Postal Service's institutional costs. 39 U.S.C. 3633(a)(3).

The Commission is required to review the appropriate share regulation at least every 5 years to determine if the contribution requirement should be ''retained in its current form, modified, or eliminated.'' *See* 39 U.S.C. 3633(b). In making such a determination, the Commission is required to consider ''all relevant circumstances, including the prevailing competitive conditions in the market, and the degree to which any costs are uniquely or disproportionately associated with any competitive products.'' 39 U.S.C. 3633(b). Thus, by its terms, section 3633(b) establishes three separate elements that the Commission must consider during each review: (1) The prevailing competitive conditions in the market; (2) the degree to which any costs are uniquely or disproportionately associated with competitive products; and (3) all other relevant circumstances. *See* Order No. 4402 at 6.

B. Previous Commission Decisions

In promulgating its initial competitive product rules in Docket No. RM2007–1, the Commission determined that basing competitive products' minimum contribution on a percentage of total institutional costs was easily understood and, in tying it to historic contribution at the time, set the appropriate share at 5.5 percent.[4]

The Commission completed its first review of the appropriate share, pursuant to 39 U.S.C. 3633(b), in Docket No. RM2012–3.[5] After considering the elements established by section 3633(b), the Commission determined that the appropriate share should be retained at 5.5 percent. *See generally* Order No. 1449.

C. Current Commission Review: Docket No. RM2017–1

1. Procedural History

On November 22, 2016, the Commission issued an Advance Notice of Proposed Rulemaking, which established this docket as its second review of the appropriate share pursuant to 39 U.S.C. 3633(b), appointed a Public Representative, and provided interested persons with an opportunity to comment.[6] On February 8, 2018, after considering initial and reply comments received, the Commission issued Order No. 4402, which responded to comments, presented a new formula-based approach to setting the appropriate share, and provided another opportunity for interested persons to submit comments. *See generally* Order No. 4402.

2. Order No. 4402

In Order No. 4402, the new formula-based approach proposed to set the appropriate share through a dynamic formula, which would annually update the appropriate share percentage based on market conditions. *Id.* at 11–33.

a. Formula-Based Approach

The proposed formula-based approach used two components to annually capture changes in the Postal Service's market power and in the overall size of the competitive market: The Postal Service Lerner Index and the Competitive Market Output. *Id.* at 15.

The purpose of the Postal Service Lerner Index was to measure the Postal Service's market power within the competitive market. *Id.* at 16. In Order No. 4402, the Commission noted that

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[1] Notice of Proposed Rulemaking to Evaluate the Institutional Cost Contribution Requirement for Competitive Products, February 8, 2018 (Order No. 4402). The Notice of Proposed Rulemaking to Evaluate the Institutional Cost Contribution Requirement for Competitive Products was published in the **Federal Register** on February 14, 2018. *See* 83 FR 6758 (February 14, 2018).

[2] The Commission received a range of comments related to its proposed formula-based approach and its analysis pursuant to the elements of 39 U.S.C. 3633(b). The Commission has reviewed and considered all comments received in response to Order No. 4402. For the purposes of this Revised Notice of Proposed Rulemaking, the Commission addresses those comments that relate to the formula modifications the Commission is proposing in this Order. Comments received in response to Order No. 4402 but not addressed in this Order will be addressed in a subsequent order in this proceeding.

[3] Uncodified section 703 of the PAEA, Public Law 109–435, 120 Stat. 3198 (2006), directs the Commission, when revising regulations under 39 U.S.C. 3633, to consider subsequent events that affect the continuing validity of a Federal Trade Commission (FTC) report that analyzed the Postal Service's economic advantages and disadvantages in the competitive product market when compared to private competitors. *See* PAEA, 120 Stat. 3244; *see also* Federal Trade Commission, Accounting for Laws that Apply Differently to the United States Postal Service and its Private Competitors, December 2007 (FTC Report), available at: *https://www.ftc.gov/sites/default/files/documents/reports/accounting-laws-apply-differently-united-states-postal-service-and-its-private-competitors-report/080116postal.pdf.*

[4] *See* Docket No. RM2007–1, Order Proposing Regulations to Establish a System of Ratemaking, August 15, 2007, at 70 (Order No. 26); Docket No. RM2007–1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007, at 91, 138 (Order No. 43)*; see also* Order No. 4402 at 6–7.

[5] *See* Docket No. RM2012–3, Order Reviewing Competitive Products' Appropriate Share Contribution to Institutional Costs, August 23, 2012 (Order No. 1449); *see also* Order No. 4402 at 7–11.

[6] Advance Notice of Proposed Rulemaking to Evaluate the Institutional Cost Contribution Requirement for Competitive Products, November 22, 2016 (Order No. 3624). The Advance Notice of Proposed Rulemaking to Evaluate the Institutional Cost Contribution Requirement for Competitive Products was published in the **Federal Register** on November 29, 2016. *See* 81 FR 229 (November 29, 2016).

market power is a competitor's ability to profitably set prices well above costs with little chance that entry or expansion by other competitors would erode such profits. *Id.* The Commission determined that evaluating the Postal Service's market power allowed it to assess whether competition was being preserved and whether the Postal Service possessed any competitive advantage. *Id.*

The purpose of the second component of the proposed formula, the Competitive Market Output, was to measure the overall size of the competitive market. *Id.* at 22. The Commission proposed evaluating the overall size of the market because doing so enabled the Postal Service's market power to be placed into context relative to the market as a whole. *Id.*

With the two components discussed above, the Commission proposed calculating the appropriate share using the following formula: [7]

$$AS_{t+1} = AS_t * (1 + \%\Delta LI_{t-1} + \%\Delta CMO_{t-1})$$

$$If\ t = 0 = FY\ 2007,\ AS = 5.5\%$$

The Commission proposed measuring the year-over-year percentage change in the Postal Service Lerner Index and Competitive Market Output, weighting both components equally. *Id.* at 29–31. As proposed in Order No. 4402, the formula's calculation was recursive with the Commission proposing to begin the calculation in FY 2007, using an initial appropriate share value of 5.5 percent. *Id.* at 31–32. The Commission proposed adjusting the appropriate share annually by using the formula to calculate the appropriate share for the upcoming fiscal year. *Id.* at 30. The appropriate share for each upcoming fiscal year would be reported in the Commission's Annual Compliance Determination (ACD). *Id.*

b. Compliance With Statutory Requirements

As part of Order No. 4402, the Commission examined how its proposed formula-based approach complied with section 3633(b) and accounted for the requirements of that section: (1) The prevailing competitive conditions in the market; (2) whether any costs are uniquely or disproportionately associated with any competitive products; and (3) other relevant circumstances. 39 U.S.C. 3633(b); Order No. 4402 at 34–53. For prevailing competitive conditions and other relevant circumstances, the Commission addressed the ways the proposed formula captured the prevailing competitive conditions and other relevant circumstances described in previous Commission decisions concerning the appropriate share. *Id.* at 34–40, 45–51. In addition, the Commission found that all costs uniquely or disproportionately associated with competitive products were already attributed to those products under the Commission's costing methodology.[8]

c. Comments in Response to Order No. 4402

The Postal Service, the Public Representative, *Amazon.com* Services, Inc. (Amazon), the Greeting Card Association (GCA), the Parcel Shippers Association, Pitney Bowes Inc., United Parcel Service, Inc. (UPS), Robert J. Shapiro, and the American Consumer Institute Center for Citizen Research filed comments in response to Order No. 4402.[9] In addition, representatives for the Public Representative and UPS filed declarations supporting comments on Order No. 4402.[10]

IV. Proposed Modified Formula and Commission Analysis

As noted above, in this Revised Notice of Proposed Rulemaking, the Commission is proposing modifications to both the Postal Service Lerner Index and the Competitive Market Output previously presented in Order No. 4402. As discussed in more detail below, these proposed modifications are made in response to comments received in response to Order No. 4402. The Commission proposes modifications to the Postal Service Lerner Index in order to address concerns related to the aggregation of data used in its calculation, provide a better measure of Postal Service market power, and more clearly distinguish the Commission's component from a traditional Lerner index. The Commission proposes modifications to the Competitive Market Output in order to more explicitly incorporate Postal Service market share.

A. Modified Formula-Based Approach

In this section, the Commission reviews pertinent portions of Order No. 4402, examines relevant comments, describes its proposed modifications to both components, and discusses the resulting formula.

1. Modification to Postal Service Lerner Index

a. Order No. 4402

The Postal Service Lerner Index component was designed to gauge the Postal Service's market power in the competitive market. Order No. 4402 at 15–16. The Commission determined that evaluating the Postal Service's market power enables it to assess whether competition is being preserved and whether the Postal Service possesses a competitive advantage in the competitive market. *Id.* at 16. A Lerner index quantitatively assesses market power for a given firm by measuring the difference between the price charged by the firm for a particular product and the marginal cost incurred by the firm in producing that product. *Id.* at 17. In general, the further a firm is able to price its product above marginal cost, the more market power the firm possesses. *Id.*

In Order No. 4402, the Commission used a traditional Lerner index as a

[7] *Id.* at 29.

[8] Order No. 4402 at 43–45. The Commission's analysis of ''the degree to which any costs are uniquely or disproportionately associated with any competitive products'' relied on current costing methodologies approved in Docket No. RM2016–2. *Id.* at 40–45; *see* Docket No. RM2016–2, Order Concerning United Parcel Service, Inc.'s Proposed Changes to Postal Service Costing Methodologies (UPS Proposals One, Two, and Three), September 9, 2016 (Order No. 3506). UPS challenged the Commission's costing methodologies approved in Order No. 3506 in the United States Court of Appeals for the District of Columbia Circuit. *See* Petition for Review, *United Parcel Serv., Inc.* v. *Postal Reg. Comm'n,* No. 16–1354 (D.C. Cir. filed Oct. 7, 2016). The Court issued its opinion on May 22, 2018. *See United Parcel Serv., Inc.* v. *Postal Reg. Comm'n,* 890 F.3d 1053 (D.C. Cir. 2018) (*UPS*). In its opinion, the Court denied UPS's Petition for Review and found that the Commission exercised reasonable judgment in ''settling on a cost-attribution methodology that implements its statutory mandate and falls well within the scope of its considerable discretion.'' *Id.* at 1069. UPS petitioned for rehearing *en banc,* which was denied by the United States Court of Appeals for the District of Columbia Circuit. *See* Petition for Rehearing *En Banc, United Parcel Serv., Inc.* v. *Postal Reg, Comm'n,* No. 16–1354 (D.C. Cir. filed July 6, 2018), *denied per curiam,* No. 16–1354 (D.C. Cir. filed July 27, 2018).

[9] Comments of the United States Postal Service in Response to Order No. 4402, April 16, 2018 (Postal Service Comments); Public Representative Comments in Response to Notice of Proposed Rulemaking, April 16, 2018 (PR Comments); Comments of *Amazon.com* Services, Inc. on Order No. 4402, April 16, 2018 (Amazon Comments); Comments of the Greeting Card Association, April 16, 2018 (GCA Comments); Comments of the Parcel Shippers Association, April 16, 2018; Comments of Pitney Bowes Inc., April 16, 2018; Initial Comments of United Parcel Service, Inc. on Notice of Proposed Rulemaking to Evaluate the Institutional Cost Contribution Requirement for Competitive Products, April 16, 2018 (UPS Comments); Declaration of Robert J. Shapiro, April 16, 2018; Comments of American Consumer Institute Center for Citizen Research Regarding Docket No. RM2017–1 Submitted to the Postal Regulatory Commission, April 16, 2018.

[10] Declaration of Soiliou Daw Namoro for the Public Representative, April 16, 2018 (Namoro Decl.); Declaration of J. Gregory Sidak on Behalf of United Parcel Service, April 16, 2018 (Sidak Decl.). Soiliou Daw Namoro filed in support of the Public Representative, and J. Gregory Sidak filed in support of UPS.

starting point and proposed to develop a measure of market power specific to the Postal Service using Postal Service data. The Commission noted that the Postal Service is a multi-product firm, with each product having its own unique marginal cost and associated set of prices. *Id.* Therefore, in order to develop a measure that would be applicable to competitive products as a whole, the Commission proposed using average competitive product marginal cost and average competitive product price to calculate what it referred to as the Postal Service Lerner Index. *Id.*

The Commission determined that marginal cost data for the Postal Service's competitive products could be obtained from the Postal Service's Cost and Revenue Analysis (CRA) report, which is submitted to the Commission annually as part of the Postal Service's Annual Compliance Report (ACR).[11] The Commission uses the CRA report as an input to the Postal Service Product Finances analysis (PFA), which is produced each year as part of the Commission's ACD.[12] Order No. 4402 at 18. The CRA report calculates marginal costs using volume-variable costs, which are the costs of specific Postal Service operations that vary with respect to relevant cost drivers. *Id.* The volume-variable costs are then distributed to individual Postal Service products. *Id.* Dividing the total volume-variable costs of a product by the product's total volume results in unit volume-variable costs, which are equivalent to marginal costs. *Id.* The Commission, therefore, proposed to divide the sum of all competitive product volume-variable costs in the PFA by the sum of all competitive product volume in order to calculate the aggregate competitive product unit volume-variable cost. *Id.* This number is equivalent to the average marginal cost for all competitive products.

The Commission determined that the price variable could be obtained using average revenue-per-piece, which incorporates all of the prices for all of the Postal Service's competitive products. *Id.* The PFA presents revenue data by product. *Id.* at 18–19. The Commission proposed dividing the sum of all competitive product revenue by the sum of all competitive product volume in order to calculate competitive product average revenue-per-piece. *Id.* at 19. This number is equivalent to the average price for all competitive products.

Using the two variables described above, the Commission developed its proposed Postal Service Lerner Index, which consisted of the following formula:[13]

$$Postal\ Service\ Lerner\ Index = \frac{Revenue\text{–}per\text{–}Piece - Unit\ Volume\text{–}Variable\ Cost}{Revenue\text{–}per\text{–}Piece}$$

b. Comments

Multiple commenters address the proposed Postal Service Lerner Index. Some of these commenters allege that the Postal Service Lerner Index suffers from a number of defects resulting from the aggregation of data. Specifically, UPS and Sidak assert that it is improper to calculate the Postal Service Lerner Index using an average of the marginal costs for each of the Postal Service's competitive products. UPS Comments at 32; Sidak Decl. at 24–26. They contend that because the Postal Service is a multi-product firm with different cost characteristics for each of its products, averaging costs across different products is misleading. *Id.* Sidak maintains that even if the aggregate Postal Service Lerner Index is positive, the Lerner index for an individual product could still be negative, which could enable the Postal Service to engage in below-cost pricing for individual products. Sidak Decl. at 24. Sidak states that, for a multi-product firm, economists typically develop separate Lerner indices for each product. *Id.*

UPS asserts that averaging product costs together could result in distortions and instability in the Postal Service Lerner Index following any future reclassifications of market dominant products as competitive or any future changes within the competitive product mail mix. UPS Comments at 32–33. UPS maintains that such changes would result in the composition of products within the Postal Service Lerner Index shifting for reasons unrelated to changes in market conditions. *Id.* For example, if a market dominant product had its own Lerner index with a value lower than the Postal Service Lerner Index (which is the aggregate of all competitive products), and that market dominant product were to be reclassified as a competitive product, then its addition to the Postal Service Lerner Index would reduce the Postal Service Lerner Index's overall value.

With regard to the Commission's proposed use of average revenue, UPS and Sidak argue that it is improper to calculate the Postal Service Lerner Index using average revenue as a measure of price. UPS Comments at 33; Sidak Decl. at 28–31. Sidak asserts that average revenue is an inaccurate measure of price for a firm that engages in price discrimination, as he states the Postal Service does through its offering of negotiated service agreements (NSAs).[14] Under these circumstances, he notes that as the quantity of a good that is sold increases, the price of a marginal unit of that good will decrease more quickly than average revenue will decrease.[15] Sidak concludes that average revenue can overstate price, and a Lerner index built on such data can overstate the difference between price and marginal costs, thereby serving as an inaccurate measure of market power.[16]

c. Commission Analysis and Proposed Modification

After considering the comments received, the Commission proposes to replace the Postal Service Lerner Index with an alternate measurement the Commission labels as the Competitive Contribution Margin. The Competitive Contribution Margin has two primary differences when compared to the Postal Service Lerner Index: (1) It uses total

[11] Order No. 4402 at 18; *see* 39 U.S.C. 3652.

[12] *See* 39 U.S.C. 3653.

[13] *Id.*

[14] Sidak Decl. at 30. Price discrimination is a form of nonlinear pricing where the same good is sold at different prices. *See* Jeffrey Church & Roger Ware, *Industrial Organization: A Strategic Approach* 157 (2000) (Church & Ware), available at: *https://works.bepress.com/jeffrey_church/23/.* The Postal Service regularly enters into NSAs, which are contractual agreements between the Postal Service and specific mailers providing for customized prices and classifications in exchange for volume commitments by the mailer.

[15] *Id.* The Commission provides a simple example to explain Sidak's concern. If the Postal Service were to sell 100 parcel deliveries at $5 each to retail consumers, and then sell 200 parcel deliveries at $3 each to a particular mailer pursuant to an NSA, then the price of a marginal unit of parcel delivery would be $3 (because marginal price is defined as the price of the last unit sold), but the average revenue for all 300 units sold would be $3.67.

[16] *Id.* Sidak does not argue that revenue in general is inappropriate as a measure of price—only that average revenue is an inappropriate measure of price because the Postal Service offers NSAs. *Id.* at 28–31. Sidak does not suggest an alternative measure of price to be used in this case.

competitive product values rather than average competitive product values; and (2) it uses competitive product attributable costs instead of competitive product volume-variable costs. The formula for calculating the Competitive Contribution Margin is as follows:

$$Competitive\ Contribution\ Margin = \frac{Total\ Revenue - Total\ Attributable\ Cost}{Total\ Revenue}$$

This modification presents several benefits. First, it addresses an apparent misunderstanding with the mathematical functioning of the Postal Service Lerner Index as initially proposed by the Commission. With regard to UPS's and Sidak's assertions that the Postal Service Lerner Index inappropriately uses average revenue in place of price, Namoro's declaration demonstrates that the use of averages has no actual effect on the calculation. *See* Namoro Decl. at 6–7.

The Postal Service Lerner Index, as initially proposed by the Commission, used revenue-per-piece (*i.e.,* average revenue) and unit volume-variable cost (*i.e.,* average cost). Revenue-per-piece is calculated by dividing total competitive product revenue by total competitive product volume, and unit volume-variable cost is calculated by dividing total competitive product volume-variable cost by total competitive product volume.

Because every term is divided by volume, the volume terms cancel each other out, which is mathematically demonstrated as follows:

$$Postal\ Service\ Lerner\ Index = \frac{Revenue\text{-}Per\text{-}Piece - Unit\ Volume\text{-}Variable\ Cost}{Revenue\text{-}Per\text{-}Piece}$$

$$= \frac{\frac{Revenue}{Volume} - \frac{Volume\text{-}Variable\ Cost}{Volume}}{\frac{Revenue}{Volume}}$$

$$= \frac{Revenue - Volume\text{-}Variable\ Cost}{Revenue}$$

The final construction of the Postal Service Lerner Index shown above is mathematically equivalent to the Postal Service Lerner Index as originally proposed in Order No. 4402, but does not use averaging. *See id.; see also* Order No. 4402 at 19. As demonstrated above, averaging is immaterial to the calculation of this component. For that reason, the Commission proposes to omit averaging and to use total revenue for all competitive products in its modified component. Because this modification does not affect what the component measures, the modified component will continue to measure the market power of the Postal Service's competitive products as a whole. At the same time, the Commission recognizes that using total amounts departs somewhat from a traditional calculation of a Lerner index, which is typically calculated using unit cost and unit price.[17] Therefore, the Commission proposes to refer to the modified component as the Competitive Contribution Margin to distinguish it from a traditional Lerner index.

The second major benefit of this modification is that by using total attributable costs, it more accurately reflects competitive product costs than the Postal Service Lerner Index. The Postal Service Lerner Index only included volume-variable costs, whereas the Competitive Contribution Margin uses attributable costs, which include volume-variable costs, product-specific costs, and inframarginal costs calculated as part of each competitive product's incremental costs.[18] In addition, by incorporating the inframarginal costs of competitive products collectively, the Competitive Contribution Margin also reflects costs which are not caused by any one competitive product, but by competitive products as a whole. Reflecting all costs caused by competitive products mitigates the risk of overstating the Postal Service's market power in the competitive market because the modification allows the component to more accurately measure the relationship between cost and price.

The third benefit of this proposed modification is that it better reflects modern economic literature on the subject of measuring market power. As Sidak notes, ''[e]conomists routinely use the ratio of 'operating profits net of depreciation, provisions and an estimated financial cost of capital [to] sales' as a proxy for a firm's Lerner [i]ndex.'' [19] Sidak estimates UPS's and FedEx's Lerner index values for FY 2017 using each firm's operating profit-to-revenue ratio. Sidak Decl. at 47. The Competitive Contribution Margin follows the same calculation outlined in the economic literature cited to by Sidak, determining the ratio of operating profit to revenue.[20] This measure is frequently referred to in economic literature as the price-cost margin.

With regard to UPS's and Sidak's concerns that an index which aggregates

[17] A traditional Lerner index is defined by the ratio of price minus marginal cost to price. *See* Church & Ware at 31–36.

[18] *See* Order No. 3506 at 60 (directing Postal Service to begin basing attributable costs for competitive products on incremental costs, which include a portion of inframarginal costs).

[19] Sidak Decl. at 47, Figure 4 (citing Philippe Aghion *et al., Competition and Innovation: An Inverted-U Relationship,* 120 Q.J. Econ. 701, 704 (2005); Frederick H. deB. Harris, *Structure and Price-Cost Performance Under Endogenous Profit Risk,* 35 J. Indus. Econ. 35, 43 (1986)).

[20] The difference between total competitive product revenue and total competitive product attributable costs constitutes the profit derived from competitive products. Dividing this difference by total competitive product revenue results in the profit-to-revenue ratio that Sidak uses.

total costs across multiple competitive products could be used to mask below-cost pricing for individual competitive products, the Commission finds that such a situation is, as a practical matter, highly unlikely to occur. First, because the PAEA allows the Postal Service to retain earnings, the Postal Service is incentivized to maximize profits on competitive products. To price below-cost for individual competitive products would be economically disadvantageous for the Postal Service. As the Commission noted in Order No. 4402, a firm pricing below marginal cost should suspend production in the short run, and if cost or market characteristics do not change, exit the industry in the long run. Order No. 4402 at 36 n.63. Second, an individual competitive product that was priced below cost would violate 39 U.S.C. 3633(a)(2), which requires each competitive product to recover its attributable costs. *See* 39 U.S.C. 3633(a)(2). Such violations are addressed annually in the ACD, with the Commission having authority to order appropriate remedies.[21]

With respect to UPS's concern that the effects of future product reclassifications or competitive product mail mix changes could result in distortions, the Commission finds that although such a change would alter the inputs to the calculation, the Competitive Contribution Margin would accurately reflect the Postal Service's market power in the expanded (or contracted) market that resulted from the change. For example, if a market dominant product were to be re-classified as competitive, the addition of that product to the competitive mail mix would change both competitive products' total attributable costs and total revenue. However, because the Competitive Contribution Margin is calculated by subtracting total attributable costs from total revenue, and dividing that number by total revenue, the result would continue to indicate how much market power the Postal Service possessed after the transfer.

Table IV–1 provides a comparison of annual changes in the Competitive Contribution Margin and the Postal Service Lerner Index.

TABLE IV–1—COMPARISON OF COMPETITIVE CONTRIBUTION MARGIN AND POSTAL SERVICE LERNER INDEX

Fiscal year	Competitive Contribution Margin	Percentage change in Competitive Contribution Margin	Postal Service Lerner Index	Percentage change in Postal Service Lerner Index
FY 2007	0.226	N/A	0.228	N/A
FY 2008	0.213	−5.9	0.217	−5.1
FY 2009	0.241	13.4	0.251	15.9
FY 2010	0.279	15.7	0.298	18.6
FY 2011	0.257	−7.9	0.276	−7.3
FY 2012	0.266	3.7	0.275	−0.3
FY 2013	0.281	5.5	0.290	5.4
FY 2014	0.282	0.4	0.292	0.8
FY 2015	0.275	−2.6	0.284	−2.7
FY 2016	0.325	18.1	0.332	16.6
FY 2017	0.329	1.3	0.356	7.5

As shown in Table IV–1, the growth and decline in the two measures is generally consistent. Two divergences warrant discussion: FY 2012, when the Postal Service Lerner Index declined while Competitive Contribution Margin grew; and FY 2017, when the difference between the Postal Service Lerner Index and Competitive Contribution Margin was more than 6 percentage points.

As noted above, the Competitive Contribution Margin uses attributable costs while the Postal Service Lerner Index uses only volume-variable costs.[22] In a given fiscal year, if the percentage growth in attributable costs was greater than the percentage growth in volume-variable costs, the Competitive Contribution Margin would grow less than the Postal Service Lerner Index. If the percentage growth in attributable costs was less than the percentage growth in volume-variable costs, the Competitive Contribution Margin would grow more than the Postal Service Lerner Index. Between FY 2011 and FY 2012, volume-variable costs increased by 27 percent, while attributable costs increased by 25 percent.[23] Thus, the Competitive Contribution Margin grew in FY 2012, while the Postal Service Lerner Index decreased.

In FY 2017, the Commission included a portion of inframarginal costs in the calculation of attributable costs for the first time, which increased the overall level of cost attribution.[24] This resulted in attributable costs growing 11 percent from FY 2016 to FY 2017, while volume-variable costs (which were not affected by this methodological change) grew only 8 percent during the same period. This produced an inverse situation to that which occurred in FY 2012—because the growth in attributable costs was greater than volume-variable costs, the Competitive Contribution Margin grew less than the Postal Service Lerner Index.

These differences reflect how the Competitive Contribution Margin more accurately measures the Postal Service's market power for competitive products. Because the Competitive Contribution Margin measures all costs caused by competitive products, including those that cannot be attributed to any one

[21] *See, e.g.,* Docket No. ACR2007, Annual Compliance Determination, March 27, 2008, at 112–13; Docket No. ACR2008, Annual Compliance Determination, March 30, 2009, at 86–89; Docket No. ACR2009, Annual Compliance Determination, March 29, 2010, at 117; Docket No. ACR2010, Annual Compliance Determination, March 29, 2011, at 139–40; Docket No. ACR2011, Annual Compliance Determination, March 28, 2012, at 156–63; Docket No. ACR2012, Annual Compliance Determination, March 28, 2013, at 162–72; Docket No. ACR2013, Annual Compliance Determination, March 27, 2014, at 79–91; Docket No. ACR2014, Annual Compliance Determination, March 27, 2015, at 72–82; Docket No. ACR2015, Annual Compliance Determination, March 28, 2016, at 79–92; Docket No. ACR2016, Annual Compliance Determination, March 28, 2017, at 80–88; Docket No. ACR2017, Annual Compliance Determination, March 29, 2018, at 82–92 (FY 2017 ACD).

[22] For FY 2007 through FY 2016, attributable costs were calculated as the sum of volume-variable costs and product-specific fixed costs.

[23] The smaller increase in attributable costs was caused by a decrease in product-specific fixed costs of 42 percent. This decrease in product-specific fixed costs was primarily driven by a decrease in competitive product advertising costs.

[24] *See* Order No. 3506 at 60.

competitive product specifically, the Competitive Contribution Margin provides a more complete view of the Postal Service's market power. For that reason, the Commission proposes to replace the Postal Service Lerner Index with the Competitive Contribution Margin in its revised formula.

2. Modification to Competitive Market Output

a. Order No. 4402

The second component of the formula initially proposed by the Commission was the Competitive Market Output, which was designed to measure the overall size of the competitive market. Order No. 4402 at 22. The Commission proposed that evaluating the overall size of the market provided context for assessing the prevailing competitive conditions in the market and the Postal Service's market power. *Id.* The Commission stated that the appropriate share requirement should balance encouraging the Postal Service to increase competitive products' contribution to institutional costs when the market is growing with the need to adjust competitive products' pricing in the event of a market decline. *Id.*

The Commission determined that the relevant market consisted of two groups: The Postal Service's competitive products and ''similar products'' offered by the Postal Service's competitors. *Id.* The Commission proposed using revenue, rather than volume, to measure the size of the overall market. *Id.* at 23. This was because revenue data for all competitors were available and directly comparable, whereas volume data were not uniformly available and would require frequent adjustments. *Id.*

The Commission proposed obtaining the necessary revenue data for the Postal Service's competitive products from the PFA, which the Commission produces every year as part of its ACD. *Id.* The Commission proposed obtaining the necessary revenue data for the Postal Service's competitors from two surveys conducted by the United States Census Bureau: The Quarterly Services Survey (QSS) and the Services Annual Survey (SAS). *Id.* The methodology for collecting and aggregating these data was described in Order No. 4402. *Id.* at 22–29.

Using the foregoing information, the Commission developed its proposed Competitive Market Output measure, which consisted of the following formula: [25]

$$\textit{Competitive Market Output} = \textit{Revenue}_{USPS} + \textit{Revenue}_{C\&M}$$ [26]

b. Comments

Multiple commenters address the proposed Competitive Market Output component. These comments can be broadly grouped into six different areas.

First, the Public Representative and his declarant, Namoro, both express concern that the Competitive Market Output component, as proposed, disproportionately incorporates competitor revenue. Namoro Decl. at 10–11; PR Comments at 5–6. Namoro explains that this is due to the fact that not all competitor revenue within Competitive Market Output is weighted by market share. Namoro Decl. at 10–11. As a result, the Public Representative and Namoro assert that coordinated price increases by the Postal Service's competitors could cause the required appropriate share to increase, regardless of other market conditions. *Id.* at 11; PR Comments at 5–6.

Second, several commenters note that the Competitive Market Output as proposed does not incorporate the Postal Service's market share. Sidak observes that the Competitive Market Output will not reflect changes in market share; it will simply show the size of the overall market. Sidak Decl. at 49–51. Namoro likewise posits that the Competitive Market Output as proposed implicitly and incorrectly assumes that ''the Postal Service's specific gains or losses from total market expansion or market contraction are irrelevant to the computation of the appropriate share[ ] . . . .'' Namoro Decl. at 3. UPS argues that the appropriate share should take into account how much the Postal Service's competitive products are growing within the context of the overall market. UPS Comments at 35. The Postal Service asserts that under the formula as proposed, the appropriate share would not decrease if the Postal Service were to lose market share but the measured Competitive Market Output did not also decrease. Postal Service Comments at 20. The Postal Service states that a circumstance where it loses market share without the Competitive Market Output similarly decreasing is not merely theoretical. *Id.* If the Postal Service's competitors were to begin competing more aggressively or shippers and non-traditional competitors were to expand their delivery operations, then the Competitive Market Output (which measures the total size of the package delivery market) might remain the same even as the Postal Service's individual share of the market decreased. *Id.* at 20–21.

Third, UPS asserts that there is no economic basis for linking the size of the overall competitive market (measured by revenue) with the question of what the appropriate share should be. UPS Comments at 34. UPS states this is because ''[n]either the Commission nor the Postal Service ha[s] the ability to control what prices are charged by other participants in the market,'' and considering market size alone ''does not account for the possibility of customers making in-house deliveries, which would not impact overall market volume but would decrease [the Competitive Market Output] nonetheless.'' *Id.* at 34–35. The Postal Service also notes this issue. It states that both the Competitive Market Output and the appropriate share could increase without necessarily reflecting additional market opportunities, for the Postal Service or any other package delivery company, if there were to be a market change towards greater self-delivery of packages by shippers themselves. Postal Service Comments at 21.

Fourth, UPS and Sidak both criticize the Competitive Market Output for measuring output in terms of revenue, as opposed to volume. UPS Comments at 35; Sidak Decl. at 36–38. Sidak asserts that ''a firm's costs are more directly a function of its unit volume than of its revenue.'' Sidak Decl. at 36. Furthermore, Sidak maintains that ''[m]easuring output on the basis of revenue can fail to capture market growth if competitive pressure decreases prices more rapidly than unit volume increases, or if growth in volume is driven by below-cost pricing.'' *Id.* Sidak notes that measuring industry output by unit volume would be consistent with the approach taken by other regulatory agencies. *Id.* at 36–38.

Fifth, the Postal Service criticizes the Competitive Market Output for failing to take into account inflation, considering that the Competitive Market Output constitutes an absolute measure of market size by revenue, denominated in current dollars. Postal Service Comments at 21. By presenting growth rates in the Competitive Market Output based on revenues expressed in nominal dollars, rather than constant dollars adjusted for inflation, the Postal Service maintains that the Competitive Market Output includes purely inflationary increases in revenue, demand, and market power. *Id.* The Postal Service

[25] *See* Order No. 4402 at 23.

[26] ''C&M'' stands for ''Couriers and Messengers,'' the name of the relevant dataset for the Postal Service's competitors within the Census Bureau data. *See id.* at 24.

also asserts that if the Competitive Market Output were to grow more slowly than inflation, the Competitive Market Output growth may not accurately reflect growth in the Postal Service's ability to increase competitive products' contribution to institutional costs because, in such a situation, institutional costs (which are also subject to inflation) would be increasing faster in real terms than the Postal Service's competitive revenue. *Id.* at 21–22.

Sixth, the Postal Service asserts that the Competitive Market Output fails to take into account differentiation between the Postal Service's and its competitors' respective product offerings, which can impact the ability of competitive products to contribute to institutional costs.[27]

c. Commission Analysis and Proposed Modification

After considering the comments received, the Commission proposes to replace the Competitive Market Output with an alternate measurement the Commission labels the Competitive Growth Differential. Unlike the Competitive Market Output, which sought to determine overall market size, the Competitive Growth Differential assesses the growth or decline of the Postal Service's market position from year-to-year. It explicitly incorporates the Postal Service's market share and accounts for inflation and whether market growth is structural or caused by coordinated pricing by competitors. It is calculated using the following equation:

Competitive Growth Differential = *Market Share*$_{USPS}$ * (%$\Delta Revenue_{USPS}$ − %$\Delta Revenue_{C\&M}$)

The Competitive Growth Differential is calculated by subtracting the year-over-year percentage change in competitors' revenue from the year-over-year percentage change in the Postal Service's competitive product revenue to determine the Postal Service's growth relative to that of its competitors, and multiplying the result by the Postal Service's market share. The Postal Service's market share is determined by dividing the Postal Service's total competitive product revenue by the sum of the Postal Service's total competitive product revenue and total competitor revenue, as depicted in the following formula:

$$Market\ Share_{USPS} = \frac{Revenue_{USPS}}{Revenue_{USPS} + Revenue_{C\&M}}$$

As with the Competitive Market Output, the Competitive Growth Differential is measured using revenue, rather than volume. As explained in Order No. 4402, the Commission selects revenue data because volume data would need to be adjusted for intra-industry transactions, while revenue data can be used directly, without adjustment.[28] Additionally, revenue data are also available for all firms in the relevant market through publicly available sources, whereas volume data for the Postal Service's competitors are not publicly available. *Id.*

As with the Competitive Market Output, revenue data for the Postal Service are obtained from the PFA, and revenue data for the Postal Service's competitors are obtained from Census Bureau data—specifically the QSS and SAS survey data. Unlike the Competitive Market Output, revenue data under the Competitive Growth Differential are adjusted for inflation, using the Consumer Price Index for All Urban Consumers (CPI–U) as the deflator.[29] CPI–U data are obtained from the Bureau of Labor Statistics (BLS).[30] The Commission indexes the CPI–U data to FY 2007; that is, FY 2007 constitutes the base year for any inflation adjustment. This aligns the CPI–U data with the beginning year for the Commission's proposed formula.[31]

The Competitive Growth Differential better reflects the Postal Service's position in the overall competitive market and addresses the concerns raised by commenters discussed above. First, the change to the Competitive Growth Differential eliminates the disproportionate inclusion of competitor revenue from the component's underlying equation. To illustrate this, the Commission starts with the formula for calculating the year-over-year percentage change in Competitive Market Output (which was an input into the formula as initially proposed in Order No. 4402):[32]

$$\%\Delta Competitive\ Market\ Output = \frac{(Revenue_{USPS,t} + Revenue_{C\&M,t}) - (Revenue_{USPS,t-1} + Revenue_{C\&M,t-1})}{Revenue_{USPS,t-1} + Revenue_{C\&M,t-1}}$$

[27] Postal Service Comments at 16. Although the Postal Service does not explain this particular argument in detail, it appears to suggest that to the extent the Postal Service's and its competitors' products are not perfect substitutes for each other, those products will not be in direct competition, and arguably should not be considered part of the same market. Therefore, to the extent that the Competitive Market Output includes such products in the same market, it could be said to overstate the size of the market.

[28] *See* Order No. 4402 at 23. An example of an intra-industry transaction is a Postal Service competitor transporting a package from a sender in California to a recipient's destination delivery unit (*i.e.,* the Postal Service facility where mail carriers depart for local mail delivery) in New York. The Postal Service would then deliver the package to the recipient (*i.e.,* last-mile delivery).

[29] The CPI–U is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. *See* Bureau of Labor Statistics, Consumer Price Index, Frequently Asked Questions, available at: *https://www.bls.gov/cpi/questions-and-answers.htm.*

[30] Bureau of Labor Statistics, Consumer Price Index—All Urban Consumers (Series ID CUUR0000SA0),'' available at: *https://data.bls.gov/timeseries/CUUR0000SA0.*

[31] *See* Order No. 4402 at 32. For additional discussion of the beginning year of the Commission's formula, *see* section IV.A.3.c, *infra.*

[32] This equation and all equations in this section are calculated for t for simplicity of demonstration, while the input (*i.e.,* when using the formula to determine the appropriate share) is calculated for $t-1$.

Although not explicitly depicted in the formula, both the change in Postal Service revenue and the change in competitor revenue are weighted by their respective market shares. This is because an aggregate rate of growth is not equivalent to the sum of individual rates of growth.[33] The formula is therefore mathematically equivalent to the following:

$$\%\Delta Competitive\ Market\ Output = (Market\ Share_{USPS} * \%\Delta Revenue_{USPS} + ((1 - Market\ Share_{USPS}) * (\%\Delta Revenue)_{C\&M})$$ [34]

Weighting by market share is necessary in order to incorporate the relative contribution of each source of revenue growth to the overall growth. As Library Reference PRC–LR–RM2017–1/2 illustrates, the year-over-year percentage change in the Competitive Market Output is equivalent to the year-over-year percentage change in the Postal Service's revenue, weighted by the Postal Service's market share, plus the year-over-year percentage change in competitors' revenue, weighted by competitors' market share.[35] In order to demonstrate how this equation over-incorporates competitor revenue, it is helpful to state its terms differently. The terms of the equation can be mathematically rewritten as follows:

$$\%\Delta Competitive\ Market\ Output = ((Market\ Share_{USPS}) * (\%\Delta Revenue_{USPS} - \%\Delta Revenue_{C\&M})) + (\%\Delta Revenue_{C\&M})$$ [36]

This construction of the Competitive Market Output growth rate equation is mathematically equivalent to the previous construction and demonstrates that growth in Competitive Market Output constitutes the sum of two terms: The market share weighted difference in revenue growth between the Postal Service and its competitors; and the unweighted growth in competitor revenue. It is this second term (+ ($\%\Delta Revenue_{C\&M}$)) that results in the disproportionate incorporation of competitor revenue because the growth in competitor revenue is not weighted by market share. The Competitive Growth Differential removes the second term, thereby resolving the problem of disproportionate incorporation of competitor revenue.[37] Eliminating the disproportionate incorporation of competitor revenue by adopting the Competitive Growth Differential addresses the concerns raised by the Public Representative and Namoro that competitors' pricing decisions alone could influence the appropriate share.

This modification also changes the nature of the component from a measure of overall market size to a measure of the Postal Service's market position because the modification captures the change in the size of the Postal Service's competitive business relative to that of the Postal Service's competitors.

Additionally, the Competitive Growth Differential directly incorporates the Postal Service's market share into the appropriate share calculation, which addresses comments that the Competitive Market Output failed to consider the Postal Service's market share.[38] The Competitive Growth Differential directly incorporates the Postal Service's market share as a weight. This ensures that any change in the appropriate share due to changes in the Competitive Growth Differential are not solely driven by growth in the overall market but are also reflective of whether those changes give the Postal Service greater (or reduced) market share. This is important because if both the Postal Service's and its competitors' respective revenues increase but the Postal Service's market share remains the same, the Postal Service's relative position in the market may not have changed. With the Competitive Growth Differential, the Commission's proposed formula will now reflect this. Similarly, the change from the Competitive Market Output to the Competitive Growth Differential will prevent the scenario identified by the Postal Service in which, despite the Postal Service having lost market share, the appropriate share requirement may not decrease due to the size of the overall market remaining unchanged.

With regard to UPS's assertion that there is no economic basis for linking the size of the overall competitive market to the appropriate share, the Commission reiterates its explanation in Order No. 4402 that evaluating the overall size of the market provides context for assessing prevailing competitive conditions. *See id.* at 22. The size of the market serves as an indicator of how healthy the market is, both when the market is considered in isolation and when the market is considered relative to the broader economy. Evaluating the overall size of the market is also necessary to determine the relative shares of the competitors in it. For these reasons, it remains appropriate to consider the overall size of the competitive market, as well as the Postal Service's position in the market, as relevant to the appropriate share.

As discussed above, the Competitive Growth Differential tracks changes in the market more accurately than the Competitive Market Output. It accomplishes this by using real revenue growth instead of nominal revenue growth. The Commission agrees with the Postal Service's suggestion that taking into account inflation will improve this component of the formula. Without such an adjustment, the formula could interpret inflationary changes in the market as market growth. Relatedly, with regard to UPS's and Sidak's criticisms of this component for measuring output in terms of revenue, it is true that there are circumstances in which using revenue as a measure of output could be misleading, such as when a firm is attempting to strategically price its products at a low level in order to gain market share. However, because the Competitive Growth Differential accounts for inflation, those circumstances do not apply here. Even if the Postal Service or its competitors were to engage in strategic pricing in order to gain market share, causing revenue to diverge from volume, as long as revenue is measured in real terms, the Competitive Growth

[33] A simple example can be used to demonstrate why this is the case. Consider an entity with two products, one generating revenue of $100,000 in FY 2017 and $105,000 in FY 2018 (a 5-percent year-over-year increase) and the other generating revenue of $50,000 in FY 2017 and $55,000 in FY 2018 (a 10-percent year-over-year increase). If the entity were trying to calculate the aggregate rate of revenue growth, it would be incorrect to add the individual rates of growth (*i.e.,* 5 percent for the first product and 10 percent for the second product = 15 percent total). Instead, the entity would calculate each product's share of total revenue (*i.e.,* $100,000/$150,000 = 66 percent for the first product and $50,000/$150,000 = 34 percent for the second product), and then multiply each product's share of total revenue by the percentage revenue change (*i.e.,* 66 percent * 5 percent = 3.3 percent for the first product, and 34 percent * 10 percent = 3.4 percent for the second product). The final step would be to add the two numbers to calculate the aggregate rate of revenue growth for the entity (*i.e.,* 3.3 percent + 3.4 percent = 6.7 percent).

[34] For a rigorous demonstration of this transformation, *see* Namoro Decl. at 11–13, reproduced in Library Reference PRC–LR–RM2017–1/2.

[35] Competitors' market share is determined by calculating $1 - Market\ Share_{USPS}$. This constitutes the residual left over after the Postal Service's market share has been determined.

[36] This formula is the result of a three-step transformation from the formula directly above it. The three-step transformation is demonstrated in detail in Library Reference PRC–LR–RM2017–1/2.

[37] The Commission notes that this adjustment was identified as a possible solution by Namoro in his declaration. *See* Namoro Decl. at 17 n. 12.

[38] The Commission found in Order No. 4402 that market share was indirectly incorporated into the Competitive Market Output because any large shift in revenue share between the Postal Service and its competitors would be reflected in the Competitive Market Output. Order No. 4402 at 38–39. Market share is also indirectly incorporated into the Competitive Market Output because determining growth rates for the Competitive Market Output implicitly requires a determination of the Postal Service's market share, as demonstrated in Library Reference PRC–LR–RM2017–1/2.

Differential would accurately reflect the Postal Service's relative position in the market.[39]

The Postal Service's concern that this component fails to directly consider product differentiation is mitigated by the overarching similarities between the Postal Service's and its competitors' products. Furthermore, product differentiation would be reflected in the Competitive Growth Differential because changes in product differentiation will affect the relative growth in revenue for the Postal Service compared to its competitors. This is because if the Postal Service's and its competitors' products became less and less interchangeable to the point that they were occupying different markets with different characteristics, those products' growth rates would be likely to diverge, resulting in greater changes in the Competitive Growth Differential. In addition, such differentiation would be reflected by larger increases in the Competitive Contribution Margin because that index measures the market power of the Postal Service; and to the extent that the Postal Service has fewer competitors, it will have greater market power. Further, if differentiation between the Postal Service's and its competitors' products were to occur such that the products were no longer considered to constitute the same market, the 5-year review of the appropriate share mandated by 39 U.S.C. 3633(b) would allow the Commission to examine whether the data obtained from Census Bureau continues to be an appropriate measure of competitors' revenue.[40]

The Competitive Market Output and Competitive Growth Differential results for each fiscal year since the PAEA was enacted are reported in Table IV–2 below.

TABLE IV–2—COMPARISON OF ANNUAL CHANGES IN COMPETITIVE MARKET OUTPUT GROWTH AND COMPETITIVE GROWTH DIFFERENTIAL [41]

Fiscal year	Competitive market output growth (%)	Competitive growth differential (%)
FY 2007	N/A	N/A
FY 2008	−1.5	0.7
FY 2009	−13.9	1.2
FY 2010	−0.8	0.9
FY 2011	5.3	−0.2
FY 2012	6.4	2.7
FY 2013	5.0	2.5
FY 2014	4.7	1.2
FY 2015	6.5	0.2
FY 2016	5.1	1.4
FY 2017	6.3	1.1

The Competitive Growth Differential values differ substantially from the Competitive Market Output values because they measure different things: The Competitive Market Output measures absolute growth in the market, whereas the Competitive Growth Differential measures the Postal Service's growth relative to that of its competitors.

For example, in FY 2008, FY 2009, and FY 2010, the Competitive Market Output decreased and the Competitive Growth Differential increased. This occurred because the Postal Service maintained (and in some years, increased) its competitive product output despite a global financial crisis, both through NSAs and the reclassification of certain market dominant products as competitive. As such, the Postal Service was able to improve its market position relative to its competitors, even as the overall market declined. In FY 2011, the Competitive Growth Differential was negative because the Postal Service's competitive revenue displayed no material growth, while competitor revenue, and hence the overall market, grew. This demonstrates that the Competitive Growth Differential reflects the source of the growth in the market in ways that the Competitive Market Output did not. Subsequent fiscal years reflect similar differences, with the Competitive Growth Differential better reflecting the Postal Service's market position in the overall competitive market than the Competitive Market Output would.

In the next section, the Commission discusses the formula proposed in Order No. 4402, as well as specific comments received related to the operation of the formula. The Commission then describes how the two modified components, the Competitive Contribution Margin and the Competitive Growth Differential, are incorporated into the Commission's proposed formula to calculate the appropriate share.

3. Resulting Formula

a. Order No. 4402

In Order No. 4402, the Commission proposed calculating the appropriate share using the following formula: [42]

$$AT_{t+1} = AS_t * (1 + \%\Delta LI_{t-1} + \%\Delta CMO_{t-1})$$

If $t = 0 = FY$ 2007, $AS = 5.5\%$

[39] With regard to Sidak's assertion that measuring industry output by volume would be more consistent with practice in other agencies, the Commission notes that the use of revenue to determine output is consistent with the methodology employed by agencies such as the United States Department of Commerce, which uses revenue as an initial measure of output when calculating Gross Domestic Product (GDP). GDP is the total expenditure on the economy's output of goods and services. *See* N. Gregory Mankiw, *Macroeconomics* 18, 27 (7th ed. 2010). For information on the use of revenue in calculating GDP, *see* Bureau of Economic Analysis, Concepts and Methods of the U.S. National Income and Product Accounts, November 2017, at 4–9, 5–30, available at: *https://www.bea.gov/national/pdf/all-chapters.pdf.*

[40] Should a change be necessary in advance of the 5-year review, the Commission is also permitted to revise its regulations when circumstances warrant. *See* 39 U.S.C. 3633(a); Order No. 1449 at 13.

[41] Because the Competitive Growth Differential evaluates relative growth rather than absolute growth, it is inappropriate to include the absolute Competitive Market Output values in this table. No corresponding absolute Competitive Growth Differential values exist.

[42] Order No. 4402 at 29.

Where,

AS = Appropriate Share [43]
LI = Postal Service Lerner Index
CMO = Competitive Market Output
t = Fiscal Year

As noted above, under the previously proposed formula, the Commission would have calculated the year-over-year percentage changes for both the Postal Service Lerner Index and Competitive Market Output components. *Id.* at 31; *see* section III.C.2.a, *supra.* In order to calculate an upcoming fiscal year's appropriate share percentage (AS_{t+1}), the formula multiplied the sum of the percentage changes in the Postal Service Lerner Index and the Competitive Market Output from the previous fiscal year [44] ($1 + \%\Delta LI_{t-1} + \%\Delta CMO_{t-1}$) by the current fiscal year's appropriate share (AS_t). Order No. 4402 at 30. In addition, both components were given equal weight in the calculation in order to balance changes in the competitive market with changes in the Postal Service's market power. *Id.* at 29–30.

In order to calculate the appropriate share for the current fiscal year, the Commission needed to determine the beginning appropriate share percentage (AS) and the beginning fiscal year (*t*). The Commission proposed to begin the calculation in FY 2007, when the PAEA was enacted, and set the initial appropriate share value at 5.5 percent, which was the appropriate share initially set by the Commission. *Id.* at 32. Both beginning values were chosen to allow for incorporation of the changes in the competitive market in the years since the PAEA's enactment. *Id.* Using FY 2007 and the 5.5-percent appropriate share as the beginning point of the formula's calculation, the Commission used the cumulative formula results from FY 2008 through FY 2018 in order to reach FY 2019's proposed appropriate share (10.8 percent). *Id.* at 33.

In Order No. 4402, the Commission proposed adjusting the appropriate share annually by using the formula to calculate the appropriate share for the upcoming fiscal year. *Id.* at 30. Due to the timing of when all necessary data were available, the Commission proposed that the appropriate share would be reported as part of the Commission's ACD issued each year in March and would take effect at the beginning of the following fiscal year on October 1. *Id.*

b. Comments Concerning Beginning Appropriate Share, Beginning Fiscal Year, and the Weighting of Components

In response to Order No. 4402, the Commission received comments from several parties concerning the beginning appropriate share, beginning fiscal year, and the weighting of the two components of the formula. As these comments relate directly to the modified formula as well as the previously proposed formula, the Commission discusses the comments received on those three topics in this section.

i. Beginning Appropriate Share

UPS contends that using 5.5 percent as the beginning appropriate share percentage is ''irrational'' because the initial 5.5 percent appropriate share was an ''intentionally low'' figure and was based on different analysis. UPS Comments at 36. UPS states that the initial 5.5 percent was set based on factors, such as small Postal Service market share and the risk of setting appropriate share too high, and was intended to provide flexibility to the Postal Service. *Id.* UPS maintains ''[t]hese concerns have no bearing today.'' *Id.*

In the Order No. 4402, the Commission proposed that the appropriate share be modified to better reflect the modern competitive market that had exhibited changes since the Commission's last appropriate share review and the PAEA's enactment. Order No. 4402 at 12. UPS interprets this as Commission recognition that the 5.5-percent appropriate share level is ''too low given current market conditions'' and thus questions its use as the beginning value for the Commission's calculation of the appropriate share. UPS Comments at 37. UPS contends that if the Commission is increasing the appropriate share from 5.5 percent to better reflect current market conditions, the beginning value of the appropriate share calculation should not be 5.5 percent and instead should reflect current market conditions. *Id.* For these reasons, UPS recommends the Commission use the average revenue share of Postal Service competitive products over the last 3 fiscal years (26.6 percent) as the beginning value of the appropriate share (*AS*). *Id.* at 39–40.

ii. Beginning Fiscal Year

UPS and the Postal Service address the beginning fiscal year used in the proposed formula in their comments. In recommending the Commission use 26.6 percent as the beginning value of the appropriate share, UPS notes that percentage should be considered ''in the Commission's formula for 2018 and onwards,'' which implies that UPS is recommending the Commission change the beginning fiscal year (*t*) to FY 2018. *Id.* at 40.

The Postal Service recommends that the Commission eliminate or reduce the appropriate share. Postal Service Comments at 3–8. However, if the Commission retains the formula, the Postal Service alternatively recommends that the Commission change the formula's beginning fiscal year (*t*)to FY 2017. *Id.* at 23–24. The Postal Service contends there is ''no basis for applying the new formula beginning in FY 2007 and continuing forward on a cumulative basis.'' *Id.* at 23.

In Order No. 4402, the Commission stated that the formula's calculation, beginning in FY 2007, would be recursive in order to capture the cumulative effects of changes in prevailing competitive conditions in the market on the appropriate share. Order No. 4402 at 31–32. The Postal Service states that the current prevailing competitive conditions are already captured by the proposed formula's two components and do not need to be captured by beginning the formula's calculation in FY 2007. Postal Service Comments at 23–24. In addition, the Postal Service notes that the formula produces a hypothetical appropriate share for each fiscal year between FY 2007 and FY 2017, and that the use of those figures is ''inappropriate'' and ''arbitrary'' because the actual appropriate share for those same fiscal years are known.[45] For these reasons, the Postal Service maintains that the beginning fiscal year (*t*)''should be FY 2017, the most recent year in which the appropriate share requirement was a fixed 5.5 percent,'' or in the alternative, FY 2012, the most recent time the Commission reviewed the appropriate share. Postal Service Comments at 23.

iii. Weighting of the Components

Related to the Commission's equal weighting of both components, Sidak asserts that the Commission's decision is an arbitrary one. Sidak Decl. at 39. He maintains the Commission provides no

[43] This figure would be expressed as a percentage and rounded to one decimal place for simplicity and consistency with the Commission's past practice of expressing an appropriate share using one decimal place. *Id.* at 29 n.52.

[44] As noted in Order No. 4402, the ''1 +'' is a necessary mathematical concept for any percentage change formula in order to incorporate the pre-existing value being changed. *Id.* at 30 n.54; *see* Jagdish Arya & Robin Lardner, Mathematical Analysis for Business and Economics 202–03 (2d ed. 1985).

[45] *Id.* at 24. The ''hypothetical'' appropriate shares the Postal Service references can be found in Order No. 4402 at 33, Table IV–6, column ''Appropriate Share for the Following Year (AS_{t+1}).''

reasonable explanation for the equal weighting of the components. *Id.* Sidak contends that the Commission failed to evaluate whether the two components are endogenous, whether a correlation exists between the two components and attributable costs, or how the formula would evolve under alternative weights. *Id.* He suggests the Commission should have ''conduct[ed] some research and analysis to find the correct ratio'' of the two components. *Id.*

c. Commission Analysis and Modified Formula

After consideration of the comments received, the Commission elects to maintain Order No. 4402's approach to the beginning appropriate share, the beginning fiscal year, and the weighting of components. In this section, the Commission initially discusses the modified formula's configuration and then provides its analysis of the commenters' recommendations.

Based on the proposed modifications to both components discussed in sections III.A.1 and III.A.2, *supra,* the Commission proposes to calculate the appropriate share using the following modified formula:

$AS_{t+1} = AS * (1 + \%\Delta CCM_{t-1})$
If $t = 0 = FY$ 2007, $AS = 5.5\%$

Where:

AS = Appropriate Share [46]
CCM = Competitive Contribution Margin
CGD = Competitive Growth Differential
t = Fiscal Year

Procedurally, the Commission proposes that the appropriate share be adjusted annually through the same process as proposed in Order No. 4402. Under that process, the appropriate share would be adjusted annually by using the formula to calculate the minimum appropriate share for the upcoming fiscal year.[47] The Commission also retains that the new appropriate share level for the upcoming fiscal year would be reported as part of the Commission's ACD.[48]

In order to calculate an upcoming fiscal year's appropriate share percentage (AS_{t+1}), the modified formula multiplies the sum of the Competitive Growth Differential and the percentage change in the Competitive Contribution Margin, $(1 + \%\Delta CCM_{t-1} + CGD_{t-1})$,[49] by the current fiscal year's appropriate share (AS_t). The modified formula continues to be recursive in nature in order to incorporate year-over-year changes in the competitive market. *See* Order No. 4402 at 31.

Thus, as an example of how the modified formula functions, if the following conditions hold:

- Current year appropriate share is 5.5 percent (AS_{t+1})
- Competitive Contribution Margin grew by 6 percent in the prior year ($\%\Delta CCM_{t-1}$)
- Competitive Growth Differential [50] was 0.4 percent when:
  - —Postal Service revenue grew 5 percent in the prior year ($\%\Delta Revenue_{USPS}$)
  - —Competitor revenue grew 3 percent in the prior year ($\%\Delta Revenue_{C\&M}$)
  - —Postal Service market share was 20 percent ($Share_{USPS}$)

Then the appropriate share for the next year is calculated as follows:

Appropriate Share = 0.055* (1 + 0.06 + (0.2 *(0.05 − 0.03))) = 0.059 *or* 5.9%

Under this scenario, the next year's appropriate share would be 5.9 percent. As noted above, this result will be the starting point for calculating the appropriate share for the following year.

Using 5.9 percent as the starting point for calculating the appropriate share for the following year ($AS_{t=1}$), if the following conditions hold:

- Competitive Contribution Margin declined by 1 percent in the prior year ($\%\Delta CCM_{t-1}$)
- Competitive Growth Differential was 2.2 percent, when:
  - —Postal Service revenue grew 6 percent in the prior year ($\%\Delta Revenue_{USPS}$)
  - —Competitor revenue declined 4 percent in the prior year ($\%\Delta Revenue_{C\&M}$)
  - —Postal Service market share was 22 percent ($Share_{USPS}$)

Then the appropriate share for the next year is calculated as follows:

Appropriate Share = 0.059 * (1 − 0.01 + (0.22 * (0.06 − (−0.04)))) = 0.06 *or* 6.0%

Under this scenario, the next year's appropriate share would be 6.0 percent and would become the starting point for calculating the appropriate share for the next year.

As it relates to comments received concerning the beginning appropriate share and beginning fiscal year, the Commission finds that it is appropriate to use 5.5 percent as the beginning appropriate share and FY 2007 as the beginning fiscal year when calculating the modified formula. Those beginning values allow the resulting appropriate share to capture the impact of market fluctuations on the appropriate share over time and moving forward.

The Commission's selection of 5.5 percent as the beginning appropriate share does not imply that the Commission believes the initial 5.5 percent set in Docket No. RM2007–1 was ''too low'' or ''inadequate'' as UPS suggests. *See* UPS Comments at 37. To the contrary, the initial 5.5 percent appropriate share was reasonably based on historical contribution. Order No. 4402 at 7. However, since the PAEA's enactment, the Postal Service, competitors, and market conditions have changed, and the goal of the formula-based approach is to better capture these changes both historically and moving forward. As a result, UPS's proposed use of Postal Service competitive products' revenue share would be inappropriate because it does not appropriately reflect market conditions in FY 2007 and subsequent years. In addition, the use of revenue share to begin the calculation of the formula is improper for the reasons discussed by the Commission in Order No. 4402 when it rejected using Postal Service competitive products' revenue share to set the appropriate share. *See* Order No. 4402 at 82. Postal Service competitive products' share of revenue is not reflective of market conditions, the elements of 39 U.S.C. 3633(b), and Commission precedent. *Id.* As discussed in Order No. 4402, competitive products' share of revenue is driven in large part by market dominant revenue, which has been declining due to a decline in demand for market dominant products. *Id.* As a result of declining market dominant demand and revenue, the competitive revenue share has

[46] This figure continues to be expressed as a percentage and rounded to one decimal place for simplicity and consistency with the Commission's past practice of expressing an appropriate share using one decimal place.

[47] In response to Order No. 4402, GCA requested the Commission confirm that, despite the use of its formula-based approach, the appropriate share continues to act as a minimum contribution level or floor, to be exceeded, if possible. GCA Comments at 1–2. As noted in Order No. 4402, ''the Commission has and continues to view the appropriate share as a minimum requirement.'' Order No. 4402 at 81; *see id.* at 6 (citing Order No. 26 at 72). The Commission continues to view the appropriate share as a minimum requirement. The minimum requirement nature of the appropriate share is embodied in the proposed rule itself, which states ''. . . the appropriate share of institutional costs to be recovered from competitive products collectively, at a minimum, will be calculated using the following formula. . . .'' *See* Order No. 4402, Attachment A at 1.

[48] *See* Order No. 4402 at 30. It is important to note that, as recently as its FY 2017 ACD, the Commission has stated the appropriate share requirement of 39 U.S.C. 3633(a)(3) applies to the Postal Service annually. *See* FY 2017 ACD at 92–93. Thus, to comply with 39 U.S.C. 3633(a)(3), the Postal Service's competitive products must collectively cover the Commission-determined appropriate share of institutional costs as set forth in 39 CFR 3015.7(c) in each fiscal year. *See id.* Although the Postal Service may exceed this minimum contribution level, any contribution that exceeds the minimum level cannot be used as a form of ''prepayment'' for future fiscal years. *See id.*

[49] See n.44, *supra.*

[50] As discussed above, the Competitive Growth Differential is calculated as follows: *Market* $Share_{USPS} * (\%\Delta Revenues_{USPS} - \%\Delta Revenues_{C\&M})$. *See* section IV.2.c, *supra.*

increased and is likely to continue to increase. However, this increase in revenue share has little do with the criteria of 39 U.S.C. 3633(b) that drive the determination of the appropriate share. As a result, use of revenue share would be inappropriate because such use would allow the appropriate share to be substantially impacted by factors unrelated to the prevailing market conditions and other relevant circumstances required pursuant to 39 U.S.C. 3633(b).

Additionally, it would be inappropriate to begin the formula's calculation in FYs 2012, 2017, or 2018, as the Postal Service and UPS respectively suggest. Calculating the appropriate share beginning in any fiscal year other than FY 2007 would result in the Commission disregarding the cumulative impact that changes in market have had on the initial 5.5 percent appropriate share in the years since the PAEA's enactment. The proposed formula's calculation incorporates the changes from those fiscal years, a necessary action to better capture the impact that changes in market conditions have had on the appropriate share.

As noted above, the Postal Service makes two specific critiques regarding the use of FY 2007 as the beginning fiscal year. The Postal Service contends that the two components themselves reflect current prevailing competitive conditions, leaving no reason to begin the formula's calculation in FY 2007 in order to capture historical market changes. Although it is true both components capture changes in prevailing competitive conditions in the market,[51] the beginning fiscal year serves a different purpose. The components, as applied through the formula, capture market changes, including prevailing competitive conditions, over a single fiscal year. However, they do not capture the prevailing competitive conditions in the market as they have evolved since the PAEA's enactment. As the Commission explained in Order No. 4402, it is appropriate to set FY 2007 as the beginning year for the formula because the prevailing competitive conditions in the market, as well as other relevant circumstances, have changed since FY 2007. Order No. 4402 at 32. By using FY 2007 as the beginning year, the proposed formula allows the appropriate share to reflect the cumulative effect of developments in competitive market conditions since the PAEA's enactment.

Additionally, the Postal Service maintains that it is inappropriate and arbitrary to assign ''hypothetical'' values that represent the appropriate share dating back to FY 2007 when the actual appropriate share for those fiscal years are known. Postal Service Comments at 24. The Commission acknowledges that the actual appropriate share[52] is known for prior fiscal years and clarifies that its approach does not purport to change the actual values for any prior fiscal year. However, as explained above, the Commission finds that the formula should ensure the appropriate share reflects the market conditions as they have evolved since the PAEA's enactment. As a result, it is neither inappropriate nor arbitrary for the Commission to use these values to determine the impact that market changes have had on the appropriate share. The formula's calculation is purposefully and appropriately cumulative in order to determine this impact.

As it relates to comments received concerning the weighting of the two components of the formula, the Commission finds that it is appropriate from both a legal and economic perspective to weight the components equally. First, from a legal perspective, the Commission's decision to weight both components equally is appropriate because it is based on the required consideration of the statutory criteria set forth in 39 U.S.C. 3633(b). The Commission notes that the modified components measure two discrete concepts. As described in sections IV.A.1 and IV.A.2, *supra,* the Competitive Contribution Margin measures the Postal Service's absolute market power; that is, its own ability to raise prices above costs, whereas the Competitive Growth Differential measures the Postal Service's market position relative to its competitors. These concepts measure different aspects of the competitive market, as the Competitive Contribution Margin considers the Postal Service's market power with respect to consumers and the Competitive Growth Differential measures the Postal Service's market position with respect to competitors. Both modified components play critical and equal roles in supporting the formula's ability to capture the criteria set forth in 39 U.S.C. 3633(b). For example—as it relates to capturing prevailing competitive conditions in the market—the Competitive Contribution Margin provides insight into potential Postal Service competitive advantage; the Competitive Growth Differential reflects any changes in Postal Service market share; and both are equally necessary in order to capture various changes to the market and competitors. *See* section IV.B.1, *infra.* Additionally, both modified components play a role in capturing each of the other relevant circumstances the Commission considers. *See* section IV.B.3, *infra.* Given that neither component is more significant than the other in capturing the criteria set forth in 39 U.S.C. 3633(b), the Commission finds it is appropriate to weight the components equally.

Second, from an economic perspective, the Commission's decision to weight both components equally is appropriate. Although Sidak maintains that ''from an economic perspective'' the Commission failed to offer a reasonable explanation for the formula's configuration and suggests that weights be assigned at the component level, Sidak's criticism is problematic for two reasons. *See* Sidak Decl. at 39. First, the assignment of weights at the component level, without unique economic justification, is inconsistent with economic practice. Typically, weighting is applied in survey analyses to correct imperfections in surveys or in regression analyses to normalize errors.[53] In those instances, a unique weight is applied to each variable, for each observation, using a function or a formula.[54] Sidak seems to suggest weights be assigned as follows:

$$\textit{Weighted Competitive Contribution Margin} = \textit{Weight} * \%\Delta CCM$$

$$\textit{Weighted Competitive Growth Differential} = \textit{Weight} * (\textit{Market Share}_{USPS,t-1} * (\%\Delta \textit{Revenue}_{USPS} - \%\Delta \textit{Revenue}_{C\&M}))$$

However, statistically, a more accurate assignment of weights would be as follows:

[51] The components, as applied through the formula, also capture other relevant circumstances. *See* section IV.B, *infra.*

[52] In using the term ''actual appropriate share'' the Commission is referring to the fact that, since its regulations in Docket No. RM2007–1 became final, as required by the PAEA, the appropriate share has remained at 5.5 percent. *See supra* at 4 n.4.

[53] *See* Jeffrey M. Wooldridge, *Introductory Econometrics: A Modern Approach* 280–94 (5th ed. 2013) (Wooldridge); *see also* Sharon L. Lohr, *Sampling: Design and Analysis* 225–29 (1999).

[54] Wooldridge at 280–94.

$$Weighted\ Competitive\ Contribution\ Margin$$

$$= \left(\frac{(Weight_1 * Revenue) - (Weight_2 * Attributable\ Cost)}{Weight_1 * Revenue}\right)$$

$$Weighted\ Competitive\ Growth\ Differential$$

$$= (Weight_1 * Market\ Share_{USPS.t-1})$$

$$* \left(\left(\left(\frac{Weight_{2,t} * Revenue_{USPS,t}}{Weight_{2,t-1} * Revenue_{USPS,t-1}}\right) - 1\right)\right.$$

$$\left. - \left(\left(\frac{Weight_{3,t} * Revenue_{C\&M,t}}{Weight_{3,t-1} * Revenue_{C\&M,t-1}}\right) - 1\right)\right)$$

The Commission finds that assigning unique weights to each variable in the context of the proposed formula would be inappropriate without an economic rationale for each weight (*e.g.,* to correct imperfections (survey analysis) or to normalize errors (regression analysis)).[55] Sidak does not propose an economic rationale for assigning any particular set of weights, and the Commission has not separately identified any. Without an economic rationale or justification, the application of unique weights to each variable would be artificial and thus inappropriate. *Id.*

Second, it would be problematic to assign weights at the component level because both the Competitive Contribution Margin and the Competitive Growth Differential rely in part on a shared input, the Postal Service's competitive product revenue. *See* Order No. 4402 at 18–19, 23; *see also* sections IV.A.1.c and IV.A.2.c, *supra.* For this reason, the components are not independent and are considered economically related.[56] Due to the relatedness of variables (*i.e.,* (*Revenue*) from the Competitive Contribution Margin and ($\%\Delta Revenue_{USPS}$) from the Competitive Growth Differential), if unique weights are assigned to the two components, the effect on those components and the formula's calculation would be disproportionate. To weight the components in a formula of this type would be inconsistent with statistical practice and would diminish the accuracy of the formula by changing how the components interact with each other.[57]

Table IV–3 below illustrates the calculation using the Commission's revised proposed formula starting with an appropriate share of 5.5 percent in FY 2007.

TABLE IV–3—CALCULATION OF APPROPRIATE SHARE, FY 2007–FY 2019[58]

Fiscal year	Appropriate share for the current year (AS_t) (%)	Percentage change in Competitive Contribution Margin for the prior year ($\%\Delta CCM_{t-1}$) (%)	Competitive Growth Differential for the prior year (CGD_{t-1}) (%)	Appropriate share for the following year (AS_{t+1}) (%)
FY 2007	5.5	N/A	N/A	5.5
FY 2008	5.5	0.0	0.0	5.5
FY 2009	5.5	−5.9	0.7	5.2
FY 2010	5.2	13.4	1.2	6.0
FY 2011	6.0	15.7	0.9	7.0
FY 2012	7.0	−7.9	−0.2	6.4
FY 2013	6.4	3.7	2.7	6.8
FY 2014	6.8	5.5	2.5	7.3
FY 2015	7.3	0.4	1.2	7.4
FY 2016	7.4	−2.6	0.2	7.2
FY 2017	7.2	18.1	1.4	8.6
FY 2018	8.6	1.3	1.1	8.8

The proposed revised formula and each resulting appropriate share percentage reflect trends in the market. For example, Table IV–3 shows that the appropriate share would have decreased from FY 2009 to FY 2010 under the

[55] *Id.* at 280–94.

[56] Related terms are commonly used in econometric models. *See* Wooldridge at 198–200.

[57] *See id.* at 280–94.

[58] Source: Library Reference PRC–LR–RM2017–1/2.

proposed modified formula (comparing the second column with the last column of the FY 2009 row). This decrease would have occurred in response to a decline in the Postal Service's market power in FY 2008 (as measured by the Competitive Contribution Margin shown in the third column of the FY 2009 row) largely due to the global financial crisis. Although there was an increase in the Competitive Growth Differential in FY 2008 (as shown in the fourth column of the FY 2009 row), it would not have offset the decline in the Competitive Contribution Margin. The appropriate share would have also decreased from FY 2012 to FY 2013 (comparing the second column with the last column of the FY 2012 row), again in response to a decline in the Postal Service's market power (as measured by the Competitive Contribution Margin shown in the third column of the FY 2012 row). In this case, the decline was due to changes in the mail mix that caused competitive products' revenue to increase less than attributable costs. Beginning with FY 2014's appropriate share, the appropriate share would have steadily increased as the Postal Service expanded its market power and market position. As a result, the appropriate share for FY 2019 (as indicated in the bottom-right cell in Table IV–3) would be 8.8 percent under the Commission's modified formula.

B. Analysis Pursuant to 39 U.S.C. 3633(b)

As it did in Order No. 4402, in this section, the Commission explains how its modified formula captures the prevailing competitive conditions in the market and other relevant circumstances as required by 39 U.S.C. 3633(b). Additionally, the Commission addresses the remaining element of section 3633(b)—whether any costs are uniquely or disproportionately associated with Postal Service competitive products.

1. Prevailing Competitive Conditions in the Market

a. Order No. 4402

In Order No. 4402, to assess the prevailing competitive conditions in the market, the Commission considered whether there was any evidence of Postal Service competitive advantage; whether there had been any changes in Postal Service market share; and whether there had been any changes in the package delivery market or to competitors since the Commission's last appropriate share review.[59]

The Commission identified and discussed changes in market conditions that had occurred since its last appropriate share review and determined that its formula-based approach captured these considerations. Order No. 4402 at 34–40. For example, the Commission found that the Postal Service Lerner Index would reflect any Postal Service competitive advantage because the more market power the Postal Service possesses, the larger the Postal Service Lerner Index would be. *Id.* at 35. The Commission also determined that the formula would capture any evidence of predatory pricing because, should the Postal Service ever engage in predatory pricing, the Postal Service Lerner Index value would be negative. *Id.* at 36–37. In addition, the Commission found that the formula captured Postal Service and competitor market share by revenue mainly through the Competitive Market Output. *Id.* at 38–39. Finally, the Commission found that changes in the market including overall growth, entry and exit of firms, and innovation would be observed in both the Postal Service Lerner Index and Competitive Market Output. *Id.* at 39–40.

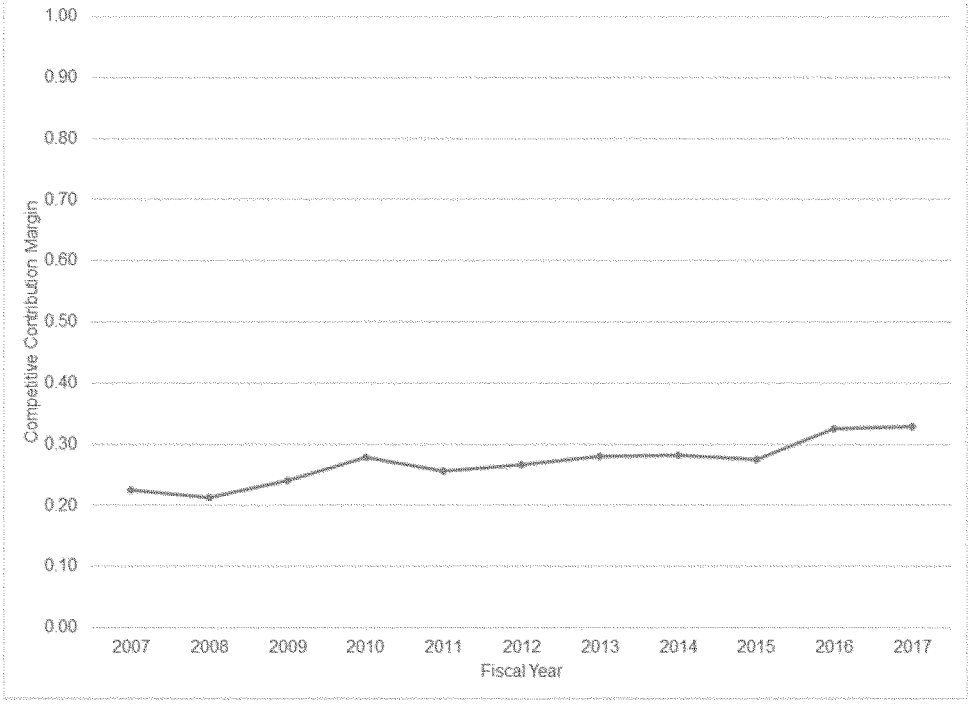
b. Modified Formula's Compliance With Section 3633(b)

Despite modifications to the previously proposed components, the modified formula captures the prevailing competitive conditions in the market. First, similar to the Postal Service Lerner Index, the Competitive Contribution Margin provides insight into whether the Postal Service possesses a competitive advantage.[60] The higher the Competitive Contribution Margin, the more market power the Postal Service possesses. Any large increases in the Competitive Contribution Margin may indicate a competitive advantage under certain circumstances. Just as with the Postal Service Lerner Index, the Competitive Contribution Margin also indicates whether the Postal Service is engaging in predatory pricing because the resulting Competitive Contribution Margin would be negative. If the Postal Service were engaging in predatory pricing, its attributable costs would be greater than its revenue, and, as calculated in the Competitive Contribution Margin, the difference between them would be less than zero, resulting in a negative value. Figure IV–1 below displays the Competitive Contribution Margin from FY 2007 to FY 2017.

[59] Order No. 4402 at 34–40. The Commission also mentioned a purely qualitative factor previously considered as a market condition—whether there was any evidence of antitrust actions filed against the Postal Service. *Id.* at 34 n.60. The Commission found that that factor could not be explicitly captured through the proposed quantitative formula. *Id.* However, the Commission did determine antitrust actions were implicitly captured by the previously proposed formula because changes in the Postal Service's market power could offer insight into whether the Postal Service was engaging in the kinds of anticompetitive behavior that would underlie an antitrust action. *See id.* Because the Competitive Contribution Margin continues to measure the Postal Service's market power, the Commission finds that the modified formula implicitly captures antitrust actions for the same reasons described in Order No. 4402.

[60] As discussed in Order No. 4402, the Commission also uses its analysis required by section 703(d) to assess whether Postal Service competitive products have a competitive advantage. *See* Order No. 4402 at 35, 54–68. The Commission clarifies that a section 703(d) analysis is the primary way the Commission assesses whether Postal Service competitive products have a competitive advantage due to differences in the application of federal and state laws to the Postal Service compared to competitors. The Commission notes that it also uses other factors (*e.g.,* large increases in market power or evidence of Postal Service predatory pricing) to assess whether the Postal Service has a competitive advantage.

Figure IV-1
Postal Service Competitive Contribution Margin, FY 2007 – FY 2017[61]



As shown in Figure IV–1, the Competitive Contribution Margin has never been negative. As a result, the Commission continues to find no evidence of Postal Service predatory pricing. The Commission maintains that the use of the Competitive Contribution Margin in its modified formula will provide an ongoing indication of whether the Postal Service is engaging in predatory pricing.

Second, the change in the Postal Service's market share by revenue would be reflected in the Competitive Growth Differential even more so than the Competitive Market Output component of the previously proposed formula. Unlike the Competitive Market Output, which reflected market share in its composition, the Competitive Growth Differential directly incorporates Postal Service market share into the calculation of the appropriate share, as discussed in section IV.A.2.c, *supra.* If the Postal Service's market share were to grow from an increase in revenue, the Competitive Growth Differential would increase, thereby increasing the appropriate share if all other factors were to remain constant. If the Postal Service's market share were to decline from a decrease in revenue, the Competitive Growth Differential would decrease, thereby decreasing the appropriate share if all other factors were to remain constant. Additionally, similar to the Postal Service Lerner Index, any growth or decline in the Postal Service's market share caused by shifts in demand or pricing strategies would be reflected in the Competitive Contribution Margin because such shifts would affect the Postal Service's ability to price above costs and therefore its market power. *See* Order No. 4402 at 39.

Finally, changes in the market and to competitors, such as overall market growth, firm entry or exit from the market and innovation, are reflected by both of the modified components. For example,[62] if a firm enters the market and generates new business, competitor revenue relative to the Postal Service's revenue would increase, thereby decreasing the Competitive Growth Differential. Alternatively, if a firm enters the market and takes business from the Postal Service—whether through pricing or innovation—the Postal Service would have to price closer to marginal cost to remain competitive, thereby reducing the Competitive Contribution Margin. However, if a firm exits the market and the business it used to generate is lost, it could cause a decrease in competitor revenue and an increase the Postal Service's market share, thereby increasing the Competitive Growth Differential. These various examples illustrate the modified formula's ability to capture overall changes, including expansion or retraction in the competitive market.

2. Unique or Disproportionate Costs

As previously noted, the second element of section 3633(b) is that the Commission must consider ''the degree to which any costs are uniquely or disproportionately associated with any competitive products.'' *See* 39 U.S.C. 3633(b); *see* section III.A, *supra.* The analysis of this second element differs from the other elements in section 3633(b) because the Commission's consideration of the second element is unrelated to the Commission's formula-based approach.

For that reason, in Order No. 4402, the Commission's discussion of whether any costs are uniquely or disproportionately associated with any competitive product relied on its current costing methodologies. *See* Order No. 4402 at 43–45. The Commission's current costing methodology attributes all reliably identifiable, causally related costs that can be traced to individual products to those products and was recently upheld

[61] Source: Library Reference PRC–LR–RM2017–1/2.

[62] Each example assumes all other factors remain constant.

by the D.C. Circuit.[63] The requirement that cost attribution must be based on reliably identified causal relationships comes from the PAEA. Order No. 4402 at 43 (citing 39 U.S.C. 3622(c)(2)). The Commission noted that ''[b]y definition, costs identified as institutional are those that cannot be causally linked to any specific product'' and found that there were no costs uniquely associated or disproportionately associated with any competitive products that were not already attributed to competitive products under the Commission's methodology. *Id.* at 43–44.

The Commission's discussion on whether any costs were uniquely associated or disproportionately associated with any competitive products elicited multiple comments.[64] However, as this Revised Notice of Proposed Rulemaking is concentrated on modifications to its proposed formula-based approach, the Commission will address the comments related to ''the degree to which any costs are uniquely or disproportionately associated with any competitive products'' in a subsequent order.

3. Other Relevant Circumstances

a. Order No. 4402

In its assessment of other relevant circumstances in Order No. 4402, the Commission considered the effects of: (1) Products which have been transferred from the market dominant product list to the competitive product list since the Commission's last review of the appropriate share; (2) changes to the mail mix (*i.e.,* the relative proportions of individual mail products' volumes within the overall postal system) since the last review of the appropriate share; (3) uncertainties in the marketplace; and (4) the risks associated with setting the appropriate share either too high or too low. Order No. 4402 at 45–53. The Commission identified and discussed changes in these relevant circumstances and determined that all were reflected in its proposed formula-based approach. *Id.*

First, the Commission identified product transfers since its last review of the appropriate share and determined that they were reflected in the previously proposed formula because the transferred products' revenue was automatically included in the Postal Service's portion of the Competitive Market Output, and the transferred products' revenue-per-piece and unit volume-variable cost were incorporated into the composition of the Postal Service Lerner Index. *Id.* at 46.

Second, the Commission noted that the Postal Service has experienced mail mix changes since the Commission's last review of the appropriate share, as market dominant volumes have continued to decline and competitive volumes have continued to increase. *Id.* at 46–49. The Commission determined that the formula's Competitive Market Output component incorporated changes in the Postal Service's mail mix by including revenue that the Postal Service received from any increase in competitive product volume. *Id.* at 48–49. Likewise, the Postal Service Lerner Index would reflect the growth or decline of competitive products with varying degrees of profitability. *Id.*

Third, with regard to market uncertainties, the Commission explained that ''shifts in market demand or macroeconomic conditions would be reflected in the appropriate share determination through changes in the Postal Service Lerner Index and Competitive Market Output.'' *Id.* at 49. The Commission also noted that the last 5 years have been a time of significant innovation and development in the delivery industry, and that it is important for the Commission's proposed formula-based approach to be able to incorporate such changes. *Id.* For potential competitor innovation or changes in e-commerce, the Commission explained that both would be reflected in the Competitive Market Output because competitor revenue would change as their innovations succeeded or failed. *Id.* The Commission also noted it was possible for competitor innovation to affect the Postal Service Lerner Index should it cause the Postal Service to alter its pricing of competitive products. *Id.* at 49–50.

Finally, the Commission has consistently recognized that there are risks inherent in setting the appropriate share either too high or too low. *Id.* at 50–51; *see also* Order No. 1449 at 12. If the appropriate share were set too high, the Postal Service would be forced to raise its prices to non-competitive levels. Order No. 4402 at 50. If the appropriate share were set too low, the Postal Service might be incentivized to discount its prices in order to gain market share. *Id.* at 50. The Commission found that its proposed formula should limit increases in the appropriate share to no higher than appropriate to account for the Postal Service's growth in market power and the growth of the market as a whole. *Id.* With regard to the risk of the appropriate share being set too low, the Commission noted that price discounting on the scale necessary to gain market share would come at the expense of the Postal Service's overall profitability. *Id.* at 50–51. The Commission therefore concluded that the Postal Service possesses little incentive to engage in such behavior. *Id.* at 51.

b. Modified Formula's Compliance With Section 3633(b)

Despite changes to the previously proposed components, with the Competitive Contribution Margin and the Competitive Growth Differential, the modified formula captures other relevant circumstances. First, the modified formula continues to capture changes caused by Postal Service product transfers to the competitive product list. When a product is transferred from the market dominant to the competitive product list, the modified formula continues to incorporate it directly through the Competitive Growth Differential because the modified component continues to include the transferred product's revenue as part of the Postal Service's revenue. The effect of product transfers would also be reflected in changes in Postal Service market share because market share is calculated using, in part, Postal Service revenue, which would include the revenue of any transferred product. In addition, the transferred product's attributable costs and revenue are incorporated into the Competitive Contribution Margin. Any change in the Competitive Contribution Margin resulting from a transfer reflects the Postal Service's market power in the expanded competitive market, as discussed above. *See* section IV.A.1.c, *supra.*

Second, as it relates to changes in the mail mix, the Commission noted in Order No. 4402 that mail mix changes occur as demand for postal products shifts. Order No. 4402 at 46. Most recently, Postal Service market dominant product demand has decreased, while demand for its competitive products has increased. *Id.* at 46–48. The modified formula captures these mail mix changes as the Competitive Growth Differential reflects the revenue the Postal Service receives from any increase in competitive product volume. The Competitive Contribution Margin, similar to the Postal Service Lerner Index, would reflect the growth or decline of very profitable or less profitable competitive products. *See id.* at 48–49.

Third, regarding market uncertainties, the modified formula captures changes in market demand or other macroeconomic conditions through

[63] *Id.; see generally UPS,* 890 F.3d 1053.

[64] *See, e.g.,* Amazon Comments at 8–11; Postal Service Comments at 4–5, 13, 16, 26–28; Sidak Decl. at 53–55.

changes in either of the modified components. For example, if demand in the market declines, because of a recession or other conditions, there may be downward pressure on prices in the market. This occurrence may cause the Postal Service to reduce its prices in order to preserve volume, reducing the Completive Contribution Margin. Other competitors may reduce prices as well, resulting in changes to the market overall; an occurrence that would be reflected in the Competitive Growth Differential.

The Commission also finds that its modified formula should capture efforts to innovate or changes in e-commerce, accomplishing the same objective as the previously proposed formula. The Competitive Growth Differential captures these changes as they affect the Postal Service's position in the market. For example, if competitors in the aggregate were to successfully innovate and generate more revenue relative to the Postal Service, the Competitive Growth Differential would decrease if all other factors were to remain constant. If the Postal Service were to successfully innovate and generate more revenue relative to its competitors, the Competitive Growth Differential would increase if all other factors were to remain constant.

Finally, in terms of the risk involved with setting the appropriate share too high, the Commission finds that this risk is addressed by the modified formula, just as it was by the previously proposed formula. The modified formula continues to limit increases in the appropriate share to no higher than appropriate to account for the Postal Service's growth in market power and for growth in the Postal Service's market position. In terms of the risks involved in setting the appropriate share too low and allowing the Postal Service to gain market share by discounting prices, the Commission continues to find that this risk is minimal. As noted in Order No. 4402, the Postal Service has little incentive to discount prices in order to gain market share because discounting prices to gain market share would decrease the Postal Service's profitability at a time when it continues to face financial challenges.[65]

V. Section 703(d) of the PAEA

As discussed in Order No. 4402,[66] in order to determine whether Postal Service competitive products enjoyed advantages over private carriers, Congress directed the FTC to prepare a report identifying federal and state laws that apply differently to the Postal Service's competitive products than similar products offered by private competitors and to account for the net economic effect resulting from such differences.[67] Additionally, section 703(d) directs the Commission, when revising regulations under 39 U.S.C. 3633, to consider subsequent events that may affect the continuing validity of the FTC's net economic effect finding.[68]

Order No. 4402 presented the first proposed revision to a regulation issued under 39 U.S.C. 3633 since the PAEA's enactment. The Commission provided its analysis pursuant to section 703(d) in Order No. 4402. Order No. 4402 at 54–68. In that analysis, the Commission discussed the FTC Report and its findings, defined the scope of its review pursuant to section 703(d), and performed the required analysis based on the statute. *Id.* The comments received in response to Order No. 4402 have not identified any subsequent events pursuant to the Commission's interpretation of section 703(d) that were not addressed in Order No. 4402 or that have subsequently occurred.[69] The Commission also has not identified any subsequent events that would affect its section 703(d) analysis in Order No. 4402. As such, the Commission affirms its finding in Order No. 4402 that the FTC's conclusion that the Postal Service operates at a net economic disadvantage continues to be valid.

VI. Administrative Actions

Additional information concerning this rulemaking may be accessed via the Commission's website at *http://www.prc.gov.* Interested persons may submit comments on the modified formula-based approach and related revisions to proposed rules[70] no later than 30 days after the date of publication of this Revised Notice of Proposed Rulemaking in the **Federal Register**. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller continues to be designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

The Regulatory Flexibility Act requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. *See* 5 U.S.C. 601, *et seq.* (1980). If the proposed or final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities, the head of the agency may certify that the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply. *See* 5 U.S.C. 605(b). In the context of this rulemaking, the Commission's primary responsibility is in the regulatory oversight of the United States Postal Service. The rules that are the subject of this rulemaking have a regulatory impact on the Postal Service, but do not impose any regulatory obligation upon any other entity. Based on these findings, the Chairman of the Commission certifies that the rules that are the subject of this rulemaking will not have a significant economic impact on a substantial number of small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

VII. Ordering Paragraphs

It is ordered:

1. Interested persons may submit comments no later than 30 days from the date of the publication of this notice in the **Federal Register**.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller continues to be appointed to serve as the Public Representative in this proceeding.

3. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

List of Subjects for 39 CFR Part 3015

Administrative practice and procedure.

For the reasons stated in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3015—REGULATION OF RATES FOR COMPETITIVE PRODUCTS

■ 1. The authority citation for part 3015 continues to read as follows:

[65] *See* Order No. 4402 at 50–51. The modified formula continues to be calculated with a time lag that further discourages price discounting by the Postal Service because the negative consequences would appear before the benefits. *See id.* at 51.

[66] *See id.* at 54–58.

[67] *See* PAEA, 120 Stat. 3244; *see also* S. Rep. No. 108–318 at 29 (2004); PAEA section 703(a) and (b). Section 703 was not codified and is reproduced in the notes of 39 U.S.C.A. 3633. *See also* FTC Report.

[68] PAEA section 703(d).

[69] The Commission's discussion on the FTC Report and section 703 elicited multiple comments. *See, e.g.,* UPS Comments at 22–26; Sidak Decl. at 6, 9–15, 52–53. However, as this Revised Notice of Proposed Rulemaking is concentrated on modifications to the proposed formula-based approach, the Commission will address the comments received on the FTC Report and section 703(d) in a subsequent order.

[70] The Commission makes one revision to proposed § 3015.7(c)(1). The Commission replaces the formula proposed in Order No. 4402 with the formula proposed in this Revised Notice of Proposed Rulemaking. The proposed rules are set forth below the signature of this Order.

Authority: 39 U.S.C. 503; 3633.

■ 2. Amend § 3015.7 by revising paragraph (c) to read as follows:

§ 3015.7 Standard for compliance.

* * * * *

(c)(1) Annually, on a fiscal year basis, the appropriate share of institutional costs to be recovered from competitive products collectively, at a minimum, will be calculated using the following formula:

$AS_{t+1} = AS_t * (1 + \%\Delta CCM_{t-1} + CGD_{t-1})$

Where,

AS = Appropriate Share, expressed as a percentage and rounded to one decimal place
CCM = Competitive Contribution Margin
CGD = Competitive Growth Differential
t = Fiscal Year
If t = 0 = FY 2007, AS = 5.5 percent

(2) The Commission shall, as part of each Annual Compliance Determination, calculate and report competitive products' appropriate share for the upcoming fiscal year using the formula set forth in paragraph (c)(1) of this section.

[FR Doc. 2018–17221 Filed 8–10–18; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2018–0138; FRL–9981–85–Region 1]

Air Plan Approval; Maine; Infrastructure State Implementation Plan Requirements for the 2012 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of a State Implementation Plan (SIP) submission from Maine that addresses the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2012 fine particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). EPA is also proposing to conditionally approve one sub-element of Maine's infrastructure SIP. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities with respect to this NAAQS under the CAA.

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

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2018–0138 at *https://www.regulations.gov,* or via email to *conroy.dave@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Planning Unit, Air Programs Branch, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100 (Mail code OEP05–2), Boston, MA 02109—3912, tel. (617) 918–1684; *simcox.alison@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background and Purpose

A. What Maine SIP submission does this rulemaking address?

This rulemaking addresses a July 6, 2016 submission from the Maine Department of Environmental Protection (Maine DEP) regarding the infrastructure SIP requirements of the CAA for the 2012 fine particle ($PM_{2.5}$[1]) National Ambient Air Quality Standard (NAAQS). The primary, health-based annual standard is set at 12.0 micrograms per cubic meter ($\mu g/m^3$) and the 24-hour standard is set at 35 $\mu g/m^3$. *See* 78 FR 3086. Under sections 110(a)(1) and (2) of the CAA, states are required to provide infrastructure SIP submissions to ensure that state SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2012 $PM_{2.5}$ NAAQS. On March 1, 2018, Maine DEP submitted a letter providing clarifying information for several of its infrastructure SIP submittals. In a July 17, 2018 email, Maine DEP asked EPA to apply this letter to the infrastructure SIP submittal for the 2012 $PM_{2.5}$ NAAQS, as well. The information in the letter and email (both included in the docket for this rulemaking) is mainly applicable to Elements E, F, G, and K.

[1] $PM_{2.5}$ refers to particulate matter of 2.5 microns or less in diameter, often referred to as ''fine'' particles.

B. What is the scope of this rulemaking?

EPA is acting on a SIP submission from Maine DEP that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2012 $PM_{2.5}$ NAAQS.

The requirement for states to make a SIP submission of this type arises out of CAA sections 110(a)(1) and 110(a)(2). Pursuant to these sections, each state must submit a SIP that provides for the implementation, maintenance, and enforcement of each primary or secondary NAAQS. States must make such SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a new or revised NAAQS.'' This requirement is triggered by the promulgation of a new or revised NAAQS and is not conditioned upon EPA's taking any other action. Section 110(a)(2) includes the specific elements that ''each such plan'' must address.

EPA commonly refers to such SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA.

This rulemaking will not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources (''SSM'' emissions) that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP-approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''); and, (iii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of EPA's ''Final New Source Review (NSR) Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Instead, EPA has the authority to address each one of these substantive areas separately. A detailed history, interpretation, and rationale for EPA's approach to infrastructure SIP requirements can be found in EPA's May 13, 2014, proposed rule entitled, ''Infrastructure SIP Requirements for the 2008 Lead NAAQS'' in the section, ''What is the scope of this rulemaking?'' *See* 79 FR 27241 at 27242–45.

II. What guidance is EPA using to evaluate this SIP submission?

EPA highlighted the statutory requirement to submit infrastructure SIPs within 3 years of promulgation of a new NAAQS in an October 2, 2007, guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 guidance). EPA has issued additional guidance documents and memoranda, including a September 13, 2013, memorandum entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'' (2013 memorandum).[2]

With respect to the ''Good Neighbor'' or interstate transport requirements for infrastructure SIPs, the most recent relevant EPA guidance is a memorandum published on March 17, 2016, entitled ''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)'' (2016 memorandum). The 2016 memorandum describes EPA's past approach to addressing interstate transport, and provides EPA's general review of relevant modeling data and air quality projections as they relate to the 2012 annual $PM_{2.5}$ NAAQS. The 2016 memorandum provides information relevant to EPA Regional office review of the CAA section 110(a)(2)(D)(i)(I) ''Good Neighbor'' provision requirements in infrastructure SIPs with respect to the 2012 annual $PM_{2.5}$ NAAQS. This rulemaking considers information provided in that memorandum.

III. EPA's review

EPA is soliciting comment on our evaluation of Maine's infrastructure SIP submission in this notice of proposed rulemaking. In Maine's submission, a detailed list of Maine Laws and previously SIP-approved Air Quality Regulations show precisely how the various components of its EPA-approved SIP meet each of the requirements of section 110(a)(2) of the CAA for the 2012 $PM_{2.5}$ NAAQS. The following review evaluates the state's submissions in light of section 110(a)(2) requirements and relevant EPA guidance.

A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures

This section (also referred to in this action as an element) of the Act requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.[3] In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

Maine's infrastructure submittal for this element cites Maine laws and regulations that include enforceable emission limitations and other control measures, means or techniques, as well as schedules and timetables for compliance to meet the applicable requirements of the CAA. Maine DEP statutory authority with respect to air quality is set out in Title 38 of the Maine Revised Statutes Annotated (''MRSA''), Chapter 4, ''Protection and Improvement of Air.'' Maine DEP's general authority to promulgate regulations is codified at 38 MRSA Chapter 2, Subchapter 1, ''Organization and Powers,'' [4] and the authority to establish emission standards and regulations implementing ambient air quality standards is contained in 38 MRSA Chapter 4, sections 585 and 585–A.

The Maine submittal cites two dozen specific rules that the state has adopted to control the emissions of criteria pollutants and precursors, including $PM_{2.5}$. A few of these rules, with their EPA-approval citation, are listed here: 06–096 Code of Maine Regulations (''CMR'') Chapter 102, ''Open Burning'' (73 FR 9459, February 21, 2008); Chapter 103, ''Fuel Burning Equipment

[2] This memorandum and other referenced guidance documents and memoranda are included in the docket for this action.

[3] *See, e.g.,* EPA's final rule on ''National Ambient Air Quality Standards for Lead.'' 73 FR 66964, 67034 (November 12, 2008).

[4] Maine DEP consists of the Board of Environmental Protection (''Board'') and a Commissioner. 38 MRSA § 341–A(2). In general, the Board is authorized to promulgate ''major substantive rules'' and the Commissioner has rulemaking authority with respect to rules that are ''not designated as major substantive rules.'' *Id.* § 341–H.

Particulate Emission Standard'' (50 FR 7770, February 26, 1985); Chapter 104, ''Incinerator Particulate Emission Standard'' (37 FR 10842, May 31, 1972); and Chapter 150, ''Control of Emissions from Outdoor Wood Boilers'' (April 24, 2012). The Maine regulations listed above were previously approved into the Maine SIP by EPA. *See* 40 CFR 52.1020.

EPA proposes that Maine meets the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2012 $PM_{2.5}$ NAAQS. As previously noted, EPA is not proposing to approve or disapprove any existing state provisions or rules related to SSM or director's discretion in the context of section 110(a)(2)(A).

B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System

This section requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze ambient air quality data, and make such data available to EPA upon request. Each year, states submit annual air monitoring network plans to EPA for review and approval. EPA's review of these annual monitoring plans includes our evaluation of whether the state: (i) Monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

Pursuant to authority granted to it by 38 MRSA §§ 341–A(1) and 584–A, Maine DEP operates an air quality monitoring network, and EPA approved the state's most recent Annual Air Monitoring Network Plan for $PM_{2.5}$ on August 23, 2017.[5] Furthermore, Maine DEP populates AQS with air quality monitoring data in a timely manner, and provides EPA with prior notification when considering a change to its monitoring network or plan. EPA proposes that Maine DEP meets the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2012 $PM_{2.5}$ NAAQS.

[5] *See* EPA approval letter located in the docket for this action.

C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet NSR requirements under PSD and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers the following: (i) Enforcement of SIP measures; (ii) PSD program for major sources and major modifications; and (iii) a permit program for minor sources and minor modifications.

Sub-Element 1: Enforcement of SIP Measures

Maine DEP identifies the sources of its authority to enforce the measures it cites to satisfy Element A (Emission limits and other control measures) as 38 MRSA Section 347–A, ''Violations,'' 38 MRSA Section 347–C, ''Right of inspection and entry,'' 38 MRSA Section 348, ''Judicial Enforcement,'' 38 MRSA Section 349, ''Penalties,'' and 06–096 CMR Chapter 115, ''Major and Minor Source Air Emission License Regulations,'' which include processes for both civil and criminal enforcement actions. Construction of new or modified stationary sources in Maine is regulated by 06–096 CMR Chapter 115, ''Major and Minor Source Air Emission License Regulations,'' which requires best available control technology (BACT) controls for PSD sources, including for $PM_{2.5}$. EPA proposes that Maine has met the enforcement requirement of section 110(a)(2)(C) with respect to the 2012 $PM_{2.5}$ NAAQS.

Sub-Element 2: PSD Program for Major Sources and Major Modifications.

Prevention of significant deterioration (PSD) applies to new major sources or modifications made to major sources for pollutants where the area in which the source is located is in attainment of, or unclassifiable with regard to, the relevant NAAQS. Maine DEP's EPA-approved PSD rules, contained at 06–096 CMR Chapter 115, ''Major and Minor Source Air Emission License Regulations,'' contain provisions that address applicable requirements for all regulated NSR pollutants, including Greenhouse Gases (GHGs).

EPA's ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline'' (Phase 2 Rule) was published on November 29, 2005 (70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_X as a precursor to ozone. *See* 70 FR 71679. This requirement is codified in 40 CFR 51.166, and requires that states submit SIP revisions incorporating the requirements of the rule, including provisions that would treat NO_X as a precursor to ozone provisions. These SIP revisions were to have been submitted to EPA by states by June 15, 2007. *See* 70 FR 71683.

Maine has adopted, and EPA has approved, rules addressing the changes to 40 CFR 51.166 required by the Phase 2 Rule, including amending its SIP to include NO_X and VOC as precursor pollutants to ozone, in order to define what constitutes a ''significant'' increase in actual emissions from a source of air contaminants. *See* 81 FR 50353 (August 1, 2016). Therefore, EPA proposes to approve Maine's infrastructure SIP submission for the 2012 $PM_{2.5}$ NAAQS with respect to the requirements of the Phase 2 Rule and the PSD sub-element of section 110(a)(2)(C).

On May 16, 2008 (73 FR 28321), EPA issued the Final Rule on the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct $PM_{2.5}$ and other pollutants that contribute to secondary $PM_{2.5}$ formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of $PM_{2.5}$, otherwise known as precursors. In the 2008 rule, EPA identified precursors to $PM_{2.5}$ for the PSD program to be SO_2 and NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The 2008 NSR Rule also specifies that VOCs are not considered to be precursors to $PM_{2.5}$ in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are

significant contributors to that area's ambient $PM_{2.5}$ concentrations.

The explicit references to SO_2, NO_X, and VOCs as they pertain to secondary $PM_{2.5}$ formation are codified at 40 CFR 51.166(b)(49)(i)(*b*) and 40 CFR 52.21(b)(50)(i)(*b*). As part of identifying pollutants that are precursors to $PM_{2.5}$, the 2008 NSR Rule also required states to revise the definition of ''significant'' as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i) define ''significant'' for $PM_{2.5}$ to mean the following emissions rates: 10 tons per year (tpy) of direct $PM_{2.5}$; 40 tpy of SO_2; and 40 tpy of NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011. *See* 73 FR 28321 at 28341.[6]

On August 1, 2016 (81 FR 50353), EPA approved revisions to Maine's PSD program that identify SO_2 and NO_X as precursors to $PM_{2.5}$ and revise the state's regulatory definition of ''significant'' for $PM_{2.5}$ to mean 10 tons per year (tpy) or more of direct $PM_{2.5}$ emissions, 40 tpy or more of SO_2 emissions, or 40 tpy or more of NO_X emissions.

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in $PM_{2.5}$ and PM_{10} emission limits in NSR permits. Instead, EPA determined that states had to account for $PM_{2.5}$ and PM_{10} condensables for applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits beginning on or after January 1, 2011. *See* 73 FR 28321 at 28334. This requirement is codified in 40 CFR 51.166(b)(49)(i)(*a*) and 40 CFR 52.21(b)(50)(i)(*a*).

Maine's SIP-approved PSD program defines $PM_{2.5}$ and PM_{10} emissions in such a manner that gaseous emissions which would condense under ambient conditions are treated in an equivalent manner as required by EPA's definition of ''regulated air pollutant'' in 40 CFR 51.166(b)(49)(i)(*a*). EPA approved these definitions into the SIP on August 1, 2016 (81 FR 50353). Consequently, we propose that the state's PSD program adequately accounts for the condensable fraction of $PM_{2.5}$ and PM_{10}.

Therefore, we propose to approve Maine's infrastructure SIP submittal for the 2012 $PM_{2.5}$ NAAQS with respect to the requirements of the 2008 NSR Rule and the PSD sub-element of section 110(a)(2)(C).

On October 20, 2010 (75 FR 64864), EPA issued the final rule on the ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (2010 NSR Rule). This rule established several components for making PSD permitting determinations for $PM_{2.5}$, including a system of ''increments,'' which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c). On June 24, 2014 (79 FR 35695), EPA approved $PM_{2.5}$ increments in 06–096 CMR Chapter 110 of Maine's regulations.

The 2010 NSR Rule also established a new ''major source baseline date'' for $PM_{2.5}$ as October 20, 2010, and a new trigger date for $PM_{2.5}$ of October 20, 2011 in the definition of ''minor source baseline date.'' These revisions are codified in 40 CFR 51.166(b)(14)(i)(*c*) and (b)(14)(ii)(*c*), and 40 CFR 52.21(b)(14)(i)(*c*) and (b)(14)(ii)(*c*). Lastly, the 2010 NSR Rule revised the definition of ''baseline area'' to include a level of significance (SIL) of 0.3 micrograms per cubic meter ($\mu g/m^3$), annual average, for $PM_{2.5}$. This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i). On August 1, 2016 (81 FR 50353), EPA approved revisions to the Maine SIP that address EPA's 2010 NSR rule. Therefore, with respect to the 2010 NSR Rule and the PSD sub-element of section 110(a)(2)(C), we are proposing to approve Maine's infrastructure SIP submittal for the 2012 $PM_{2.5}$ NAAQS.

With respect to Elements C and J, EPA interprets the Clean Air Act to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Maine has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including GHGs.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427. The Supreme Court said that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of BACT.

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by EPA, the application of the Best Available Control Technology (BACT) requirement to GHG emissions from Step 1 or ''anyway'' sources. With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), ''to

[6] EPA notes that on January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (DC Cir.), held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM_{10} nonattainment areas (Title I, part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1 (*Natural Resources Defense Council* v. *EPA,* No. 08–1250). As the subpart 4 provisions apply only to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR rule in order to comply with the court's decision. Accordingly, EPA's approval of Maine's infrastructure SIP as to Elements C, D(i)(II), or J with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion.

The Court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revisitation of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification.''

On August 19, 2015, EPA amended its PSD and title V regulations to remove from the Code of Federal Regulations portions of those regulations that the D.C. Circuit specifically identified as vacated. EPA intends to further revise the PSD and title V regulations to fully implement the Supreme Court and D.C. Circuit rulings in a separate rulemaking. This future rulemaking will include revisions to additional definitions in the PSD regulations.

Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process until they have more information about the additional planned revisions to EPA's PSD regulations. EPA is not expecting states to have revised their PSD programs in anticipation of EPA's additional actions to revise its PSD program rules in response to the court decisions for purposes of infrastructure SIP submissions. Instead, EPA is only evaluating such submissions to assure that the state's program addresses GHGs consistent with both the court decision, and the revisions to PSD regulations that EPA has completed at this time.

On October 5, 2012 (77 FR 49404), EPA approved revisions to the Maine SIP that modified Maine's PSD program to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Maine's PSD permitting requirements for their GHG emissions. Therefore, EPA has determined that Maine's SIP is sufficient to satisfy Elements C, D(i)(II), and J with respect to GHGs. The Supreme Court decision and subsequent D.C. Circuit judgment do not prevent EPA's approval of Maine's infrastructure SIP as to the requirements of Element C, as well as sub-elements D(i)(II), and J(iii).

For the purposes of this rulemaking on Maine's infrastructure SIP, EPA reiterates that NSR Reform is not in the scope of these actions.

In summary, we are proposing to approve Maine's submittal for this sub-element with respect to the 2012 $PM_{2.5}$ NAAQS.

Sub-Element 3: Preconstruction Permitting for Minor Sources and Minor Modifications

To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, an infrastructure SIP submission should identify the existing EPA-approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulate emissions of the relevant NAAQS pollutants. EPA last approved revisions to Maine's minor NSR program on August 1, 2016 (81 FR 50353). Maine and EPA rely on the existing minor NSR program in 06–096 CMR Chapter 115 to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 2012 $PM_{2.5}$ NAAQS.

We are proposing to find that Maine has met the requirement to have a SIP-approved minor new source review permit program as required under Section 110(a)(2)(C) for the 2012 $PM_{2.5}$ NAAQS.

D. Section 110(a)(2)(D)—Interstate Transport.

This section contains a comprehensive set of air quality management elements pertaining to the transport of air pollution with which states must comply. It covers the following five topics, categorized as sub-elements: Sub-element 1, Significant contribution to nonattainment, and interference with maintenance of a NAAQS; Sub-element 2, PSD; Sub-element 3, Visibility protection; Sub-element 4, Interstate pollution abatement; and Sub-element 5, International pollution abatement. Sub-elements 1 through 3 above are found under section 110(a)(2)(D)(i) of the Act, and these items are further categorized into the four prongs discussed below, two of which are found within sub-element 1. Sub-elements 4 and 5 are found under section 110(a)(2)(D)(ii) of the Act and include provisions insuring compliance with sections 115 and 126 of the Act relating to interstate and international pollution abatement.

Sub-Element 1: Section 110(a)(2)(D)(i)(I)—Contribute to Nonattainment (Prong 1) and Interfere With Maintenance of the NAAQS (Prong 2)

Section 110(a)(2)(D)(i)(I) of the CAA requires a SIP to prohibit any emissions activity in the state that will contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any downwind state. EPA commonly refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or jointly as the ''Good Neighbor'' or ''transport'' provisions of the CAA. This rulemaking proposes action on the portions of Maine's July 6, 2016, SIP submission that address the prong 1 and 2 requirements with respect to the 2012 $PM_{2.5}$ NAAQS.

EPA has developed a consistent framework for addressing the prong 1 and 2 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 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 NAAQS downwind; and (4) for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, reducing the identified upwind emissions through adoption of permanent and enforceable measures. This framework was most recently applied with respect to $PM_{2.5}$ in the Cross-State Air Pollution Rule (CSAPR), which addressed both the 1997 and 2006 $PM_{2.5}$ standards, as well as the 1997 ozone standard. *See* 76 FR 48208 (August 8, 2011).

EPA's analysis for CSAPR, conducted consistent with the four-step framework, included air-quality modeling that evaluated the impacts of 38 eastern states on identified receptors in the eastern United States. EPA indicated that, for step 2 of the framework, states with impacts on downwind receptors that are below the contribution threshold of 1% of the relevant NAAQS would not be considered to significantly contribute to nonattainment or interfere with maintenance of the relevant NAAQS, and would, therefore, not be included in CSAPR. *See* 76 FR 48220. EPA further indicated that such states could rely on EPA's analysis for CSAPR as technical support in order to demonstrate that their existing or future interstate transport SIP submittals are adequate to address the transport

requirements of 110(a)(2)(D)(i)(I) with regard to the relevant NAAQS. *Id.*

In addition, as noted above, on March 17, 2016, EPA released the 2016 memorandum to provide information to states as they develop SIPs addressing the Good Neighbor provision as it pertains to the 2012 $PM_{2.5}$ NAAQS. Consistent with step 1 of the framework, the 2016 memorandum provides projected future-year annual $PM_{2.5}$ design values for monitors throughout the country based on quality-assured and certified ambient-monitoring data and recent air-quality modeling and explains the methodology used to develop these projected design values. The memorandum also describes how the projected values can be used to help determine which monitors should be further evaluated to potentially address if emissions from other states significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS at these monitoring sites. The 2016 memorandum explained 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. Accordingly, because the available data included 2017 and 2025 projected average and maximum $PM_{2.5}$ design values calculated through the CAMx photochemical model, the memorandum suggests approaches states might use to interpolate $PM_{2.5}$ values at sites in 2021.

For all but one monitor site in the eastern United States, the modeling data provided in the 2016 memorandum showed that monitors were expected to both attain and maintain the 2012 $PM_{2.5}$ NAAQS in both 2017 and 2025. The modeling results project that this one monitor, the Liberty monitor, (ID number 420030064), located in Allegheny County, Pennsylvania, will be above the 2012 annual $PM_{2.5}$ NAAQS in 2017, but only under the model's maximum projected conditions, which are used in EPA's interstate transport framework to identify maintenance receptors. The Liberty monitor (along with all the other Allegheny County monitors) is projected to both attain and maintain the NAAQS in 2025. The 2016 memorandum suggests that under such a condition (again, where EPA's photochemical modeling indicates an area will maintain the 2012 annual $PM_{2.5}$ NAAQS in 2025, but not in 2017), further analysis of the site should be performed to determine if the site may be a nonattainment or maintenance receptor in 2021 (which, again, is the attainment deadline for moderate $PM_{2.5}$ areas). 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 these analyses for Maine, as well as additional analysis conducted by EPA during review of Maine's submittal.

To develop the projected values presented in the memorandum, EPA used the results of nationwide photochemical air-quality modeling that it recently performed to support several rulemakings related to the ozone NAAQS. Base-year modeling was performed for 2011. Future-year modeling was performed for 2017 to support the proposed CSAPR Update for the 2008 Ozone NAAQS. *See* 80 FR 75705 (December 3, 2015). Future-year modeling was also performed for 2025 to support the Regulatory Impact Assessment of the final 2015 Ozone NAAQS.[7] The outputs from these model runs included hourly concentrations of $PM_{2.5}$ that were used in conjunction with measured data to project annual average $PM_{2.5}$ design values for 2017 and 2025. Areas that were designated as moderate $PM_{2.5}$ nonattainment areas for the 2012 annual $PM_{2.5}$ NAAQS in 2014 must attain the NAAQS by December 31, 2021, or as expeditiously as practicable. Although neither the available 2017 nor 2025 future-year modeling data corresponds directly to the future-year attainment deadline for moderate $PM_{2.5}$ nonattainment areas, EPA believes that the modeling information is still helpful for identifying potential nonattainment and maintenance receptors in the 2017–2021 period. Assessing downwind $PM_{2.5}$ air-quality problems based on estimates of air-quality concentrations in a future year aligned with the relevant attainment deadline is consistent with the instructions from the United States Court of Appeals for the District of Columbia Circuit in *North Carolina* v. *EPA,* 531 F.3d 896, 911–12 (DC Cir. 2008) that upwind emission reductions should be harmonized, to the extent possible, with the attainment deadlines for downwind areas.

Maine's Submission for Prongs 1 and 2

On July 6, 2016, Maine DEP submitted an infrastructure SIP submission for the 2012 $PM_{2.5}$ NAAQS that addressed prongs 1 and 2 for the 2012 $PM_{2.5}$ NAAQS. The state's submission relied in part on EPA's analysis performed for the CSAPR rulemaking to conclude that the state will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any downwind area.

EPA analyzed the state's July 2016 submittal to determine whether it fully addresses the prong 1 and 2 transport provisions with respect to the 2012 $PM_{2.5}$ NAAQS. As discussed below, EPA concludes that emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors (NO_X and SO_2) in Maine will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.

Analysis of Maine's Submission for the 2012 $PM_{2.5}$ NAAQS

As noted above, the modeling discussed in EPA's 2016 memorandum identified one potential maintenance receptor for the 2012 $PM_{2.5}$ NAAQS at the Liberty monitor (ID number 420030064), located in Allegheny County. The memorandum also identified certain states with incomplete ambient monitoring data as areas that may require further analysis to determine whether there are potential downwind air quality problems that may be impacted by transported emissions.

While developing the 2011 CSAPR rulemaking, EPA modeled the impacts of all 38 eastern states in its modeling domain on $PM_{2.5}$ concentrations at downwind receptors in other states in the 2012 analysis year in order to evaluate the contribution of upwind states on downwind states with respect to the 1997 and 2006 $PM_{2.5}$. Although the modeling was not conducted for purposes of analyzing upwind states' impacts on downwind receptors with respect to the 2012 $PM_{2.5}$ NAAQS, the contribution analysis for the 1997 and 2006 standards can be informative for evaluating Maine's compliance with the Good Neighbor provision for the 2012 standard.

This CSAPR modeling showed that Maine had a very small impact (0.003 $\mu g/m^3$) on the Liberty monitor in Allegheny County, which is the only out-of-state monitor that may be a nonattainment or maintenance receptor in 2021. Although EPA has not proposed a specific threshold for evaluating the 2012 $PM_{2.5}$ NAAQS, EPA notes that Maine's impact on the Liberty monitor is far below the threshold of 1% for the annual 2012 $PM_{2.5}$ NAAQS (*i.e.,* 0.12 $\mu g/m^3$) that EPA previously used to evaluate the contribution of upwind states to downwind air-quality monitors. (A spreadsheet showing

[7] *See* 2015 ozone NAAQS RIA at: *https://www3.epa.gov/ttnecas1/docs/20151001ria.pdf.*

CSAPR contributions for ozone and $PM_{2.5}$ is included in docket EPA–HQ–OAR–2009–0491–4228.) Therefore, even if the Liberty monitor were considered a receptor for purposes of transport, the EPA proposes to conclude that Maine will not significantly contribute to nonattainment, or interfere with maintenance, of the 2012 $PM_{2.5}$ NAAQS at that monitor.

In addition, the Liberty monitor is already close to attaining the 2012 $PM_{2.5}$ NAAQS, and expected emissions reductions in the next four years will lead to additional reductions in measured $PM_{2.5}$ concentrations. There are both local and regional components to measured $PM_{2.5}$ levels. All monitors in Allegheny County have a regional component, with the Liberty monitor most strongly influenced by local sources. This is confirmed by the fact that annual average measured concentrations at the Liberty monitor have consistently been 2–4 $\mu g/m^3$ higher than other monitors in Allegheny County.

Specifically, previous CSAPR modeling showed that regional emissions from upwind states, particularly SO_2 and NO_X emissions, contribute to $PM_{2.5}$ nonattainment at the Liberty monitor. In recent years, large SO_2 and NO_X reductions from power plants have occurred in Pennsylvania and states upwind from the Greater Pittsburgh region. Pennsylvania's energy sector emissions of SO_2 will have decreased 166,000 tons between 2015–2017 as a result of CSAPR implementation. This is due to both the installation of emissions controls and retirements of electric generating units (EGUs). Projected power plant closures and additional emissions controls in Pennsylvania and upwind states will help further reduce both direct $PM_{2.5}$ and $PM_{2.5}$ precursors. Regional emission reductions will continue to occur from current on-the-books federal and state regulations such as the federal on-road and non-road vehicle programs, and various rules for major stationary emissions sources. *See* proposed approval of the Ohio Infrastructure SIP for the 2012 $PM_{2.5}$ NAAQS (82 FR 57689; December 7, 2017).

In addition to regional emissions reductions and plant closures, additional local reductions to both direct $PM_{2.5}$ and SO_2 emissions are expected to occur and should contribute to further declines in Allegheny County's $PM_{2.5}$ monitor concentrations. For example, significant SO_2 reductions have recently occurred at US Steel's integrated steel mill facilities in southern Allegheny County as part of a 1-hr SO_2 NAAQS SIP.[8] Reductions are largely due to declining sulfur content in the Clairton Coke Work's coke oven gas (COG). Because this COG is burned at US Steel's Clairton Coke Works, Irvin Mill, and Edgar Thompson Steel Mill, these reductions in sulfur content should contribute to much lower $PM_{2.5}$ precursor emissions in the immediate future. The Allegheny SO_2 SIP also projects lower SO_2 emissions resulting from vehicle fuel standards, reductions in general emissions due to declining population in the Greater Pittsburgh region, and several shutdowns of significant sources of emissions in Allegheny County.

EPA modeling projections, the recent downward trend in local and upwind emissions reductions, the expected continued downward trend in emissions between 2017 and 2021, and the downward trend in monitored $PM_{2.5}$ concentrations all indicate that the Liberty monitor will attain and be able to maintain the 2012 annual $PM_{2.5}$ NAAQS by 2021. *See* proposed approval of the Ohio Infrastructure SIP (82 FR 57689).

As noted in the 2016 memorandum, several states have had recent data-quality issues identified as part of the $PM_{2.5}$ designations process. In particular, some ambient $PM_{2.5}$ data for certain time periods between 2009 and 2013 in Florida, Illinois, Idaho, Tennessee, and Kentucky did not meet all data-quality requirements under 40 CFR part 50, appendix L. The lack of data means that the relevant areas in those states could potentially be in nonattainment or be maintenance receptors in 2021. However, as mentioned above, EPA's analysis for the 2011 CSAPR rulemaking with respect to the 2006 $PM_{2.5}$ NAAQS determined that Maine's impact to all these downwind receptors would be well below the 1% contribution threshold for this NAAQS. That conclusion informs the analysis of Maine's contributions for purposes of the 2012 $PM_{2.5}$ NAAQS as well. Given this, and the fact that the state's $PM_{2.5}$ design values for all ambient monitors have been well below the 2012 24-hour NAAQS (35 $\mu g/m^3$) and the annual $PM_{2.5}$ NAAQS (12.0 $\mu g/m^3$) since 2005–2007,[9] EPA concludes that it is highly unlikely that Maine significantly contributes to nonattainment or interferes with maintenance of the 2012 $PM_{2.5}$ NAAQS in areas with data-quality issues.

Information in Maine's July 2016 SIP submission corroborates EPA's proposed conclusion that Maine's SIP meets its Good Neighbor obligations. The state's technical analysis in that submission includes 2012–2014 design values for monitors in Maine, actual and projected $PM_{2.5}$ emissions from 2002 through 2020 for various source categories for Maine, and results of EPA CSAPR modeling. As mentioned above, the state's $PM_{2.5}$ design values for all ambient monitors have been well below the 2012 $PM_{2.5}$ NAAQS since 2005–2007. In addition, the 24-hour and annual design values for all monitors in the neighboring and nearby states of New Hampshire, Massachusetts, and Vermont also have been below the 2012 $PM_{2.5}$ NAAQS since 2005–2007.

At specific monitors in Maine, the highest 24-hour mean value satisfying minimum data completion criteria was 25 $\mu g/m^3$ in 2016 at a monitor in Rumford in Oxford County. The highest annual mean value satisfying minimum data completion criteria was 9 $\mu g/m^3$ in 2014 at a monitor in Madawaska in Aroostook County.[10]

Second, Maine's sources are well-controlled. Maine's July 2016 submission indicates that the state has many SIP-approved rules and programs that limit emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors and the interstate transport of pollution, including 06–096 Code of Maine Regulations (CMR) Chapter 102, ''Open Burning Regulation'' (73 FR 9459, February 21, 2008); 06–096 CMR Chapter 103, ''Fuel Burning Equipment Particulate Emission Standard'' (50 FR 7770, February 26, 1985); and Chapter 145, ''NO_X Control Program'' (70 FR 11879, March 10, 2005), as well the state's Title V permitting program (38 MRSA § 353–A; 06–096 CMR Chapter 140, which was approved by EPA on October 18, 2001 (66 FR 52874)).

It should also be noted that Maine is not in the CSAPR program because EPA analyses show that the state does not emit NO_X at a level that contributes significantly to non-attainment or interferes with maintenance of the 1997 and 2006 $PM_{2.5}$ NAAQS in any other state.

For the reasons explained herein, EPA agrees with Maine's conclusions and proposes to determine that Maine will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS

[8] *http://www.achd.net/air/pubs/SIPs/SO2_2010_NAAQS_SIP_9-14-2017.pdf.*

[9] Maine's $PM_{2.5}$ design values for all ambient monitors from 2005–2007 through 2013–2015 are available on the Design Value Reports at *https://19january2017snapshot.epa.gov/air-trends/air-quality-design-values_.html.*

[10] 24-hour and annual $PM_{2.5}$ monitor values for individual monitoring sites throughout Maine are available at *www.epa.gov/outdoor-air-quality-data/monitor-values-report.*

in any other state. Therefore, EPA is proposing to approve the July 2016 infrastructure SIP submission from Maine with regard to prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2012 $PM_{2.5}$ NAAQS.

Sub-Element 2: Section 110(a)(2)(D)(i)(II)—PSD (Prong 3)

To prevent significant deterioration of air quality, this sub-element requires SIPs to include provisions that prohibit any source or other type of emissions activity in one state from interfering with measures that are required in any other state's SIP under Part C of the CAA. One way for a state to meet this requirement, specifically with respect to in-state sources and pollutants that are subject to PSD permitting, is through a comprehensive PSD permitting program that applies to all regulated NSR pollutants and that satisfies the requirements of EPA's PSD implementation rules. For in-state sources not subject to PSD, this requirement can be satisfied through a fully-approved nonattainment new source review (NNSR) program with respect to any previous NAAQS. EPA last approved revisions to Maine's NNSR regulations on February 14, 1996 (61 FR 5690).

To meet the requirements of Prong 3, Maine DEP cites to its PSD permitting programs under 06–096 CMR Chapter 115, ''Major and Minor Source Air Emission License Regulations,'' to ensure that new and modified major sources of $PM_{2.5}$, SO_2, and NO_X emissions do not contribute significantly to nonattainment, or interfere with maintenance, of those standards. As noted above in our discussion of Element C, Maine's PSD program fully satisfies the requirements of EPA's PSD implementation rules. Consequently, we are proposing to approve Maine's infrastructure SIP submission for the 2012 $PM_{2.5}$ NAAQS related to section 110(a)(2)(D)(i)(II) Prong 3 for the reasons discussed under Element C.

Sub-Element 3: Section 110(a)(2)(D)(i)(II)—Visibility Protection (Prong 4)

With regard to applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional-haze program requirements under part C of the CAA (which includes sections 169A and 169B). EPA's 2009, 2011, and 2013 memoranda recommend that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze. A fully approved regional haze SIP meeting the requirements of 40 CFR 51.308 will ensure that emissions from sources under an air agency's jurisdiction are not interfering with measures required to be included in other air agencies' plans to protect visibility. EPA approved Maine's Regional Haze SIP on April 24, 2012 (77 FR 24385). Accordingly, EPA proposes that Maine has met the visibility protection requirements of 110(a)(2)(D)(i)(II) for the 2012 $PM_{2.5}$ NAAQS.

Sub-Element 4: Section 110(a)(2)(D)(ii)—Interstate Pollution Abatement

This sub-element requires each SIP to contain provisions requiring compliance with requirements of section 126 relating to interstate pollution abatement. Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources.

EPA-approved regulations require the Maine DEP to provide pre-construction notice of new or modified sources to, among others, ''any State . . . whose lands may be affected by emissions from the source or modification.'' See 06–096 CMR Chapter 115, § IX(E)(3), approved March 23, 1993 (58 FR 15422). Such notice ''shall announce availability of the application, the Department's preliminary determination in the form of a draft order, the degree of increment consumption that is expected from the source or modification, as well as the opportunity for submission of written public comment.'' 06–096 CMR Chapter 115, § IX(E)(2). These provisions are consistent with EPA's PSD regulations and require notice to affected states of a determination to issue a draft PSD permit. Regarding section 126(b), no source or sources within the state are the subject of an active finding with respect to the 2012 $PM_{2.5}$ NAAQS. Consequently, EPA proposes to approve Maine's infrastructure SIP submittals for this sub-element with respect to the 2012 $PM_{2.5}$ NAAQS.

Sub-Element 5: Section 110(a)(2)(D)(ii)—International Pollution Abatement

This sub-element requires each SIP to contain provisions requiring compliance with the applicable requirements of CAA § 115 relating to international pollution abatement. There are no final findings under section 115 against Maine with respect to the 2012 $PM_{2.5}$ NAAQS. Therefore, EPA proposes that Maine has met the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 for the 2012 $PM_{2.5}$ NAAQS.

E. Section 110(a)(2)(E)—Adequate Resources

This section requires each state to provide for personnel, funding, and legal authority under state law to carry out its SIP and related issues. In addition, Section 110(a)(2)(E)(ii) requires each state to comply with the requirements with respect to state boards under section 128. Finally, section 110(a)(2)(E)(iii) requires that, where a state relies upon local or regional governments or agencies for the implementation of its SIP provisions, the state retain responsibility for ensuring implementation of SIP obligations with respect to relevant NAAQS. This last sub-element, however, is inapplicable to this action, because Maine does not rely upon local or regional governments or agencies for the implementation of its SIP provisions.

Sub-Element 1: Adequate Personnel, Funding, and Legal Authority Under State Law To Carry Out Its SIP, and Related Issues

Maine, through its infrastructure SIP submittal, has documented that its air agency has authority and resources to carry out its SIP obligations. Maine cites to 38 MRSA § 341–A, ''Department of Environmental Protection,'' 38 MRSA § 341–D, ''Board responsibilities and duties,'' 38 MRSA § 342, ''Commissioner, duties'' and 38 MRSA § 581, ''Declaration of findings and intent.'' These statutes provide the Maine DEP with the legal authority to enforce air pollution control requirements and carry out SIP obligations with respect to the 2012 $PM_{2.5}$ NAAQS. Additionally, state law provides Maine DEP with the authority to assess preconstruction permit fees and annual operating permit fees from air emissions sources and establishes a general revenue reserve account within the general fund to finance the state clean air programs. Maine also receives CAA sections 103 and 105 grant funds through Performance Partnership Grants along with required state-matching funds to provide funding necessary to carry out SIP requirements. Maine DEP states that these funding sources provide it with adequate resources to carry out the SIP. Therefore, EPA proposes that Maine has met the infrastructure SIP requirements of this

portion of section 110(a)(2)(E) with respect to the 2012 $PM_{2.5}$ NAAQS.

Sub-Element 2: State Board Requirements Under Section 128 of the CAA

Section 110(a)(2)(E) also requires each SIP to provide requirements that the State comply with the state board requirements of section 128 of the CAA. Section 128(a) contains two explicit requirements: (1) That any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (2) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

As mentioned earlier, the Maine DEP consists of a Commissioner and a Board of Environmental Protection (''BEP'' or ''Board''), which is an independent authority under state law that reviews certain permit applications in the first instance and also renders final decisions on appeals of permitting actions taken by the Commissioner as well as some enforcement decisions by the Commissioner. Because the Board has authority under state law to hear appeals of some CAA permits and enforcement orders, EPA considers that the Board has authority to ''approve'' those permits or enforcement orders, as recommended in the 2013 Memorandum, and that the requirement of CAA § 128(a)(1) applies to Maine—that is, that ''any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter.''

Pursuant to state law, the BEP consists of seven members appointed by the Governor, subject to confirmation by the State Legislature. *See* 38 MRSA § 341–C(1). The purpose of the Board ''is to provide informed, independent and timely decisions on the interpretation, administration and enforcement of the laws relating to environmental protection and to provide for credible, fair and responsible public participation in department decisions.'' *Id.* § 341–B. State law further provides that Board members ''must be chosen to represent the broadest possible interest and experience that can be brought to bear on the administration and implementation of'' Maine's environmental laws and that ''[a]t least 3 members must have technical or scientific backgrounds in environmental issues and no more than 4 members may be residents of the same congressional district.'' *Id.* § 341–C(2). EPA proposes to find that these provisions fulfill the requirement that at least a majority of Board members represent the public interest, but do not address the requirement that at least a majority ''not derive any significant portion of their income from persons subject to'' air permits and enforcement orders. Furthermore, section 341–C is not currently in Maine's SIP. By letter dated March 1, 2018 (extended to apply to the 2012 $PM_{2.5}$ NAAQS in an email dated July 17, 2018), DEP committed to revise section 341–C to address the CAA § 128(a)(1) requirement that at least a majority of Board members ''not derive a significant portion of their income from persons subject to'' air permits or enforcement orders and to submit, for inclusion in the SIP, the necessary provisions to EPA within one year of EPA final action on its infrastructure SIPs for the 2008 lead (Pb), 2008 ozone, and 2010 nitrogen dioxide (NO_2) NAAQS. Final action on these SIPs was published on June 18, 2018 (83 FR 28157). Consequently, EPA proposes to conditionally approve Maine's infrastructure SIP submittal for this requirement of CAA § 128(a)(1) for the 2012 $PM_{2.5}$ NAAQS.

As noted above, section 128(a)(2) of the Act provides that ''any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.'' As EPA has explained in other infrastructure SIP actions, the purpose of section 128(a)(2) is to assure that conflicts of interest are disclosed by the ultimate decision maker in permit or enforcement order decisions. *See, e.g.,* 80 FR 42446, 42454 (July 17, 2015). Although the Board is the ultimate decision maker on air permitting decisions in Maine, certain air enforcement orders of the DEP Commissioner are not reviewable by the Board, but rather may be appealed directly to Maine Superior Court. For this reason, EPA interprets the conflict of interest requirement of CAA § 128(a)(2) to be applicable in Maine to *both* Board members *and* the DEP Commissioner.

In a recent infrastructure SIP action for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS, EPA determined that Maine's conflict of interest statute, 5 MRSA § 18, and a provision explicitly making it applicable to Board members, 38 MRSA § 341–C(7), together satisfy the CAA § 128(a)(2) requirement for Maine with respect to Board members, and EPA approved both statutes into the Maine SIP. 83 FR 28157 (June 18, 2018). For more information, see 83 FR 12905, 12912 (March 26, 2018). EPA proposes that Maine's SIP also satisfies CAA § 128(a)(2) with respect to Board members for the 2012 $PM_{2.5}$ NAAQS for the same reasons discussed in the infrastructure SIP action for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

Regarding the DEP Commissioner, state law at 38 MRSA § 341–A(3)(D) also explicitly makes that official subject to 5 MRSA § 18, the same conflict-of-interest statute to which the Board is subject. In the above-referenced infrastructure SIP action, EPA also determined that together 5 MRSA § 18 (which is in the Maine SIP) and 38 MRSA § 341–A(3)(D) (which is not currently in the SIP) satisfy the conflict of interest requirement with respect to the DEP Commissioner. *See* 83 FR 28157; 83 FR 12905, 12912. For the same reasons discussed in the infrastructure SIP action for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS, EPA proposes that together the two state statutes would also satisfy the conflict of interest requirement with respect to the DEP Commissioner for the 2012 $PM_{2.5}$ NAAQS. While 38 MRSA § 341–A(3)(D) is not currently in the SIP, Maine DEP has already committed to submitting it to EPA for inclusion within one year of EPA's final action on Maine's infrastructure SIP submissions for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS. *See* 83 FR 28157. Consequently, EPA proposes to conditionally approve Maine's infrastructure SIP submissions for the conflict of interest requirement of CAA § 128(a)(2) with respect to the DEP Commissioner for the 2012 $PM_{2.5}$ NAAQS.

F. Section 110(a)(2)(F)—Stationary Source Monitoring System

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards. Lastly, the reports shall be available at reasonable times for public inspection.

Maine's infrastructure submittal references several existing state regulations previously approved by EPA that require sources to monitor emissions and submit reports. The first reference is to 06–096 CMR Chapter 115, ''Major and Minor Source Air Emission License Regulations.'' This regulation contains compliance assurance requirements for licensed sources and stipulates that licenses shall include the following compliance assurance elements: (a) A description of all required monitoring and analysis procedures or test methods required under the requirements applicable to the source; (b) A description of all recordkeeping requirements; and (c) A description of all reporting requirements. The second reference is to 06–096 CMR Chapter 117, ''Source Surveillance.'' This regulation specifies which air emission sources are required to operate continuous emission monitoring systems (CEMS) and details the performance specifications, quality assurance requirements and procedures for such systems, and subsequent record keeping and reporting requirements. In addition, Maine cites its regulations implementing its operating permit program pursuant to 40 CFR part 70: 06–096 CMR Chapter 140, ''Part 70 Air Emission License Regulations.'' These regulations, although not in the SIP, identify the sources of air emissions that require a Part 70 air emission license and incorporate the requirements of Title IV and Title V of the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.,* and 38 MRSA §§ 344 and 590. Chapter 140 contains compliance assurance requirements regarding monitoring and reporting for licensed sources requiring a Part 70 air emission license. The regulation was approved by EPA on October 18, 2001 (66 FR 52874). While Chapter 140 and the referenced provisions of Chapter 115 are not formally approved into Maine's SIP, they are legal mechanisms the state can use to assure the enforcement of the monitoring requirements approved in the SIP.

Regarding the section 110(a)(2)(F) requirements that the SIP provide for the correlation and public availability of emission reports, Maine's emission statement rule, Chapter 137, requires facilities to report emissions of air pollutants on an annual basis. The DEP uses a web-based electronic reporting system, the Maine Air Emissions Inventory Reporting System (''MAIRIS''), for this purpose that allows it to package and electronically submit reported emissions data to EPA under the national emission inventory (NEI) program. NEI data are available to the public. *See www.epa.gov/air-emissions-inventories/national-emissions-inventory-nei.* The MAIRIS system is structured to electronically correlate reported emissions with permit conditions and other applicable standards, and identify all inconsistencies and potential compliance concerns.

Furthermore, pursuant to DEP's EPA-approved regulations, ''Except as expressly made confidential by law; the commissioner shall make all documents available to the public for inspection and copying including the following: 1. All applications or other forms and documents submitted in support of any license application: 2. All correspondence, into or out of the Department, and any attachments thereto . . . .'' *See* 06–096 CMR Chapter 1, § 6(A). Furthermore, ''The Commissioner shall keep confidential only those documents which may remain confidential pursuant to 1 MRSA Section 402.'' *Id.* § 6(B). In its July 6, 2016, submittal, DEP certified that, ''[e]xcept as specifically exempted by the Maine statute (1 MRSA Chapter 13 Public Records and Proceedings), Maine makes all records, reports or information obtained by the MEDEP or referred to at public hearings available to the public.'' Maine DEP further certified therein that the information submitted to Maine DEP is ''available to the public at reasonable times for public inspection pursuant to Maine law.'' By letter dated March 1, 2018 (extended to apply to the 2012 $PM_{2.5}$ NAAQS in an email dated July 17, 2018), Maine further certified that Maine's Freedom of Access law does not include any exceptions that apply to stationary source emissions. For these reasons, we propose to find that Maine satisfies the requirement that emissions statements be available at reasonable times for public inspection.

Finally, in the March 1, 2018, letter (extended to apply to the 2012 $PM_{2.5}$ NAAQS in an email dated July 17, 2018), DEP also certified that there are no provisions in Maine law that would prevent the use of any credible evidence of noncompliance, as required by 40 CFR 51.212. *See also* 06–096 CMR Chapter 140, § 3(E)(7)(a)(v) (''Notwithstanding any other provision in the State Implementation Plan approved by the EPA or Section 114(a) of the CAA, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any statute, regulation, or Part 70 license requirement.''). For the above reasons, EPA proposes to approve Maine's submittals for this requirement of section 110(a)(2)(F) for the 2012 $PM_{2.5}$ NAAQS.

G. Section 110(a)(2)(G)—Emergency Powers

This section requires that a plan provide for state authority comparable to that provided to the EPA Administrator in section 303 of the CAA, and adequate contingency plans to implement such authority. Section 303 of the CAA provides authority to the EPA Administrator to seek a court order to restrain any source from causing or contributing to emissions that present an ''imminent and substantial endangerment to public health or welfare, or the environment.'' Section 303 further authorizes the Administrator to issue ''such orders as may be necessary to protect public health or welfare or the environment'' in the event that ''it is not practicable to assure prompt protection . . . by commencement of such civil action.''

We propose to find that a combination of state statutes and regulations discussed in Maine DEP's July 6, 2016, submittal and a March 1, 2018, letter (extended to apply to the 2012 $PM_{2.5}$ NAAQS in an email dated July 17, 2018) provides for authority comparable to that given the Administrator in CAA section 303, as explained below. First, 38 MRSA § 347–A, ''Emergency Orders,'' provides that ''[w]henever it appears to the commissioner, after investigation, that there is a violation of the laws or regulations [DEP] administers or of the terms or conditions of any of [DEP's] orders that is creating or is likely to create a substantial and immediate danger to public health or safety or to the environment, the commissioner may order the person or persons causing or contributing to the hazard to immediately take such actions as are necessary to reduce or alleviate the danger.'' *See* 38 MRSA § 347–A(3). Section 347–A further authorizes the DEP Commissioner to initiate an enforcement action in state court in the event of a violation of such emergency order issued by the Commissioner. *Id.* § 347–A(1)(A)(4). Similarly, 38 MRSA § 348, ''Judicial Enforcement,'' authorizes Maine DEP to institute injunction proceedings ''[i]n the event of a violation of any provision of the laws administered by [DEP] or of any order, regulation, license, permit, approval, administrative consent agreement or decision of the board or commissioner.'' *Id.* § 348(1). Section 348 also authorizes Maine DEP to seek a court order to a restrain a source if it ''finds that the discharge, emission or deposit of any materials into any waters,

air or land of th[e] State constitutes a substantial and immediate danger to the health, safety or general welfare of any person, persons or property.'' *Id.* § 348(3). Thus, these provisions authorize Maine DEP to issue an administrative order or to seek a court order to restrain any source from causing or contributing to emissions that present an imminent and substantial endangerment to public health or welfare, or the environment, if there is also a violation of a law, regulation, order, or permit administered or issued by DEP, as the case may be.

Second, in its March 1, 2018, letter, Maine DEP also cites to 38 MRSA § 591, ''Prohibitions,'' as contributing to its authority. Section 591 provides that ''[n]o person may discharge air contaminants into ambient air within a region in such manner as to violate ambient air quality standards established under this chapter or emission standards established pursuant to section 585, 585–B or 585–K.'' In those cases where emissions of $PM_{2.5}$, or $PM_{2.5}$ precursors may be causing or contributing to an ''imminent and substantial endangerment to public health or welfare, or the environment,'' a violation of § 591 would also occur, since Maine law provides that ambient air quality standards are designed to prevent ''air pollution,'' *id.* § 584, which state law expressly defines as ''the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration *as to be injurious to human, plant or animal life or to property,* or which unreasonably interfere with the enjoyment of life and property,'' *id.* § 582(3) (emphasis added). In its March 1, 2018, letter, Maine further explains that sections 347–A and 591 ''together authorize the Commissioner to issue an emergency order upon finding an apparent violation of DEP laws or regulations to address emissions of criteria pollutants, air contaminants governed by standards promulgated under section 585, and hazardous air pollutants governed by standards promulgated under section 585–B.''

Third, in the unlikely event that air emissions are creating a substantial or immediate threat to the public health, safety or to the environment without violating any DEP law, regulation, order, or permit, emergency authority to issue an order to restrain a source may also be exercised pursuant to 37–B MRSA § 742, ''Emergency Proclamation.'' Maine explains that the DEP Commissioner can notify the Governor of an imminent ''disaster,'' and the Governor can then exercise authority to ''declare a state of emergency in the State or any section of the State.'' *See* 37–B MRSA § 742(1)(A). State law defines ''disaster'' in this context to mean ''the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural or man-made cause, including, but not limited to . . . air contamination.'' *Id.* § 703(2). Upon the declaration of a state of emergency, the Governor may, among other things, ''[o]rder the termination, temporary or permanent, of any process, operation, machine or device which may be causing or is understood to be the cause of the state of emergency,'' *id.* § 742(1)(C)(11), or ''[t]ake whatever action is necessary to abate, clean up or mitigate whatever danger may exist within the affected area,'' *id.* § 742(1)(C)(12). Thus, even if there may otherwise be no violation of a DEP-administered or -issued law, regulation, order, or permit, state authorities exist to restrain the source.

Finally, Maine's submittal cites 06–096 CMR Chapter 109, ''Emergency Episode Regulations,'' which sets forth various emission reduction plans intended to prevent air pollution from reaching levels that would cause imminent and substantial harm and recognizes the Commissioner's authority to issue additional emergency orders pursuant to 38 MRSA § 347–A, as necessary to the health of persons, by restricting emissions during periods of air pollution emergencies. For these reasons, we propose to find that certain state statutes and regulations provide for authority comparable to that provided to the Administrator in CAA § 303.

Section 110(a)(2)(G) also requires a state to submit for EPA approval a contingency plan (also known as an emergency episode plan) to implement the air agency's emergency episode authority for any Air Quality Control Region (AQCR) within the state that is classified as Priority I, IA, or II for certain pollutants. *See* 40 CFR 51.150. For classifications for Maine, see 40 CFR 52.1021. AQCRs classified as Priority III do not require contingency plans. *See* 40 CFR 51.152(c). In general, contingency plans for Priority I, IA, and II areas must meet the applicable requirements of 40 CFR part 51, subpart H (40 CFR 51.150 through 51.153) (''Prevention of Air Pollution Emergency Episodes'') for the relevant NAAQS, if the NAAQS is covered by those regulations. In the case of $PM_{2.5}$, EPA has not promulgated regulations that provide the ambient levels to classify different priority levels for the 2012 standard (or any $PM_{2.5}$ NAAQS). For the 2006 $PM_{2.5}$ NAAQS, EPA's 2009 Guidance recommends that states develop emergency episode plans for any area that has monitored and recorded 24-hour $PM_{2.5}$ levels greater than 140 $\mu g/m^3$ since 2006. EPA's review of Maine's certified air quality data in AQS indicates that the highest 24-hour $PM_{2.5}$ level recorded since 2006 was 83.3 $\mu g/m^3$, which occurred in 2017 in the town of Madawaska in Aroostook County.[11] Therefore, EPA proposes that a specific contingency plan from Maine for $PM_{2.5}$ is not necessary. Furthermore, although not expected, if $PM_{2.5}$ conditions in Maine were to change, Maine DEP has general authority to order a source to reduce or discontinue air pollution as required to protect the public health or safety or the environment, as discussed earlier. In addition, as a matter of practice, Maine posts on the internet daily forecasted $PM_{2.5}$ levels through the EPA AirNow and EPA Enviroflash systems. Information regarding these two systems is available on EPA's website at *www.airnow.gov.* When levels are forecast to exceed the 24-hour $PM_{2.5}$ standard in Maine, notices are sent out to Enviroflash participants, the media are alerted via a press release, and the National Weather Service (NWS) is alerted to issue an Air Quality Advisory through the normal NWS weather alert system. These actions are similar to the notification and communication requirements for contingency plans in 40 CFR 51.152.

Therefore, EPA proposes that Maine, through the combination of statutes and regulations discussed above and participation in EPA's AirNow program, meets the applicable infrastructure SIP requirements of section 110(a)(2)(G) with respect to the 2012 $PM_{2.5}$ NAAQS.

H. Section 110(a)(2)(H)—Future SIP Revisions

This section requires that a state's SIP provide for revision from time to time as may be necessary to take into account changes in the NAAQS or availability of improved methods for attaining the NAAQS and whenever the EPA finds that the SIP is substantially inadequate.

To address this requirement, Maine's infrastructure submittal references 38 MRSA § 581, ''Declaration of findings and intent,'' which characterizes the state's laws regarding the Protection and Improvement of Air as an exercise of ''the police power of the State in a coordinated state-wide program to

[11] 24-hour and annual $PM_{2.5}$ monitor values for individual monitoring sites throughout Maine are available at *www.epa.gov/outdoor-air-quality-data/monitor-values-report.*

control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that reasonably insures the continued health, safety and general welfare of all of the citizens of the State; protects property values and protects plant and animal life.'' In addition, we note that Maine DEP is required by statute to ''prevent, abate and control the pollution of the air [, to] preserve, improve and prevent diminution of the natural environment of the State [, and to] protect and enhance the public's right to use and enjoy the State's natural resources.'' *See* 38 MRSA § 341–A(1). Furthermore, Maine DEP is authorized to ''adopt, amend or repeal rules and emergency rules necessary for the interpretation, implementation and enforcement of any provision of law that the department is charged with administering.'' *Id.* § 341–H(2); *see also id.* § 585–A (recognizing DEP's rulemaking authority to propose SIP revisions). These general authorizing statutes give Maine DEP the power to revise the Maine SIP from time to time as may be necessary to take account of changes in the NAAQS or availability of improved methods for attaining the NAAQS and whenever the EPA finds that the SIP is substantially inadequate.

Consequently, EPA proposes that Maine meets the infrastructure SIP requirements of CAA section 110(a)(2)(H) for the 2012 $PM_{2.5}$ NAAQS.

I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas. EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; Prevention of Significant Deterioration; Visibility Protection

The evaluation of the submission from Maine with respect to the requirements of CAA section 110(a)(2)(J) is described below.

Sub-Element 1: Consultation With Government Officials

States must provide a process for consultation with local governments and Federal Land Managers (FLMs) in carrying out NAAQS implementation requirements.

Pursuant to state law, Maine DEP is authorized to, among other things, ''educate the public on natural resource use, requirements and issues.'' *See* 38 MRSA § 341–A(1). State law further provides that one of the purposes of the BEP is ''to provide for credible, fair and responsible public participation in department decisions,'' *id.* § 341–B, and authorizes it to ''cooperate with other state or federal departments or agencies to carry out'' its responsibilities, *id.* § 341–F(6). Furthermore, pursuant to Maine's EPA-approved regulations, Maine DEP is required to provide notice to relevant municipal officials and FLMs, among others, of DEP's preparation of a draft permit for a new or modified source. *See* 06–096 CMR Chapter 115, § IX(E)(3) (approved March 23, 1993 (58 FR 15422)). In addition, with respect to area reclassifications to Class I, II, or III for PSD purposes, the DEP is required to offer an opportunity for a public hearing and to consult with appropriate FLMs. *See* 38 MRSA § 583–B; 06–096 CMR Chapter 114, § 1(E). Maine's Transportation Conformity rule at 06–096 CMR Chapter 139 also provides procedures for interagency consultation, resolution of conflicts, and public consultation and notification. Finally, the Maine Administrative Procedures Act (Maine Revised Statutes Title 5, Chapter 375, subchapter 2) requires notification and provision of comment opportunities to all parties affected by proposed regulations. All SIP revisions undergo public notice and opportunity for hearing, which allows for comment by the public, including local governments.

EPA proposes that Maine has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2012 $PM_{2.5}$ NAAQS.

Sub-Element 2: Public Notification

Section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area, advise the public of health hazards associated with exceedances, and enhance public awareness of measures that can be taken to prevent exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality.

As mentioned elsewhere in this notice, state law directs Maine DEP to, among other things, ''prevent, abate and control the pollution of the air . . . improve and prevent diminution of the natural environment of the State[, and] protect and enhance the public's right to use and enjoy the State's natural resources.'' *See* 38 MRSA § 341–A(1). State law also authorizes Maine DEP to ''educate the public on natural resource use, requirements and issues. *Id.* § 341–A(1). To that end, Maine DEP makes real-time and historical air quality information available on its website.

The agency also provides extended-range air-quality forecasts, which give the public advanced notice of air quality events. This advance notice allows the public to limit their exposure to unhealthy air and enact a plan to reduce pollution at home and at work. Maine DEP forecasts daily ozone and particle levels and issues these forecasts to the media and to the public via its website, telephone hotline, and email. Alerts include information about the health implications of elevated pollutant levels and list actions to reduce emissions and to reduce the public's exposure. In addition, Air Quality Data Summaries of the year's air-quality monitoring results are issued annually and posted on the Maine DEP Bureau of Air Quality website. Maine is also an active partner in EPA's AirNow and EnviroFlash air quality alert programs.

EPA proposes that Maine has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2012 $PM_{2.5}$ NAAQS.

Sub-Element 3: PSD

State plans must meet the applicable requirements of part C of the CAA related to PSD. Maine's PSD program in the context of infrastructure SIPs has already been discussed in sections 110(a)(2)(C) and 110(a)(2)(D)(i)(II) and, as we have noted, fully satisfies the requirements of EPA's PSD implementation rules. Consequently, we propose to approve the PSD sub-element of section 110(a)(2)(J) for the 2012 $PM_{2.5}$ NAAQS, consistent with the actions we are proposing for sections 110(a)(2)(C) and 110(a)(2)(D)(i)(II).

Sub-Element 4: Visibility Protection

With regard to the applicable requirements for visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, as noted in EPA's 2013 memorandum, we find that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIP submissions.

K. Section 110(a)(2)(K)—Air Quality Modeling/Data

Section 110(a)(2)(K) of the Act requires that a SIP provide for the performance of such air quality modeling as the EPA Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which EPA has established a NAAQS, and the submission, upon request, of data related to such air quality modeling. EPA has published modeling guidelines at 40 CFR part 51, appendix W, for predicting the effects of emissions of criteria pollutants on ambient air quality. EPA has interpreted section 110(a)(2)(K) to require a state to submit or reference the statutory or regulatory provisions that provide the air agency with the authority to conduct such air quality modeling and to provide such modeling data to EPA upon request. *See* 2013 Memorandum at 55.

Maine state law implicitly authorizes Maine DEP to perform air quality modeling and provide such modeling data to EPA upon request. *See* 38 MRSA §§ 341–A(1), 581, 591–B. In addition, Maine cites 06–096 CMR Chapters 115 and 140, which provide that any modeling required for pre-construction permits and operating permits for minor and major sources be performed consistent with EPA-prescribed modeling guidelines at 40 CFR part 51, Appendix W. Chapters 115 and 140 also require that applicants submit data related to modeling to Maine DEP. *See* Email from Jeff Crawford, Maine DEP, to Alison Simcox, EPA (July 17, 2018). In its July 6, 2016, submission, Maine DEP further states that it performs modeling, provides modeling data to EPA upon request, and will continue to do both. Consequently, the SIP provides for such air quality modeling as the Administrator has prescribed and for the submission, upon request, of data related to such modeling.

EPA proposes that Maine meets the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2012 $PM_{2.5}$ NAAQS.

L. Section 110(a)(2)(L)—Permitting Fees

This section requires SIPs to mandate that each major stationary source pay permitting fees sufficient to cover the reasonable cost of reviewing, approving, implementing, and enforcing a permit.

Maine implements and operates a Title V permit program, *see* 38 MRSA § 353–A; 06–096 CMR Chapter 140, which was approved by EPA on October 18, 2001 (66 FR 52874). To gain this approval, Maine demonstrated the ability to collect sufficient fees to run the program. *See* 61 FR 49289, 49291 (September 19, 1996). Maine state law provides for the assessment of application fees from air emissions sources for permits for the construction or modification of air contaminant sources and sets permit fees. *See* 38 MRSA §§ 353–A (establishing annual air emissions license fees), 352(2)(E) (providing that such fees ''must be assessed to support activities for air quality control including licensing, compliance, enforcement, monitoring, data acquisition and administration'').

EPA proposes that Maine meets the infrastructure SIP requirements of section 110(a)(2)(L) for the 2012 $PM_{2.5}$ NAAQS.

M. Section 110(a)(2)(M)—Consultation/ Participation by Affected Local Entities

To satisfy Element M, states must provide for consultation with, and participation by, local political subdivisions affected by the SIP. Maine's infrastructure submittal references the Maine Administrative Procedure Act, 5 MRSA Chapter 375, and explains that it requires public notice of all SIP revisions prior to their adoption, which allows for comment by the public, including local political subdivisions. In addition, Maine cites 38 MRSA § 597, ''Municipal air pollution control,'' which provides that municipalities are not preempted from studying air pollution and adopting and enforcing ''air pollution control and abatement ordinances'' that are more stringent than those adopted by DEP or that ''touch on matters not dealt with'' by state law. Finally, Maine cites Chapter 9 of Maine's initial SIP, which was approved on May 31, 1972 (37 FR 10842), and contains intergovernmental cooperation provisions.

EPA proposes that Maine meets the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2012 $PM_{2.5}$ NAAQS.

IV

EPA proposes to approve Maine's July 6, 2016, infrastructure SIP submission certifying that its current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2012 $PM_{2.5}$ NAAQS, with the exception of CAA section 110(a)(2)(E)(ii) regarding State Boards and Conflicts of Interest, which we propose to conditionally approve, as described in more detail above. EPA's proposed actions regarding these infrastructure SIP requirements are contained in Table 1 below.

Element	2012 $PM_{2.5}$
(A): Emission limits and other control measures.	A
(B): Ambient air quality monitoring and data system.	A
(C)1: Enforcement of SIP measures	A
(C)2: PSD program for major sources and major modifications.	A
(C)3: PSD program for minor sources and minor modifications.	A
(D)1: Contribute to nonattainment/ interfere with maintenance of NAAQS.	A
(D)2: PSD	A
(D)3: Visibility Protection	A
(D)4: Interstate Pollution Abatement	A
(D)5: International Pollution Abatement.	A
(E)1: Adequate resources	A
(E)2: State boards	CA
(E)3: Necessary assurances with respect to local agencies.	NA
(F): Stationary source monitoring system.	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D.	NG
(J)1: Consultation with government officials.	A
(J)2: Public notification	A
(J)3: PSD	A
(J)4: Visibility protection	NG
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities.	A

In the above table, the key is as follows:

A	Approve.
CA	Conditionally approve.
NA	Not applicable.
NG	Not germane to infrastructure SIPs.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**. As noted in Table 1, EPA is proposing to conditionally approve one portion of Maine's July 2016 infrastructure SIP submission for the 2012 $PM_{2.5}$ NAAQS pertaining to Element E(2) regarding State Boards and Conflicts of Interest.

Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than 1 year from the date of approval. If EPA conditionally approves the commitment

in a final rulemaking action, the State must meet its commitment to submit an update to its State Board rules that fully remedies the deficiency mentioned above under element E. If the State fails to do so, this action will become a disapproval one year from the date of final approval. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved Maine SIP. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the submission. If EPA disapproves the new submittal, the conditionally approved infrastructure SIP elements will also be disapproved at that time. If EPA approves the submittal, the conditionally approved infrastructure SIP elements will be fully approved in their entirety and replace the conditionally approved program in the SIP.

If the conditional approval is converted to a disapproval, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c).

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 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 proposed 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 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);
- This action is not expected to be an Executive Order 13771 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 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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 6, 2018.

Alexandra Dunn,

Regional Administrator, EPA Region 1.

[FR Doc. 2018–17247 Filed 8–10–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0060; FRL–9982–11—Region 5]

Air Plan Approval; Minnesota; Infrastructure SIP Requirements for the 2012 $PM_{2.5}$ NAAQS; Multistate Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of the State Implementation Plan (SIP) submission from Minnesota regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2012 annual fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS or standard). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This action pertains specifically to infrastructure requirements concerning interstate transport provisions.

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

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2017–0060 at *https://www.regulations.gov,* or via email to *blakley.pamela@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 *https://www2.epa.gov/dockets/commenting-epa-dockets.*

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 the background of this SIP submission?

This rulemaking addresses a submission from the Minnesota Pollution Control Agency dated January 23, 2017, which describes its infrastructure SIP for the 2012 annual $PM_{2.5}$ NAAQS. Specifically, this rulemaking addresses the portion of the submission dealing with interstate pollution transport under CAA Section 110(a)(2)(D)(i), otherwise known as the ''good neighbor'' provision. 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 EPA's 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. EPA commonly refers to such state plans as ''infrastructure SIPs.''

II. What guidance and memoranda is EPA using to evaluate this SIP submission?

EPA highlighted the statutory requirement to submit infrastructure SIPs within three years of promulgation of a new NAAQS in an October 2, 2007 guidance document titled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 guidance). EPA has issued additional guidance documents and memoranda, including a September 13, 2013 guidance document titled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'' (2013 guidance).

The most recent relevant document is 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)'' (2016 memorandum). The 2016 memorandum describes EPA's consistent approach over the years to address interstate transport, and provides EPA's general review of relevant modeling data and air quality projections as they relate to the 2012 annual $PM_{2.5}$ NAAQS. The 2016 memorandum provides information relevant to 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. Minnesota's submittal and this rulemaking consider information provided in that memorandum.

The 2016 memorandum provides states and 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 2016 memorandum further 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 will significantly contribute to nonattainment or interfere with maintenance of the 2012 annual $PM_{2.5}$ NAAQS at those sites. The 2016 memorandum explains that, for purposes of addressing interstate transport for the 2012 annual $PM_{2.5}$ NAAQS, it may be appropriate to evaluate projected air quality in 2021, which is the attainment deadline for 2012 annual $PM_{2.5}$ NAAQS nonattainment areas classified as Moderate. Accordingly, because the available data includes 2017 and 2025 projected average and maximum $PM_{2.5}$ design values calculated through the CAMx photochemical model, the 2016 memorandum suggests approaches that states might use to interpolate $PM_{2.5}$ values at sites in 2021. The 2016 memorandum indicates that it may be reasonable to assume receptors projected to have average and/or maximum design values above the NAAQS in both 2017 and 2025 are also likely to be either nonattainment or maintenance receptors in 2021. Similarly, the 2016 memorandum indicates that it may be reasonable to assume that receptors that are projected to attain the NAAQS in both 2017 and 2025 are also likely to be attainment receptors in 2021. However, where a potential receptor is projected to be nonattainment or maintenance in 2017, but projected to be attainment in 2025, the 2016 memorandum suggests that further analysis of the emissions and modeling may be needed to make a further judgement regarding the receptor status in 2021.

The 2016 memorandum indicates that for all but one monitor site in the eastern United States with at least one complete and valid $PM_{2.5}$ design value for the annual average 2012 annual $PM_{2.5}$ NAAQS in the 2009–2013 period, the modeling data shows that monitors are expected to both attain and maintain the 2012 annual $PM_{2.5}$ NAAQS in both 2017 and 2025. The modeling results provided in the 2016 memorandum show that out of seven $PM_{2.5}$ monitors located in Allegheny County, Pennsylvania, one monitor is expected to be above the 2012 annual $PM_{2.5}$ NAAQS in 2017. Further, that monitor, the Liberty monitor (ID number 420030064), is projected to be above the NAAQS only under the model's maximum projected conditions (used in EPA's interstate transport framework to identify maintenance receptors), and is projected to both attain and maintain the NAAQS (along with all Allegheny County monitors) in 2025. The 2016 memorandum therefore indicates that under such a condition (where EPA's photochemical modeling indicates an area will maintain the 2012 annual $PM_{2.5}$ NAAQS in 2025 but not attain in 2017) further analysis of the site should be performed to determine if the site may be a nonattainment or maintenance receptor in 2021 (the attainment deadline for moderate $PM_{2.5}$ areas).

The 2016 memorandum indicates that based on modeling projections, there are 17 potential nonattainment or maintenance receptors in California, located in the San Joaquin Valley and South Coast nonattainment areas, and one potential receptor in Shoshone County, Idaho.

The 2016 memorandum 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. These states include all or portions of Florida, Illinois, Idaho (outside of Shoshone County), Tennessee and Kentucky. With the exception of four counties in Florida, the data quality problems have subsequently been resolved for these areas, and these areas now have current design values below the 2012 annual $PM_{2.5}$ NAAQS and are expected to maintain the NAAQS due to downward emission trends for NO_X and SO_2.

Minnesota's submittal indicates that the state used data from the 2016 memorandum in its analysis. EPA considered the analysis from Minnesota, as well as additional analysis conducted by EPA, in its review of the Minnesota submittal. More information contained in our review can be found in the technical support document (TSD) in the docket, ''[Technical Support Document for Docket #EPA–R05–OAR–2017–0060].''

III. EPA's Review

This rulemaking proposes action on the portion of Minnesota's January 23, 2017 SIP submission addressing the good neighbor provision requirements of CAA Section 110(a)(2)(D)(i). State plans must address four 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);

—Prohibiting any source or other type of emissions activity in one state from interfering with maintenance of the NAAQS in another state (prong two);

—Prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality in another state (prong three); and

—Protecting visibility in another state (prong four).

This rulemaking is evaluating Minnesota's January 23, 2017 submission, to determine whether Minnesota's interstate transport provisions in its $PM_{2.5}$ infrastructure SIP meet prongs one and two of the good neighbor requirements of the CAA. Prongs three and four will be evaluated in a separate rulemaking.

EPA has developed a consistent framework for addressing the interstate transport requirements required by prongs one and two 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 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 NAAQS downwind; and (4) for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, reducing the identified upwind emissions through adoption of permanent and enforceable measures. This framework was most recently applied with respect to $PM_{2.5}$ in the August 8, 2011 Cross-State Air Pollution Rule (CSAPR) (76 FR 48208), designed to address both the 1997 and 2006 $PM_{2.5}$ standards, as well as the 1997 and 2008 ozone standards.

Minnesota's January 23, 2017 submission indicates that the Minnesota SIP contains the following major programs related to the interstate transport of pollution:

- 7011.0500–0553 Indirect Heating Fossil Fuel Burning Equipment
- 7011.0600–0625 Direct Heating Fossil Fuel Burning Equipment
- 7011.1400–1430 Petroleum Refineries
- 7011.1600–1605 Sulfuric Acid Plants
- 7011.0150 Preventing Particulate Matter from Becoming Airborne
- 7011.0710–0735 Industrial Process Equipment
- 7011.0850–0859 Concrete Manufacturing Plant Standards of Performance
- 7011.0900–0922 Hot Mix Asphalt Plants
- 7011.1000–1015 Bulk Agricultural Commodity Facilities
- 7011.1100–1125 Coal Handling Facilities
- 7011.1300–1325 Incinerators
- 7011.1700–1705 Nitric Acid Plants
- Title I/Title V operating permits and administrative orders for facilities in the state as defined in the January 23, 2017 submittal.

Minnesota's submittal also contains a technical analysis of its interstate transport of pollution relative to the 2012 annual $PM_{2.5}$ NAAQS. The technical analysis studies Minnesota sources' contribution to monitored $PM_{2.5}$ air quality values in other states and whether Minnesota would need to take further steps to decrease its emissions to (and therefore impacts on) those areas. Minnesota's technical analysis considers CSAPR rule implementation, EPA guidance and memoranda, and other factors such as meteorology and state-wide emissions inventories. Minnesota did not focus on its potential contribution to areas EPA identified as not attaining the 2012 annual $PM_{2.5}$ NAAQS based on monitor data in Alaska, California, Idaho, Nevada, or Hawaii. The distance between Minnesota and these areas, coupled with the prevailing wind directions, leads EPA to propose to find that Minnesota will not contribute significantly to any of the potential receptors in those states.[1]

Additionally, EPA's 2016 memorandum found Allegheny County, Pennsylvania, the Liberty monitor, to be a potential receptor, however, EPA proposes to find that Minnesota will not contribute significantly to the receptor. Minnesota's impacts on that potential receptor is relatively small. CSAPR contained a determination that for the 1997 and 2006 $PM_{2.5}$ NAAQS, any state whose impacts on a specific receptor in a downwind state meet or exceed a threshold of 1% of the NAAQS are considered linked to that receptor (76 FR 48236). In other words, EPA determined that any state whose impacts are below that threshold will not significantly contribute to nonattainment or interfere with maintenance of the relevant NAAQS. EPA has not determined a comparable threshold for the 2012 annual $PM_{2.5}$ NAAQS. EPA believes that a proper and well-supported weight of evidence approach can provide sufficient information for purposes of evaluating the impact of Minnesota on the Liberty monitor. In addition, in its review, Minnesota determined that its impact on air quality monitors in Pennsylvania is less than 1% of the 2012 annual $PM_{2.5}$ NAAQS. Minnesota's determination is based on EPA's source apportionment modeling predicting state contributions to downwind monitors in 2012 under the base case scenario in our original CSAPR analysis. For these reasons, we propose to find that Minnesota's emissions will not contribute significantly to the Liberty monitor.

With respect to Illinois, EPA's source apportionment modeling in our original CSAPR analysis predicts that

[1] It should be noted that EPA has projected that receptors in California and Idaho will be in nonattainment in 2021 but, as just noted, Minnesota's distance from those receptors, as well as the fact that the wind generally blows from west to east over the continental U.S., means that Minnesota will not contribute to them.

Minnesota's emissions impact Illinois's monitors. The $PM_{2.5}$ monitoring data for Illinois for the period from January 2011 to July 2014 suffered from data quality/completion issues, and no current annual $PM_{2.5}$ design values existed for Illinois at the time of the modeling for the 2016 memorandum. Illinois has since resolved these quality control issues.

EPA considered available data from monitors in Illinois for its analysis of Minnesota's submittal. As shown in Table 1, Illinois is now meeting the standard throughout the state.

TABLE 1—ILLINOIS ANNUAL $PM_{2.5}$ DESIGN VALUES FOR 2015–2017 DESIGN PERIOD

Local site name	Monitoring site	2015–2017 design value ($\mu g/m^3$)
Alsip	17–031–0001	9.5
Washington High School	17–031–0022	9.3
Mayfair Pump Station	17–031–0052	9.1
Springfield Pump Station	17–031–0057	10.2
Com Ed	17–031–0076	9.5
Schiller Park	17–031–3103	10.5
Summit	17–031–3301	9.7
Des Plaines	17–031–4007	9.4
Northbrook	17–031–4201	8.4
Cicero	17–031–6005	10.0
Naperville	17–043–4002	8.3
Elgin	17–089–0003	8.3
Aurora	17–089–0007	8.3
Cary	17–111–0001	+8.2
Joliet	17–197–1002	7.9
Braidwood	17–197–1011	7.9
Jerseyville	17–083–0117	+8.8
Granite City	17–119–1007	9.7
Alton	17–119–2009	8.8
Wood River	17–119–3007	8.7
Houston	17–157–0001	8.5
East St. Louis	17–163–0010	9.8
Champaign	17–019–0006	7.9
Bondville	17–019–1001	7.8
Knight Prairie	17–065–0002	8.2
Normal	17–113–2003	8.0
Decatur	17–115–0013	8.4
Peoria	17–143–0037	8.2
Rock Island	17–161–3002	8.1
Springfield	17–167–0012	8.2
Rockford	17–201–0013	8.3

+ Data incomplete.

Illinois' air quality trends reflect what is shown across the nation: A general downward trend in ambient air concentrations, including sites that Minnesota analyzed in its submittal. During the last valid design period, only three Illinois counties reported 2008–2010 annual $PM_{2.5}$ design values above the NAAQS: Cook, Madison, and Saint Clair counties. In Cook County, the 2008–2010 annual design value was 13.0 micrograms per cubic meter ($\mu g/m^3$), and the annual mean values have trended downward. As shown in the table above, these areas are now meeting the NAAQS for the 2015 to 2017 design period. Therefore, EPA expects that all counties in Illinois will attain and maintain the $PM_{2.5}$ NAAQS without the need for additional $PM_{2.5}$ reductions in Minnesota, and for this reason, we propose to find that Minnesota will not contribute significantly to nonattainment or maintenance problems in Illinois.

Minnesota found, and our review confirmed, that despite the fact that Minnesota emissions potentially contribute to monitored $PM_{2.5}$ air quality in areas in other states, all of those areas were attaining the 2012 annual $PM_{2.5}$ NAAQS based on 2014–2016 data. Despite Minnesota not significantly contributing to the monitored $PM_{2.5}$ air quality in Pennsylvania, our review evaluated $PM_{2.5}$ air quality issues in Pennsylvania. All but two areas in Pennsylvania (Allegheny and Delaware counties) were attaining the 2012 annual $PM_{2.5}$ NAAQS based on 2012–2014 data. A review of 2013–2015 design values shows that all areas except for Allegheny County have attained the NAAQS. Our review also considers 2014–2016 design values, which show only Allegheny and Lancaster counties not meeting the NAAQS. In Delaware and Lebanon counties, not only do the most recent $PM_{2.5}$ monitor data show these counties are attaining the $PM_{2.5}$ NAAQS, EPA's $PM_{2.5}$ modeling data for 2017 and 2025 do not indicate any nonattainment or maintenance issues in these counties. There is a clear downward trend in $PM_{2.5}$ values in these counties. For Lancaster County, despite having a 2014–2016 design value that exceeds the NAAQS, there is a clear downward trend in the monitored $PM_{2.5}$ air quality data that supports EPA's $PM_{2.5}$ modeling that shows no nonattainment or maintenance problems for this county by 2021.

The modeling information contained in EPA's 2016 memorandum shows that one monitor in Allegheny County, PA (the Liberty monitor, 420030064) may have a maintenance issue in 2017, but is projected to both attain and maintain the NAAQS by 2025. A linear interpolation of the modeled design values to 2021 shows that the monitor is likely to both attain and maintain the standard by 2021. Emissions and air quality data trends help to corroborate this interpolation.

Over the last decade, local and regional emissions reductions of primary $PM_{2.5}$, sulfur dioxide (SO_2), and nitrogen oxide (NO_X), have led to large reductions in annual $PM_{2.5}$ design values in Allegheny County, Pennsylvania. In 2007, all of Allegheny County's $PM_{2.5}$ monitors exceeded the level of the 2012 annual $PM_{2.5}$ NAAQS (the 2005–2007 annual average design values ranged from 12.9–19.8 μg/m³, as shown in Table 2). The 2014–2016 annual average $PM_{2.5}$ design values now show that only one monitor (Liberty, at 12.8 μg/m³) exceeds the health-based annual $PM_{2.5}$ NAAQS of 12.0 μg/m³.

TABLE 2—$PM_{2.5}$ ANNUAL DESIGN VALUES IN μG/M³

Monitor	2005–2007	2006–2008	2007–2009	2008–2010	2009–2011	2010–2012	2011–2013	2012–2014	2013–2015	2014–2016
Avalon	.....	.....	.....	*16.3	*14.7	13.4	11.4	10.6	10.6	*10.4
Lawrenceville	15.0	14.0	13.1	12.2	11.6	11.1	10.3	10.0	9.7	9.5
Liberty	19.8	18.3	17.0	16.0	15.0	14.8	13.4	13.0	12.6	12.8
South Fayette	12.9	*11.8	11.7	11.1	11.0	10.5	9.6	9.0	8.8	*8.5
North Park	*13.0	*12.3	*11.3	*10.1	9.7	9.4	8.8	8.5	8.5	*8.2
Harrison	15.0	14.2	13.7	13.0	12.4	*11.7	10.6	10.0	9.8	9.8
North Braddock	16.2	15.2	14.3	13.3	12.7	12.5	*11.7	11.4	11.2	11.0
Parkway East Near-Road	.....	.....	.....	.....	.....	.....	.....	.....	.....	*10.6
Clairton	15.3	14.3	13.2	12.4	*11.5	*10.9	*9.8	9.5	9.8	*9.8

*Value does not contain a complete year's worth of data.

The Liberty monitor is already close to attaining the NAAQS, and expected emissions reductions in the next four years will lead to additional reductions in measured $PM_{2.5}$ concentrations. There are both local and regional components to the measured $PM_{2.5}$ levels in Allegheny County and the greater Pittsburgh area. Previous CSAPR modeling showed that regional emissions from upwind states, particularly SO_2 and NO_X emissions, contribute to $PM_{2.5}$ nonattainment at the Liberty monitor. In recent years, large SO_2 and NO_X reductions from power plants have occurred in Pennsylvania and states upwind from the Greater Pittsburgh region. Based on existing CSAPR budgets, Pennsylvania's energy sector emissions of SO_2 will have decreased 166,000 tons between 2015–2017 as a result of CSAPR implementation. This is due to both the installation of emissions controls and retirements of electric generating units (EGUs) (see the TSD for more details). Projected power plant closures and additional emissions controls in Pennsylvania and upwind states will help further reduce both direct $PM_{2.5}$ and $PM_{2.5}$ precursors. Regional emission reductions will continue to occur from current on-the-books Federal and state regulations such as the Federal on-road and non-road vehicle programs, and various rules for major stationary emissions sources.

In addition to regional emissions reductions and plant closures, additional local reductions of both direct $PM_{2.5}$ and SO_2 emissions are expected to occur and should also contribute to further declines in Allegheny County's $PM_{2.5}$ monitor concentrations. For example, significant SO_2 reductions have recently occurred at US Steel's integrated steel mill facilities in southern Allegheny County as part of a 1-hr SO_2 NAAQS SIP.[2] Reductions are largely due to declining sulfur content in the Clairton Coke Work's coke oven gas (COG). Because this COG is burned at US Steel's Clairton Coke Works, Irvin Mill, and Edgar Thompson Steel Mill, these reductions in sulfur content should contribute to much lower $PM_{2.5}$ precursor emissions in the immediate future. The Allegheny SO_2 SIP also projects lower SO_2 emissions resulting from vehicle fuel standards, reductions in general emissions due to declining population in the Greater Pittsburgh region and several shutdowns of significant sources of emissions in Allegheny County.

EPA modeling projections, the recent downward trend in local and upwind emissions reductions, the expected continued downward trend in emissions between 2017 and 2021, and the downward trend in monitored $PM_{2.5}$ concentrations, all indicate that the Liberty monitor will attain and be able to maintain the 2012 annual $PM_{2.5}$ NAAQS by 2021.

With respect to Florida, in the CSAPR modeling analysis for the 1997 $PM_{2.5}$ NAAQS, Florida did not have any potential nonattainment or maintenance receptors identified for the 1997 or 2006 $PM_{2.5}$ NAAQS. At this time, it is anticipated that this trend will continue, however, as there are ambient monitoring data gaps in the 2009–2013 data that could have been used to identify potential $PM_{2.5}$ nonattainment and maintenance receptors for Miami/Dade, Gilchrist, Broward and Alachua counties in Florida, the modeling analysis of potential receptors was not complete for these counties. However, the most recent ambient data (2015–2017) for these counties has been preliminarily deemed complete and indicates design values well below the level of the 2012 annual $PM_{2.5}$ NAAQS. In addition, the highest preliminary value for these observed monitors is 7.5 μg/m³ at the Miami-Dade County monitor (12–086–1016), which is well below the NAAQS. This is also consistent with historical data: complete and valid design values in the 2006–2008, 2007–2009 and/or 2008–2010 periods for these counties were all well below the 2012 annual $PM_{2.5}$ NAAQS. This is also consistent with historical data: complete and valid design values in the 2006–2008 and/or 2007–2009 periods for these counties were well below the 2012 annual $PM_{2.5}$ NAAQS. For these reasons, we find that none of the counties in Florida with monitoring gaps between 2009–2013 should be considered either nonattainment or maintenance receptors for the 2012 annual $PM_{2.5}$ NAAQS. For these reasons, we propose to find that emissions from Minnesota will not significantly contribute to nonattainment or interfere with maintenance of the 2012 annual $PM_{2.5}$ NAAQS in Florida. We find further support in the fact that EPA's source apportionment modeling predicted state impacts on downwind monitors in 2012 under the base case scenario in our original CSAPR analysis, showing little impact from Minnesota to any of Florida's counties.

[2] *http://www.achd.net/air/publichearing2017/SO2_2010_NAAQS_SIP_5-1-2017.pdf.*

The conclusions of Minnesota's analysis are consistent with EPA's expanded review of its January 23, 2017 submittal. All areas that Minnesota sources potentially contribute to attain and maintain the 2012 annual $PM_{2.5}$ NAAQS, and as demonstrated in its submittal, Minnesota will not contribute to projected nonattainment or maintenance issues at any sites in 2021. Minnesota's analysis shows that through permanent and enforceable measures currently contained in its SIP, and other emissions reductions occurring in Minnesota and in other states, monitored $PM_{2.5}$ air quality in all identified areas that Minnesota sources may impact will continue to improve, and that no further measures are necessary to satisfy Minnesota's responsibilities under CAA section 110(a)(2)(D)(i)(I). Therefore, EPA is proposing that prongs one and two of the interstate pollution transport element of Minnesota's infrastructure SIP are approvable.

IV. What action is EPA taking?

EPA is proposing to approve a portion of Minnesota's January 23, 2017 submittal certifying that the current Minnesota SIP is sufficient to meet the required infrastructure requirements under CAA section 110(a)(2)(D)(i)(I), specifically prongs one and two, as set forth above. 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, 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 this rulemaking does not involve technical standards; 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 30, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

[FR Doc. 2018–17362 Filed 8–10–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2018–0255; FRL– 9981–48—Region 4]

Georgia: Proposed Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Georgia has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. EPA has reviewed Georgia's application and has determined that these changes satisfy all requirements needed to qualify for final authorization. Therefore, we are proposing to authorize the state's changes. EPA seeks public comment prior to taking final action.

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

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2018–0255, at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov*. 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, 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: Thornell Cheeks, Materials and Waste Management Branch, RCR Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960; telephone number: (404) 562–8479: fax

number: (404) 562–9964; email address: *cheeks.thornell@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Thus, EPA will implement those requirements and prohibitions in Georgia, including the issuance of new permits implementing those requirements, until the state is granted authorization to do so.

B. What decisions has EPA made in this rule?

On September 22, 2015, September 12, 2016, and November 7, 2017, Georgia submitted program revision applications seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated between July 1, 2005 and June 30, 2017 (also known as RCRA Clusters XVI, XIX and XXII through XXV). EPA concludes that Georgia's applications to revise its authorized program meet all of the statutory and regulatory requirements established by RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA proposes to grant Georgia final authorization to operate its hazardous waste program with the changes described in its authorization applications, and as outlined below in Section F of this document.

Georgia has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program applications, subject to the limitations of HSWA, as discussed above.

C. What is the effect of this proposed authorization decision?

If Georgia is authorized for the changes described in Georgia's authorization applications, these changes will become part of the authorized state hazardous waste program, and therefore will be federally enforceable. Georgia will continue to have primary enforcement authority and responsibility for its state hazardous waste program. EPA would retain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements, including authorized state program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the state has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations for which EPA is proposing to authorize Georgia are already effective, and are not changed by this proposed action.

D. What happens if EPA receives comments that oppose this action?

If EPA receives comments on this proposed action, we will address all such comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What has Georgia previously been authorized for?

Georgia initially received final authorization on August 7, 1984, effective August 21, 1984 (49 FR 31417), to implement the RCRA hazardous waste management program. EPA granted authorization for changes to Georgia's program on the following dates: July 7, 1986, effective September 18, 1986 (51 FR 24549); July 28, 1988, effective September 26, 1988 (53 FR 28383); July 24, 1990, effective September 24, 1990 (55 FR 30000); February 12, 1991, effective April 15, 1991 (56 FR 5656); May 11, 1992, effective July 10, 1992 (57 FR 20055); November 25, 1992, effective January 25, 1993 (57 FR 55466); February 26, 1993, effective April 27, 1993 (58 FR 11539); November 16, 1993, effective January 18, 1994 (58 FR 60388); April 26, 1994, effective June 27, 1994 (59 FR 21664); May 10, 1995, effective July 10, 1995 (60 FR 24790); August 30, 1995, effective October 30, 1995 (60 FR 45069); March 7, 1996, effective May 6, 1996 (61 FR 9108); September, 18, 1998, effective November 17, 1998 (63 FR 49852); October 14, 1999, effective December 13, 1999 (64 FR 55629); November 28, 2000, effective March 30, 2001 (66 FR 8090); July 16, 2002, effective September 16, 2002 (67 FR 46600); November 19, 2002, effective January 21, 2003 (67 FR 69690); July 18, 2003, effective September 16, 2003 (68 FR 42605); January 27, 2005, effective April 20, 2005 (70 FR 12973); April 25, 2006, effective June 26, 2006 (71 FR 23864); May 2, 2013, effective July 1, 2013 (78 FR 25579); and January 26, 2015, effective March 27, 2015 (80 FR 3888).

F. What changes are we proposing with this action?

On September 22, 2015, September 12, 2016, and November 7, 2017, Georgia submitted program revision applications seeking authorization of changes to its hazardous waste management program in accordance with 40 CFR 271.21. EPA proposes to determine, subject to receipt of written comments that oppose this action, that Georgia's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. Therefore, EPA is proposing to authorize Georgia for the following program changes:

Description of federal requirement	**Federal Register** date and page	Analogous state authority [1]
Checklist 213, Burden Reduction Initiative	71 FR 16862; 4/4/06.	391–3–11–.05(1)–(2); 391–3–11–.07(1)–(2); 391–3–11–.10(1)–(3); 391–3–11–.11(3)(h) and (7)(d); and 391–3–11–.16.
Checklist 228, Hazardous Waste Technical Corrections and Clarifications.	77 FR 22229; 4/13/12.	391–3–11–.07(1) and 391–3–11–.10(3).

Description of federal requirement	Federal Register date and page	Analogous state authority [1]
Checklist 229, Conditional Exclusions for Solvent Contaminated Wipes.	78 FR 46448; 7/31/13.	391–3–11–.02(1) and 391–3–11–.07(1).
Checklist 231, Hazardous Waste Electronic Manifest Rule.	79 FR 7518; ... 2/7/14	391–3–11–.02(1); 391–3–11–.08(1); 91–3–11–.09; and 391–3–11–.10(1)–(2).
Checklist 232, Revisions to the Export Provisions of the Cathode Ray Tube Rule.	79 FR 36220; 6/26/14.	391–3–11–.02(1) and 391–3–11–.07(1).
Checklists 219 and 233, Revisions to the Definition of Solid Waste.	73 FR 64668; 10/30/08;. 80 FR 1694; 1/13/15.	391–3–11–.02(1); 391–3–11–.05(5); 391–3–11–.07(1)–(2); and 391–3–11–.11(7)(d).
Checklist 236, Imports and Exports of Hazardous Waste.	81 FR 85696; 11/28/16.	391–3–11–.02(1); 391–3–11–.07(1); 391–3–11–.08(1); 391–3–11–.09; 391–3–11–.10(1)–(3); and 391–3–11–.18.
Checklist 237, Hazardous Waste Generator Improvements Rule.	81 FR 85732; 11/28/16.	391–3–11–.01(2)(e); 391–3–11–.02(1); 391–3–11–.07(1); 391–3–11–.08(1); 391–3–11–.09; 391–3–11–.10(1)–(3); 391–3–11–.11(1)(a), (5), and (7)(d); 391–3–11–.16; 391–3–11–.17; and 391–3–11–.18.

[1] The Georgia provisions are from the Georgia Rules for Hazardous Waste Management Chapter 391–3–11, effective September 28, 2017.

G. Where are the revised state rules different from the Federal rules?

EPA considers the following state requirements to go beyond the scope of the Federal program:

- Georgia is broader in scope than the Federal program in its adoption of 40 CFR 260.43 (2015) and 40 CFR 261.4(a)(24) (2015) at Ga. Comp. R. & Regs. r. 391–3–11–.07(1). Both of these regulations include provisions from the 2015 Definition of Solid Waste (DSW) Rule that have been vacated and replaced with the less stringent requirements of 40 CFR 260.43 (2008) and 40 CFR 261.4(a)(24) and (25) (2008) from the 2008 DSW Rule.
- Georgia is also broader in scope than the Federal program by not adopting the conditional exclusion for carbon dioxide streams in geologic sequestration activities (Checklist 230) at 40 CFR 261.4(h) (see Ga. Comp. R. & Regs. r. 391–3–11–.01(2)). Georgia's continued regulation of these waste streams is broader in scope than the Federal program.

Broader-in-scope requirements are not part of the authorized program and EPA cannot enforce them. Although regulated entities must comply with these requirements in accordance with state law, they are not RCRA requirements.

EPA cannot delegate certain Federal requirements associated with the Hazardous Waste Electronic Manifest Rule (Checklist 231), the Imports and Exports of Hazardous Waste Rule (Checklist 236), and the Revisions to the Export Provisions of the Cathode Ray Tube Rule (Checklist 232) (40 CFR 261.39(a)(5) and 261.41). Georgia has adopted these requirements and appropriately preserved EPA's authority to implement them (see Ga. Comp. R. & Regs. R. 391–3–11–.01(2)(c))

H. Who handles permits after the final authorization takes effect?

Georgia will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which EPA issued prior to the effective date of this authorization until they are terminated. EPA will not issue any new permits or new portions of permits for the provisions listed in the Table above after the effective date of the final authorization. EPA will continue to implement and issue permits for HSWA requirements for which Georgia is not yet authorized.

I. What is codification and will EPA codify Georgia's hazardous waste program as proposed in this rule?

Codification is the process of placing the state's statutes and regulations that comprise the state's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized state rules in 40 CFR part 272. EPA is not proposing to codify the authorization of Georgia's changes at this time. However, EPA reserves the amendment of 40 CFR part 272, subpart L, for the authorization of Georgia's program changes at a later date.

J. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action proposes to authorize state requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by state law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this proposed authorization of Georgia's revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposes to authorize pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to authorize state requirements

as part of the state RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in proposing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). ''Burden'' is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action proposes authorization of pre-existing state rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by state law, and there are no anticipated significant adverse human health or environmental effects, this proposed rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: July 10, 2018.

Onis ''Trey'' Glenn, III,

Regional Administrator, Region 4.

[FR Doc. 2018–17206 Filed 8–10–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–OLEM–2017–0603; FRL–9981–49–OLEM]

Documentation Supporting the Proposal of the Orange County North Basin Site; Addendum Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of data availability.

SUMMARY: This notice provides an opportunity to comment on additional reference documentation for the Orange County North Basin site in Orange County, California. The site was proposed to the National Priorities List (NPL) on January 18, 2018.

DATES: Comments must be submitted (postmarked) on or before September 12, 2018.

ADDRESSES: Submit your comments, identified by docket number EPA–HQ–OLEM–2017–0603, 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 whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

To send a comment via the United States Postal Service, use the following address: U.S. Environmental Protection Agency, EPA Superfund Docket Center, Mailcode 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. Use the Docket Center address below if you are using express mail, commercial delivery, hand delivery or courier. Delivery verification signatures will be available only during regular business hours: EPA Superfund Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Jennifer Wendel, phone: (404) 562–8799, email: *wendel.jennifer@epa.gov,* Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mail Code 5204P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

The site was proposed to the National Priorities List (NPL) on January 18, 2018 (83 FR 2576).

Site Geological Information

One commenter questioned the EPA's use of a reference in the HRS documentation record (HRS Reference 110—the 3DVA Technical Memorandum) to support aquifer interconnection and contaminant migration. EPA notes that the reference in question is a model, and analysis, of the hydrology and geology in the vicinity of the Orange County North Basin site. The commenter stated that the EPA cites to HRS Reference 110 and presents conclusions in the HRS documentation record based on the model in the reference that used well borehole and lithology data that was not

available to the public to review to confirm the reliability of the reference.

The EPA has examined this issue and has decided to provide the relevant documentation used to develop the content presented in the reference. This information includes well logs and lithology reports for the wells which were used to produce HRS Reference 110—the 3DVA Technical Memorandum. This data will be included as one reference to the HRS documentation record and the EPA is providing this additional document for public review and comment. This document is available at the Regional office in San Francisco, CA. Anyone wishing to comment on the information in the reference or the impact this data may have on the HRS score for the proposed Orange County North Basin site should do so within the next 30 calendar days (see **DATES** section at the beginning of this notice). Additional comments will not be accepted on other HRS scoring issues which could have appropriately been raised during the original comment period and are not based on information provided in these additional references.

Comments should be submitted pursuant to instructions in the **ADDRESSEES** section of this notice; they may be submitted electronically, by mail or by express mail. The docket number for this site is EPA–HQ–OLEM–2017–0603 and should be identified in any correspondence/electronic submission.

Dated: July 16, 2018.

James E. Woolford,

Director, Office of Superfund Remediation and Technology Innovation.

[FR Doc. 2018–16801 Filed 8–10–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2018–0035; FXES11130900000C2–189–FF09E42000]

RIN 1018–BB98

Endangered and Threatened Wildlife and Plants; Proposed Replacement of the Regulations for the Nonessential Experimental Population of Red Wolves in Northeastern North Carolina

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reopening the public comment period on our June 28, 2018, proposed rule to replace the existing regulations governing the nonessential experimental population designation of the red wolf (*Canis rufus*) under section 10(j) of the Endangered Species Act of 1973, as amended (Act). We are reopening the comment period to allow the public an additional opportunity to review and comment on the proposed rule. Comments already submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: The comment period for the proposed rule published on June 28, 2018, at 83 FR 30382 is reopened. We will accept comments received or postmarked on or before August 28, 2018. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be submitted by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Availability of documents:* The proposed rule is available on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2018–0035 and on our website at *http://www.fws.gov/Raleigh*. Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, are also available for public inspection at *http://www.regulations.gov*. All comments, materials, and documentation that we considered in the proposed rule are available for public inspection, by appointment, during normal business hours, at the Raleigh Ecological Services Field Office, U.S. Fish and Wildlife Service, 551F Pylon Drive, Raleigh, NC 27606; telephone 919–856–4520; facsimile 919–856–4556. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339.

Comment submission: You may submit written comments on the proposed rule by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R4–ES–2018–0035, which is the docket number for the rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2018–0035, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. See Information Requested, below, for more information on submitting comments on the proposed rule.

FOR FURTHER INFORMATION CONTACT: Pete Benjamin, Field Supervisor, U.S. Fish and Wildlife Service, Raleigh Ecological Services Field Office, 551F Pylon Drive, Raleigh, NC 27606; telephone 919–856–4520; facsimile 919–856–4556. Persons who use a TDD may call the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 2018, we published in the **Federal Register** a proposed rule (83 FR 30382) to replace the regulations governing the northeast North Carolina (NC) nonessential experimental population (NEP) of the red wolf, which were codified in 1995 in title 50 of the Code of Federal Regulations (CFR) at § 17.84(c) (50 CFR 17.84(c)). That proposal had a 30-day comment period, ending July 30, 2018. The purpose of the proposed action is to incorporate the most recent science and lessons learned related to the management of red wolves to implement revised regulations that will better further the conservation of the red wolf. We propose to establish a more manageable wild propagation population that will allow for more resources to support the captive population component of the red wolf program (which is the genetic fail safe for the species); serve the future needs of new reintroduction efforts; retain the influences of natural selection on the species; eliminate the regulatory burden on private landowners; and provide a population for continued scientific research on wild red wolf behavior and population management.

Information Requested

We will accept written comments and information during this reopened comment period and will consider information and recommendations from all interested parties. If you previously submitted comments or information on the proposed rule, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final determination. We intend that any final action resulting from the proposal will be based on the best scientific and commercial data available and be as accurate and as effective as possible.

We request comments or information from other concerned governmental

agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning the June 28, 2018, proposed rule. We particularly seek comments concerning:

(1) Contribution of the NC NEP to recovery goals for the red wolf;

(2) The relative effects that management of the NC NEP under the proposed rule would have on the conservation of the species;

(3) The extent to which the NC NEP may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the proposed NC NEP management area;

(4) Appropriate provisions for protections and ''take'' of red wolves;

(5) Ideas and strategies for promoting tolerance of red wolves on private property outside the NC NEP management area; and

(6) Appropriate means to evaluate the effectiveness of the proposed action, including relevant performance measures.

Additionally, we seek comments on the identification of direct, indirect, beneficial, and adverse effects that may result from the June 28, 2018, proposed rule. You may wish to consider the extent to which the proposed rule will affect the following when providing comments:

(1) Impacts on floodplains, wetlands, wild and scenic rivers, or ecologically sensitive areas;

(2) Impacts on Federal, State, local, or Tribal park lands; refuges and natural areas; and cultural or historic resources;

(3) Impacts on human health and safety;

(4) Impacts on air, soil, and water;

(5) Impacts on prime agricultural lands;

(6) Impacts to other species of wildlife, including other endangered or threatened species;

(7) Disproportionately high and adverse impacts on minority and low income populations;

(8) Any socioeconomic or other potential effects; and

(9) Any potential conflicts with other Federal, State, local, or Tribal environmental laws or requirements.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

We will post all comments on *http://www.regulations.gov*. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, are available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Raleigh Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 30, 2018.

James W. Kurth,

Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director for the U.S. Fish and Wildlife Service.

[FR Doc. 2018–17320 Filed 8–10–18; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 83, No. 156
Monday, August 13, 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

Agricultural Marketing Service

[Docket No. AMS–ST–18–0064]

Notice of Request for Revision of a Currently Approved Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from Office of Management and Budget (OMB) for an extension of and revision to the currently approved information collection ''Application for Plant Variety Protection Certification and Objective Description of Variety.''

DATES: Comments must be received by October 12, 2018.

ADDRESSES: Interested persons are invited to submit comments concerning this notice by using the electronic process available at *http://www.regulations.gov.* Written comments may also be submitted to the Plant Variety Protection Office (PVPO), Science and Technology, Agricultural Marketing Service, USDA, 1400 Independence Avenue SW, Room 4512–S, Stop 0274, Washington, DC 20250 or by facsimile to (202) 260–8976. All comments should reference the docket number AMS–ST–18–0064, the date, and the page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bernadette Thomas, Information Technology Specialist, (202) 720–1168 or *Bernadette.thomas@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing the Application for Plant Variety Protection Certificate and Reporting Requirements under the Plant Variety Protection Act.

OMB Number: 0581–0055.

Expiration Date of Approval: December 31, 2018.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Plant Variety Protection Act (PVPA) (7 U.S.C. 2321 *et seq.*) was established ''To encourage the development of novel varieties of sexually reproduced plants and make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promote progress in agriculture in the public interest.''

The PVPA is a voluntary user funded program which grants intellectual property rights protection to breeders of new, distinct, uniform, and stable seed reproduced and tuber propagated plant varieties. To obtain these rights the applicant must provide information which shows the variety is eligible for protection and that it is indeed new, distinct, uniform, and stable as the law requires. Application forms, descriptive forms, and ownership forms are furnished to applicants to identify the information which is required to be furnished by the applicant in order to legally issue a certificate of protection (ownership). The certificate is based on claims of the breeder and cannot be issued on the basis of reports in publications not submitted by the applicant. Regulations implementing the PVPA appear at 7 CFR part 92.

Currently approved forms ST–470, Application for Plant Variety Protection Certificate, ST–470 A, Origin and Breeding History, ST–470 B, Statement of Distinctness, Form ST–470 series, Objective Description of Variety (Exhibit C), Form ST–470–E, Basis of Applicant's Ownership, are the basis by which the determination, by experts at PVPO, is made as to whether a new, distinct, uniform, and stable seed reproduced or tuber-propagated variety in fact exists and is entitled to protection.

The ST 470 application form combines Exhibits A, B, and E into one form. The information received on applications, with certain exceptions, is required by law to remain confidential until the certificate is issued (7 U.S.C. 2426).

The information collection requirements in this request are essential to carry out the intent of the PVPA, to provide applicants with certificates of protection, to provide the respondents the type of service they request, and to administer the program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.02 hours per response.

Respondents: Businesses or other for-profit, not-for-profit institutions, and Federal Government.

Estimated Number of Respondents: 93.

Estimated Number of Responses per Respondent: 21.78.

Estimated Total Annual Burden on Respondents: 2,063 (rounded).

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All comments received will be available for public inspection during regular business hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: August 8, 2018.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2018–17285 Filed 8–10–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 4284, subpart J.

DATES: Comments on this notice must be received by October 12, 2018 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Deputy Administrator, Cooperative Programs, U.S. Department of Agriculture, 1400 Independence Avenue SW, STOP 3250, Washington, DC 20250, Telephone: 202–720–7558.

SUPPLEMENTARY INFORMATION:

Title: Value-Added Producer Grants.

OMB Number: 0570–0064.

Expiration Date of Approval: December 31, 2018.

Type of Request: Revision of a currently approved information collection.

Abstract: The purpose of this information collection is to obtain information necessary to evaluate grant applications to determine the eligibility of the applicant and the project for the program and to qualitatively assess the project to determine which projects should be funded.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 39 hours per grant application.

Respondents: Independent producers, agriculture producer groups, farmer- or rancher-cooperatives, and majority-controlled producer-based business ventures.

Estimated Number of Respondents: 249.

Estimated Number of Responses per Respondent: 14.

Estimated Number of Responses: 3,564.

Estimated Total Annual Burden on Respondents: 52,818 hours.

Copies of this information collection can be obtained from Kimble Brown, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Rural Business-Cooperative Service, including whether the information will have practical utility; (b) the accuracy of the Rural Business-Cooperative Service's estimate of the burden of the proposed collection of information including validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the 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 may be sent to Kimble Brown, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Avenue SW, Washington, DC 20250–0742.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 6, 2018.

Bette Brand,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2018–17229 Filed 8–10–18; 8:45 am]

BILLING CODE 3410–XY–P

ARCTIC RESEARCH COMMISSION

Notice of 110th Commission Meeting

A notice by the U.S. Arctic Research Commission on 08/03/2018.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 110th meeting in Kotzebue, AK, on September 4–5, 2018. The business sessions, open to the public, will convene at 8:30 a.m. at NW Borough Assembly Chambers, 163 Lagoon Street, Kotzebue, AK 99752.

The Agenda items include:

(1) Call to order and approval of the agenda
(2) Approval of the minutes from the 109th meeting
(3) Commissioners and staff reports
(4) Discussion and presentations concerning Arctic research activities

The meeting will focus on reports and updates relating to programs and research projects affecting Alaska and the greater Arctic.

The Arctic Research and Policy Act of 1984 (Title I Pub. L. 98–373) and the Presidential Executive Order on Arctic Research (Executive Order 12501) dated January 28, 1985, established the United States Arctic Research Commission.

If you plan to attend this meeting, please notify us via the contact information below. Any person planning to attend who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission of those needs in advance of the meeting.

Contact person for further information: Kathy Farrow, Communications Specialist, U.S. Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Dated: August 3, 2018.

Kathy Farrow,

Communications Specialist.

[FR Doc. 2018–17300 Filed 8–10–18; 8:45 am]

BILLING CODE 7555–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–471–807]

Certain Uncoated Paper From Portugal: Final Results of Antidumping Duty Administrative Review; 2015–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that certain uncoated paper (uncoated paper) from Portugal is being, or is likely to be sold, at less than normal value during the period of review (POR), August 26, 2015, through February 28, 2017.

DATES: Applicable August 13, 2018.

FOR FURTHER INFORMATION CONTACT: Carrie Bethea, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1491.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The product covered by this review is uncoated paper from Portugal. For a full description of the scope, see the Issues and Decision Memorandum dated concurrently with and hereby adopted by this notice.[1]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum.[2]

[1] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Certain Uncoated Paper from Portugal; 2015–2017,'' dated concurrently with this notice (Preliminary Decision Memorandum).

[2] *See* Memorandum, ''Certain Uncoated Paper from Portugal: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review; 2015–2017,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

A list of the issues that parties raised and to which we responded is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on-file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Central Records Unit (CRU), room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties, we have recalculated The Navigator Company, S.A.'s (Navigator) weighted-average dumping margin using facts otherwise available for Navigator's home market bonus discounts and facts otherwise available with an adverse inference for certain of Navigator's U.S. brokerage and handling expenses. For further discussion, *see* the Issues and Decision Memorandum.

Final Results of the Review

We determine that, for the period of March 1, 2016, through February 28, 2017, the following weighted-average dumping margin exists:

Exporter/producer	Weighted-average dumping margin (percent)
The Navigator Company, S.A. ...	37.34

Duty Assessment

Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by Sidenor for which it did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue instructions to CBP 15 days after the publication date of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review 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 this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Navigator will be the rate established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 7.80 percent, the all-others rate established in the investigation.[3] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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 POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction 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 the 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.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: August 6, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

List of Topics Discussed in the Final Decision Memorandum

[FR Doc. 2018–17294 Filed 8–10–18; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See Certain Uncoated Paper from Portugal: Final Determination of Sales at Less than Fair Value and Final Negative Determination of Critical Circumstances,* 81 FR 3105 (January 20, 2016).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–552–824]

Laminated Woven Sacks From the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of laminated woven sacks (LWS) from the Socialist Republic of Vietnam (Vietnam). The period of investigation is January 1, 2017, through December 31, 2017. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable August 13, 2018.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Ariela Garvett, AD/

CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–3936 or 202–482–3609, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 3, 2018.[1] On May 17, 2018, Commerce published its postponement of the deadline for the preliminary determination of the investigation for the full 130 days permitted under section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) until August 6, 2018.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping (AD) and Countervailing Duty (CVD) Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are laminated woven sacks from Vietnam. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of the signature date of that notice. We received several comments concerning the scope of the AD and CVD investigations of LWS from Vietnam.

We are currently evaluating the scope comments filed by interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determination of the companion AD investigation, which is due for signature on October 3, 2018. We will incorporate the scope decisions from the AD investigation into the scope of the final CVD determination after considering any relevant comments submitted in case and rebuttal briefs.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that confers a benefit on the recipient, and that the subsidy is specific.[4] For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of LWS from Vietnam, based on a request made by Laminated Woven Sacks Fair Trade Coalition (the Coalition) and its individual members Polytex Fibers Corporation and ProAmpac Holdings Inc., (the petitioners).[5] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than December 17, 2018.[6]

All-Others Rate and Preliminary Determination

With respect to the all-others rate, section 705(c)(5)(A) of the Act provides that if the countervailable subsidy rates established for all exporters and producers individually investigated are determined entirely in accordance with section 776 of the Act, Commerce may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated.

In this investigation, Commerce calculated individual estimated countervailable subsidy rates for Duong Vinh Hoa Packaging Company Ltd (DVH) and Xinsheng Plastic Industry Co Ltd (Xinsheng) that are not zero, *de minimis,* or based entirely on facts otherwise available. Commerce calculated the all-others rate using a weighted average of the individual estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged values for the merchandise under consideration.[7]

Commerce summarizes its preliminary countervailable subsidy rates in the table below:

Producer/exporter	Subsidy rate (percent)
Duong Vinh Hoa Packaging Company Limited	3.24
Xinsheng Plastic Industry Co., Ltd.	6.15
All-Others	5.19

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and

[1] *See Laminated Woven Sacks from the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigation,* 83 FR 14253 (April 3, 2018) *(Initiation Notice).*

[2] *See Countervailing Duty Investigation of Laminated Woven Sacks from the Socialist Republic of Vietnam: Postponement of Preliminary Determination,* 83 FR 22953 (May 17, 2018).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of Laminated Woven Sacks from the Socialist Republic of Vietnam,'' dated concurrently with, and hereby adopted by, this notice (*Preliminary Decision Memorandum*).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[5] *See* Letter from the petitioners, ''Investigation of Laminated Woven Sacks from the Socialist Republic of Vietnam: Petitioners' Alignment Request,'' dated July 13, 2018.

[6] *See Laminated Woven Sacks from the Socialist Republic of Vietnam: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation,* 83 FR 36876 (July 31, 2018).

[7] With two respondents under examination, Commerce normally calculates (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: 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). As complete publicly ranged sales data was available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, please see the All-Others' Rate Calculation Memorandum.

Border Protection (CBP) to suspend liquidation of all entries of LWS from Vietnam as described in the scope of the investigation entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Public Comment

Interested parties may submit case and rebuttal briefs, as well as request a hearing. Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[8] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If Commerce's final determination is affirmative, the ITC will make its final determination before the later of 120 days after the date of this preliminary determination or 45 days after Commerce's final determination.

Notification Regarding Administrative Protective Orders

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: August 6, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of the Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is laminated woven sacks. Laminated woven sacks are bags consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (BOPP), polyester (PET), polyethylene (PE), nylon, or any film suitable for printing, or to an exterior ply of paper; printed; displaying, containing, or comprising three or more visible colors (*e.g.,* laminated woven sacks printed with three different shades of blue would be covered by the scope), not including the color of the woven fabric; regardless of the type of printing process used; with or without lining; with or without handles; with or without special closing features (including, but not limited to, closures that are sewn, glued, easy-open (*e.g.,* tape or thread), re-closable (*e.g.,* slider, hook and loop, zipper), hot-welded, adhesive-welded, or press-to-close); whether finished or unfinished (*e.g.,* whether or not closed on one end and whether or not in roll form, including, but not limited to, sheets, lay-flat, or formed in tubes); not exceeding one kilogram in actual weight. Laminated woven sacks produced in the Socialist Republic of Vietnam are subject to the scope regardless of the country of origin of the fabric used to make the sack.

Subject laminated woven sacks are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 6305.33.0040. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including, but not limited to, sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings, including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500. If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2018–17287 Filed 8–10–18; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

DEPARTMENT OF COMMERCE

International Trade Administration

University of Pittsburgh of the Commonwealth System of Higher Education, et al.: Notice of Decision on Application for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave. NW, Washington, DC.

Docket Number: 17–017. Applicant: University of Pittsburgh of the Commonwealth System of Higher Education, Pittsburgh, PA 15260. Instrument: Photonic Professional GT System. Manufacturer: Nano scribe, Germany. Intended Use: See notice at 83 FR 31120, July 3, 2018. Comments:

None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to support the fabrication of devices comprised primarily of both commercially available and in house developed UV curable polymers. Biomaterials and other biopolymers that have been specifically designed to be cured using a radical polymerization process will also be investigated in this device. Any polymer or biomaterial that can be ablated using the wavelength and power available in the Nano scribe system will also be used for subtractive manufacturing.

Docket Number: 18–001. Applicant: William March Rice University, Houston, TX 77005. Instrument: 3D-Discovery Bioprinter and Direct Write Electro spinner. Manufacturer: regnum, Switzerland. Intended Use: See notice at 83 FR 31120, July 3, 2018. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used for a multitude of techniques across disciplines ranging from biology to materials science, chemical engineering and bioengineering. Techniques like thermoplastic and hydrogel extrusion, 3D printing, 2-component printing, cell-bioprinting, electrospinning/direct write electrospinning, drug/factor encapsulation.

Docket Number: 18–002. Applicant: Centers for Disease Control and Prevention, Atlanta, GA 30333. Instrument: Cello Scope Optical Screening Instrument. Manufacturer: Bio Sense Solutions Apes, Denmark. Intended Use: See notice at 83 FR 31120, July 3, 2018. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used for research use only to study several Gram-negative and Gram-positive bacterial pathogens. Use of this optical screening instrument, will be developing and evaluating an automated antimicrobial susceptibility test for bacterial pathogens based on time-lapse imaging of cells incubating in broth microdilution drug panels. Experiments to be conducted include growth assessment of these bacterial pathogens in the presence and absence of clinically relevant antibiotics. The antibiotics selected for our studies are those recommended by the Clinical and Laboratory Standards Institute (CLSI) for primary testing. The objectives of the investigations are to more rapidly determine antimicrobial susceptibility of bacterial pathogens. Currently, the gold-standard method for antimicrobial susceptibility testing requires 16–20 or 24–48 hours, depending on the species. The techniques required to perform these experiments include inoculation of a testing drug panel with a bacterial suspension and assessing susceptibly by optical screening. The research conducted using this instrument may substantially reduce the time required to make an informed therapeutic decision.

Docket Number: 18–003. Applicant: University of Virginia, Charlottesville, VA 22903. Instrument: Superconducting Magnet System. Manufacturer: Cryogenic Ltd., United Kingdom. Intended Use: See notice at 83 FR31120, July 3, 2018. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to study the beta decay of neutrons. Neutrons are elementary constituents of any matter in our universe. The experiments require measuring the kinetic energies of electrons and protons, two of the particles that are produced in neutron decay. The Nab spectrometer is to extract the neutrino-electron correlation coefficient ''a'' and the Fires term ''b'' which describes the dynamic properties of the decay particles; the results test our understanding of the Standard Model of Elementary Particle Physics. The Nab spectrometer, electrons and protons are guided by the magnetic field, produced by the magnet system that we are importing. Electrons and protons eventually reach detectors. The detectors allow us to determine the kinetic energies of both particles, respectively.

Docket Number: 18–004. Applicant: University of Nebraska-Lincoln, Lincoln, NE 68588–0645. Instrument: Closed Cycle Cryogen Free Cryostat. Manufacturer: Autocue Systems, Germany. Intended Use: See notice at 83 FR 31120, July 3, 2018. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to study the optoelectronic properties of novel atomically thin semiconductor materials such as metal chalcogenides, which are promising for application in energy conversion (for example solar cells) and micro-/nanoelectronics. Leading-edge fundamental research on the optoelectronic properties of novel nanomaterials, with the goal of developing advanced materials to support the needs for new energy conversion processes and next-generation electronics and computing.

Gregory W. Campbell,

Director, Subsidies Enforcement, Enforcement and Compliance.

[FR Doc. 2018–17295 Filed 8–10–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG410

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, August 28, 2018 at 9 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Four Points by Sheraton, One Audubon Road, Wakefield, MA 01880; phone: (781) 245–9300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The committee will discuss the Clam dredge framework, particularly review

fishing industry proposals and preliminary Habitat Plan Development Team evaluation for exemption areas in the Great South Channel Habitat Management Area. They will recommend alternatives to the Council for inclusion in the framework and for further analysis. The committee will receive an update on recent Essential Fish Habitat consultations from Greater Atlantic Regional Fisheries Office staff. They also plan to discuss recent Council and National Marine Fisheries Services activity related to offshore wind engagement and research and monitoring plans under development by the states. Other business will be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 8, 2018.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–17309 Filed 8–10–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG412

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Spiny Dogfish Advisory Panel (AP) will meet to review recent fishery performance and develop a Fishery Performance Report and/or other recommendations in preparation for development of annual specifications commencing May 1, 2019. Specifications can be set for up to five years.

DATES: The meeting will be held Monday, August 27, 2018, from 4:30 p.m. to 7 p.m.

ADDRESSES: The meeting will be held via webinar, but anyone can also attend at the Council office address (see below). The webinar link is: *http://mafmc.adobeconnect.com/dogfishap2018/.* Please call the Council at least 24 hours in advance if you wish to attend at the Council office.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's website, *www.mafmc.org* also has details on the proposed agenda, webinar access, and briefing materials.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to create a Fishery Performance Report by the Council's Spiny Dogfish Advisory Panel. The intent of the report is to facilitate structured input from the Advisory Panel members into the specifications development process.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: August 8, 2018.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–17308 Filed 8–10–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG413

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Spiny Dogfish Monitoring Committee will hold a public meeting to review annual specifications and management measures and make any appropriate recommendations.

DATES: The meeting will be held Friday, September 14, 2018, from 9 a.m. to 11 a.m.

ADDRESSES: The meeting will be held via webinar, but anyone can also attend at the Council office address (see below). The webinar link is: *http://mafmc.adobeconnect.com/spinydogmc-2018/.* Please call the Council at least 24 hours in advance if you wish to attend at the Council office.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's website, *www.mafmc.org* also has details on the proposed agenda, webinar access, and briefing materials.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council's Spiny Dogfish Monitoring Committee will hold a public meeting to review annual specifications and management measures and make any appropriate recommendations. New annual specifications should begin May 1, 2019 and can be set for up to five years. Public comment will be taken.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: August 8, 2018.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–17310 Filed 8–10–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG406

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Surfclam and Ocean Quahog Advisory Panel will hold a public meeting.

DATES: The meeting will be held on Wednesday, September 5, 2018, from 10 a.m. until 4 p.m.

ADDRESSES: The meeting will be held at the Embassy Suites by Hilton—Philadelphia Airport, 9000 Bartram Ave., Philadelphia, Pennsylvania; telephone: (215) 365–4500.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council's (MAFMC's) Surfclam and Ocean Quahog Advisory Panel will meet to provide feedback on the Public Hearing Document for the Surfclam and Ocean Quahog Excessive Shares Amendment. An agenda and background documents will be posted at the Council's website (*www.mafmc.org*) prior to the meeting. The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: August 8, 2018.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–17326 Filed 8–10–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

First Responder Network Authority

[Docket Number 131219999–8730–04]

RIN 0660–XC009

Withdrawal of Notice of Intent To Prepare Supplemental Environmental Impact Statements and Amendment of Record of Decisions for Programmatic Environmental Impact Statements

AGENCY: First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of intent; withdrawal.

SUMMARY: The First Responder Network Authority (FirstNet Authority) is (1) withdrawing its Notice of Intent to Prepare Supplemental Programmatic Environmental Impact Statements (SPEISs) and Conduct Scoping for the Nationwide Public Safety Broadband Network (NPSBN), and (2) amending five (5) records of decision to remove the references to the FirstNet Authority's intent to prepare the SPEISs.

FOR FURTHER INFORMATION CONTACT: Eli Veenendaal, First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce, 3122 Sterling Circle, Suite 100, Boulder, CO 80301 or *elijah.veenendaal@firstnet.gov.*

SUPPLEMENTARY INFORMATION:

The Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1401 *et seq.*) created and authorized the FirstNet Authority to take all actions necessary to ensure the building, deployment, and operation of an interoperable NPSBN. As part of NPSBN deployment, the FirstNet Authority is required to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) and the implementing regulations issued by the Council on Environmental Quality (40 CFR parts 1500–1508) (CEQ Regulations) to assess the environmental effects of its proposed actions prior to making a final decision and implementing the action.

To support NEPA compliance, the FirstNet Authority prepared and finalized five regional programmatic environmental impact statements (PEISs) that analyze the potential environmental impacts of the deployment and operation of the NPSBN at a programmatic level.[1] However, prior to completing the PEISs and issuing corresponding records of decision (RODs), the FirstNet Authority was still in the process of revising the FirstNet Authority Procedures for Implementing the National Environmental Policy Act (FirstNet Authority NEPA Procedures) and identified a potential need to account for these changes in the PEISs and RODs.[2]

Consequently, on September 25, 2017, the FirstNet Authority published a notice of intent (NOI) in the **Federal Register** to prepare SPEISs to address the potential impact of the FirstNet Authority NEPA Procedures as well as the process the FirstNet Authority would follow to assess potential environmental impacts of the NPSBN deployment at the site specific-level.[3] Similarly, the FirstNet Authority also included comparable language relating to its intent to prepare SPEISs in each of the RODS.[4]

Subsequently, on February 1, 2018, following the issuance of the NOI and RODs for each region, the FirstNet Authority completed the regulatory process for and published in the **Federal Register** a notice responding to comments and finalizing its proposed modifications to the FirstNet Authority NEPA Procedures.[5] The revised FirstNet

[1] Notice of Availability of a Final Programmatic Environmental Impact Statement for the East Region of the Nationwide Public Safety Broadband Network, 82 FR 49785 (Oct. 27, 2017); *See also* Notice of Availability of a Final Programmatic Environmental Impact Statement for the South Region of the Nationwide Public Safety Broadband Network, 82 FR 45806 (Oct. 5, 2017); *See also* Notice of Availability of a Final Programmatic Environmental Impact Statement for the Central Region of the Nationwide Public Safety Broadband Network, 82 FR 41594 (Sept. 1, 2017); Notice of Availability of a Final Programmatic Environmental Impact Statement for the West Region of the Nationwide Public Safety Broadband Network, 82 FR 33870 (July 21, 2017); Notice of Availability of a Final Programmatic Environmental Impact Statement for the Non-Contiguous Region of the Nationwide Public Safety Broadband Network, 82 FR 29825 (June 30, 2017).

[2] Revised National Environmental Policy Act Procedures and Categorical Exclusions, 82 FR 28621 (June 23, 2017) (proposing and seeking public comment on revised FirstNet Authority Procedures for Implementing NEPA).

[3] Notice of Intent To Prepare a Supplemental Programmatic Environmental Impact Statement and Conduct Scoping for the Nationwide Public Safety Broadband Network, 82 FR 44556 (Sept. 25, 2017).

[4] FirstNet Authority, *Final Programmatic Environmental Impact Statement and Record of Decisions for West Region, Central Region, South Region, East Region, and Non-Contiguous Region, https://website.azurewebsites.us/network/peis-content* (discussing the intent to prepare a SPEIS in section 3.4.1—Tiered Site Specific Analysis of each ROD).

[5] Revised National Environmental Policy Act Procedures and Categorical Exclusions, 83 FR 4632 (Feb. 1, 2018) (responding to comments and

Authority NEPA Procedures describe the process and review criteria the FirstNet Authority will follow to comply with NEPA and CEQ Regulations for proposed actions related to NPSBN deployment.[6] In particular, the FirstNet Authority NEPA Procedures define the roles and responsibilities of the FirstNet Authority and its applicants and describe the criteria and process for determining the appropriate level of NEPA review and making environmental determinations and final decisions for site-specific reviews of FirstNet Authority actions related to the NPSBN.[7]

Accordingly, the FirstNet Authority has reviewed and determined that the revisions to the FirstNet Authority NEPA Procedures do not significantly impact any of the environmental analyses in the PEISs and that the information anticipated to be presented in the SPEISs related to the process for conducting site-specific reviews has already been sufficiently included in the revised FirstNet Authority Implementing Procedures. Thus, to avoid duplicative analysis and the unnecessary use of resources, the FirstNet Authority is (1) withdrawing its Notice of Intent to Prepare SPEISs and Conduct Scoping for the NPSBN, and (2) amending five (5) records of decision to remove the references to the FirstNet Authority's intent to prepare SPEISs, including section 3.4.1—Tiered Site Specific Analysis, in each of the documents.[8]

Dated: August 7, 2018.

Elijah Veenendaal,

Attorney-Advisor, First Responder Network Authority.

[FR Doc. 2018–17225 Filed 8–10–18; 8:45 am]

BILLING CODE 3510–TL–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2018–0050]

Office Patent Trial Practice Guide, August 2018 Update

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (''Office'') issued an update to the Office Patent Trial Practice Guide (''TPG'') in August 2018 to provide updated guidance to the public on standard practices before the Patent Trial and Appeal Board (''Board'') in the post-grant trial procedures implemented following the Leahy-Smith America Invents Act (''AIA''). The Office publishes the TPG to provide practitioners with guidance on typical procedures and times for taking action in AIA trials, as well as to ensure consistency of procedure among panels of the Board.

FOR FURTHER INFORMATION CONTACT: Michael Tierney and William Fink, Vice Chief Administrative Patent Judges, by telephone at (571) 272–9797.

SUPPLEMENTARY INFORMATION: The Office issued an update to the TPG in August 2018, to update the guidance set forth in the TPG by incorporating the Board's current practices and provide further explanation of certain aspects of the Board's practices to the public. The TPG is divided into sections, each directed to a particular stage of a typical AIA trial proceeding or a specific issue commonly encountered during such proceedings. As such, the TPG contains informative material and outlines the current procedures that panels of the Board typically follow in appropriate cases in the normal course of an AIA trial proceeding. In order to expedite these updates and provide guidance to the public as quickly as possible, the Office has chosen to issue updates to the Practice Guide on a section-by-section, rolling basis, rather than a single, omnibus update addressing all aspects of the current Practice Guide. The Office anticipates releasing further revisions to the remaining sections of the TPG on a periodic basis, to take into account feedback received from stakeholders, changes in controlling precedent or applicable regulations, or the further refinement of the Board's practices over time.

The August 2018 update revises Sections I.G. (Expert Testimony), II.A.3. (Word Count and Page Limits), II.D.2. (Considerations in Instituting a Review), II.I. (Reply to Patent Owner Response and Reply for a Motion to Amend; Sur-Replies), II.K. (Challenging Admissibility; Motions to Exclude; Motions to Strike), II.M. (Oral Hearing), and Appendix A (Sample Scheduling Order).

The August 2018 update of the TPG, containing only the revised sections, may be viewed or downloaded free of charge from the USPTO website at *https://go.usa.gov/xU7GP.* The full version of the August 2012 TPG continues to be available for reference on the USPTO website at *https://go.usa.gov/xU7GK.*

Dated: August 8, 2018.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2018–17315 Filed 8–10–18; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Extend Collection 3038–0101, Registration of Foreign Boards of Trade

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on collections of information provided for by Commission regulation Part 48, Registration of Foreign Boards of Trade.

DATES: Comments must be submitted on or before October 12, 2018.

ADDRESSES: You may submit comments, identified by ''FBOT Registration'' or ''OMB Control No. 3038–0101'' by any of the following methods:

- The Agency's website, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Duane C. Andresen, Associate Director,

finalizing revisions to FirstNet Authority Procedures for Implementing NEPA).

[6] FirstNet Procedures for Implementing the National Environmental Policy Act (January 2018), *https://www.firstnet.gov/content/notice-revised-national-environmental-policy-act-procedures-and-categorical-exclusions.*

[7] *See* id.

[8] The amended RODs for each of five regions are available at *www.firstnet.gov.*

Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5492; email: *dandresen@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.,* 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 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, the CFTC is publishing notice of the proposed collection of information listed below. 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.

Title: Registration of Foreign Boards of Trade (OMB Control No. 3038–0101). This is a request for extension of a currently approved information collection.

Abstract: Section 738 of the Dodd-Frank Act amended section 4(b) of the Commodity Exchange Act to provide that the Commission may adopt rules and regulations requiring foreign boards of trade (FBOT) that wish to provide their members or other participants located in the United States with direct access to the FBOT's electronic trading and order matching system to register with the Commission. Pursuant to this authorization, the CFTC adopted a final rule requiring FBOTs that wish to permit trading by direct access to provide certain information to the Commission in applications for registration and, once registered, to provide certain information to meet quarterly and annual reporting requirements. The rule establishes reporting and/or recordkeeping requirements that are required by Part 48 of the Commission's regulations and are necessary to ensure that FBOTs registered to provide for trading by direct access meet statutory and regulatory requirements on an initial and ongoing basis.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement

- *Collection 3038–0101—Registration of Foreign Boards of Trade (17 CFR part 48)*

The Commission is revising its estimate of the burden for this collection for registered FBOTs, by reducing the number of FBOTs to which the burden applies. The respondent burden for this collection is estimated to range from two to eight hours per response for submission of required reports. These estimates include the time to locate, compile, validate, and verify and disclose and to ensure such information is maintained. The respondent burden for this collection is estimated to be as follows:

Estimated number of respondents: 23.

Estimated Average Burden Hours Per Respondent: 375.2 hours.

Estimated total annual burden on respondents: 8630 hours.

Frequency of collection: When a reportable event occurs and quarterly and annually for required reports.

There are no capital costs or operating and maintenance costs associated with this collection.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: August 8, 2018.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2018–17336 Filed 8–10–18; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before September 12, 2018.

ADDRESSES: Comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (OIA) in OMB within 30 days of this notice's publication by either of the following methods. Please identify the comments by ''OMB Control No. 3038–0007.''

- *By email addressed to: OIRAsubmissions@omb.eop.gov* or
- *By mail addressed to:* the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW, Washington, DC 20503.

A copy of all comments submitted to OIRA should be sent to the Commodity Futures Trading Commission (the ''Commission'') by either of the following methods. The copies should refer to ''OMB Control No. 3038–0007.''

• Through the Commission's website at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.

• *By mail addressed to:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; or

• By Hand Delivery/Courier to the same address; or

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

A copy of the supporting statements for the collection of information discussed herein may be obtained by visiting *http://RegInfo.gov.*

FOR FURTHER INFORMATION CONTACT: Jacob Chachkin, Special Counsel, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, (202) 418–5496; email: *jchachkin@cftc.gov,* and refer to OMB Control No. 3038–0007.

SUPPLEMENTARY INFORMATION:

Title: Regulation of Domestic Exchange-Traded Options (OMB Control No. 3038–0007). This is a request for extension of a currently approved information collection.

Abstract: The rules require futures commission merchants (FCMs) and introducing brokers (IBs): (1) To provide their customers with standard risk disclosure statements concerning the risk of trading commodity interests; and (2) to retain all promotional material and the source of authority for information contained therein. The purpose of these rules is to ensure that customers are advised of the risks of trading commodity interests and to avoid fraud and misrepresentation. This information collection contains the recordkeeping and reporting requirements needed to ensure regulatory compliance with Commission rules relating to this issue. The disclosure and recordkeeping requirements are necessary to monitor and to verify compliance by FCMs and IBs with their obligations concerning disclosure and promotional material.

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. On June 7, 2018, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 83 FR 26437 (''60-Day Notice''). The Commission did not receive any comments on the 60-Day Notice.

Burden Statement: The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Regulation	Estimated number of respondents or recordkeepers per year	Reports annually by each respondent	Total annual responses	Estimated average number of hours per response	Estimated total number of hours of annual burden in fiscal year
Reporting:					
33.7—(Risk disclosure)	1,272.00	115.00	146,280.00	0.08	11,702.40
Recordkeeping:					
33.8—(Retention of promotional material)	1,272.00	1.00	1,272.00	25.00	31,800.00
Grand total (reporting and recordkeeping)			147,552.00		43,502.40

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: August 8, 2018.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2018–17334 Filed 8–10–18; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Extend Collection 3038–0085: Rule 50.50 End-User Notification of Non-Cleared Swap

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the renewal of the reporting requirement that is embedded in the final rule adopting the end-user exception to the Commission's swap clearing requirement.

DATES: Comments must be submitted on or before October 12, 2018.

[1] 17 CFR 145.9.

ADDRESSES: You may submit comments, identified by ''OMB Control No. 3038–0085'' by any of the following methods:

- The Agency's website, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Melissa D'Arcy, Special Counsel, Division of Clearing and Risk, Commodity Futures Trading Commission, (202) 418–5086; email: *mdarcy@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.,* 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 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, the CFTC is publishing this notice of the proposed extension of the currently approved collection of information listed below. 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.

Title: Rule 50.50 End-User Notification of Non-Cleared Swap (OMB Control No. 3038–0085). This is a request for an extension of a currently approved information collection.

Abstract: Rule 50.50 specifies the requirements for eligible end-users who elect the end-user exception from the Commission's swap clearing requirement, as provided under section 2(h)(7) of the Commodity Exchange Act (''CEA''). Rule 50.50 requires the counterparties to report certain information to a swap data repository registered with the Commission, or to the Commission directly, if one or more counterparties elects the end-user exception. The rule establishes a reporting requirement that is required in order to ensure compliance with the Commission's clearing requirement under section 2(h)(1) of the CEA and is necessary in order for Commission staff to prevent abuse of the end-user exception under section 2(h)(1) of the CEA and pursuant to Rule 50.50.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement:

- *Collection 3038–0085—Rule 50.50 End-User Notification of Non-Cleared Swap (17 CFR 50.50: Exceptions to the Clearing Requirement)*

The Commission is revising its estimate of the burden for this collection for eligible end-users electing the end-user exception. The Commission is increasing the estimated number of respondents from 1,092 to 1,815 based on an observed increase in the number of entities electing the exception. The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 1,815.

Estimated Average Burden Hours per Respondent: 0.58.

Estimated Total Annual Burden Hours: 1,053.

Frequency of Collection: On occasion; annually.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: August 8, 2018.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2018–17337 Filed 8–10–18; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for the Air Force Reserve Command F–35A Operational Beddown

AGENCY: Department of the United States Air Force, Department of Defense.

ACTION: Amended notice of intent.

SUMMARY: The Air Force issued a Notice of Intent to Prepare an Environmental Impact Statement for the Air Force Reserve Command F–35A Operational Beddown Environmental Impact Statement (Vol. 83, No. 56 **Federal Register**, 12568, March 22, 2018) and is now being amended to correct the address for courier delivered public scoping comments.

DATES: The 10-working day resubmittal period begins on the date of this notice.

ADDRESSES: The address for courier delivered (*e.g.,* Federal Express or United Parcel Service) public scoping comments is: AFCEC/CZN, (ATTN: Mr. Hamid Kamalpour), 3515 S. General McMullen Drive, Suite 155, San Antonio, Texas 78226–1710.

The address for U.S. Postal Service mail delivery is the same as initially published on March 22, 2018: AFCEC/CZN, (ATTN: Mr. Hamid Kamalpour), 2261 Hughes Avenue, Suite 155, JBSA-

Lackland Air Force Base, Texas 78236–9853.

Both the courier address and U.S. Postal Service address are listed on the project website (*www.AFRC-F35A-Beddown.com*), which also provides more information on the Environmental Impact Statement and related materials.

SUPPLEMENTARY INFORMATION: The Notice of Intent provided the public with instructions on how to submit scoping comments to the Air Force in consideration of the four alternatives being considered, which include: Homestead Air Reserve Base, Homestead FL; Naval Air Station Fort Worth Joint Reserve Base, Fort Worth, TX; Davis-Monthan Air Force Base, Tucson, AZ; and Whiteman Air Force Base, Knob Noster, MO. The Air Force has subsequently been made aware that the address provided for submittal of courier delivered public scoping comments (*e.g.,* Federal Express or United Parcel Service) was incorrect. This notice corrects the address for courier delivered public scoping comments and provides 10-working days for the interested public to submit scoping comments. During this 10-working day period, the Air Force is offering multiple ways in which comments can be submitted. Comments can be provided through the project website (*www.AFRC-F35A-Beddown.com*), via email to the email address provided below and via regular mail or via courier to the addresses listed below. The website also provides additional information on the Environmental Impact Statement and related materials. The Air Force will consider all scoping comments submitted.

Henry Williams,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2018–17324 Filed 8–10–18; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No.: RP–18]

Final Rules of Procedure

AGENCY: Bonneville Power Administration (Bonneville), Department of Energy (DOE).

ACTION: Notice of final rules of procedure.

SUMMARY: These final rules of procedure revise the rules of procedure that govern Bonneville's hearings conducted under section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act).

DATES: The final rules of procedure are effective on September 12, 2018.

FOR FURTHER INFORMATION CONTACT: Heidi Helwig, DKE–7, BPA Communications, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208; by phone toll-free at 1–800–622–4520; or by email to *hyhelwig@bpa.gov.*

Responsible Official: Mary K. Jensen, Executive Vice President, General Counsel, is the official responsible for the development of Bonneville's rules of procedure.

SUPPLEMENTARY INFORMATION:

Table of Contents

Part I—Introduction and Background

The Northwest Power Act provides that Bonneville must establish and periodically review and revise its rates so that they recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including amortization of the Federal investment in the Federal Columbia River Power System over a reasonable number of years, and Bonneville's other costs and expenses. 16 U.S.C. 839e(a)(1). Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that Bonneville's rates be established according to certain procedures, including notice of the proposed rates; one or more hearings conducted as expeditiously as practicable by a Hearing Officer; opportunity for both oral presentation and written submission of views, data, questions, and arguments related to the proposed rates; and a decision by the Administrator based on the record.

In addition, section 212(i)(2)(A) of the Federal Power Act, 16 U.S.C. 824k(i)(2)(A), provides in part that the Administrator may conduct a section 7(i) hearing to determine the terms and conditions for transmission service on the Federal Columbia River Transmission System under certain circumstances. Such a hearing must adhere to the procedural requirements of paragraphs (1) through (3) of section 7(i) of the Northwest Power Act, except that the Hearing Officer makes a recommended decision to the Administrator before the Administrator's final decision.

Bonneville last revised its procedures to govern hearings under section 7(i) of the Northwest Power Act in 1986. *See* Procedures Governing Bonneville Power Administration Rate Hearings, 51 FR 7611 (Mar. 5, 1986). Since the establishment of those procedures, there have been significant advancements in the technology available to conduct the hearings. The revised rules of procedure incorporate changes to reflect the manner in which Bonneville will apply these advancements. In addition, through conducting numerous hearings over the past few decades, Bonneville gained insight regarding the strengths and weaknesses of its procedures. The revised rules reflect changes to make the hearings more efficient and to incorporate procedures that were regularly adopted by orders of the Hearing Officers in previous hearings. Finally, the revised rules now explicitly apply to any proceeding under section 212(i)(2)(A) of the Federal Power Act.

In order to encourage public involvement and assist Bonneville in the development of the revisions to the rules, Bonneville met with customers and other interested parties on February 13, 2018, in Portland, Oregon, to discuss how the then-current rules might be revised. Bonneville also posted an initial draft of proposed revisions to the rules for public review and informally solicited written comments over a two-week period ending February 28, 2018. After reviewing the comments, Bonneville incorporated a number of revisions to the initial draft of proposed revisions to the rules. On May 2, 2018, Bonneville published a Notice of proposed revised rules of procedure in the **Federal Register**. *See* Proposed Revised Rules of Procedure and Opportunity for Review and Comment, 83 FR 19262 (May 2, 2018). Although rules of agency procedure are exempt from notice and comment rulemaking requirements under the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), Bonneville nevertheless published notice of the proposed revisions to the procedural rules in the **Federal Register** to promote transparency and public participation. Bonneville accepted written comments on the proposed revisions until June 4, 2018.

Part II—Response to Comments and Changes to Proposed Rules

Bonneville received seven comments on its proposed revisions to the rules of procedure (''proposed rules''). In response to these comments, changes were made to the proposed rules as noted below. For purposes of clarity, if a term used in the discussion below is defined in the rules, the term has the meaning found in the rules. For example, ''Party'' refers to all

intervenors and not Bonneville, while ''Litigant'' refers to all Parties and Bonneville.

Section 1010.1 General Provisions

Avangrid Renewables LLC, Avista Corporation, Idaho Power Company, PacifiCorp, Portland General Electric Company, and Puget Sound Energy, Inc. (''Avangrid/IOU'') note that Section 1010.1(b)(3) of the proposed rules states that the rules do not apply to ''[c]ontract negotiations unless otherwise provided by paragraph (a) [general rule of applicability] of this section.'' Avangrid/IOU Comments at 1. Avangrid/IOU states that this subsection is unclear, and the intent is not apparent. *Id.* Bonneville agrees that the provision is unclear. Upon further review, the provision is unnecessary because contract provisions are not negotiated or determined in section 7(i) ratemaking proceedings, but rather through separate negotiations. Furthermore, Bonneville's rates may be referenced in contracts, but rates can be effective only after they are established in section 7(i) proceedings. Hence, Bonneville has removed Section 1010.1(b)(3) from the final rules.

Section 1010.2 Definitions

Sacramento Municipal Utility District, Turlock Irrigation District, and the Transmission Agency of Northern California (the ''Northern California Utilities'' or ''NCU'') suggest revising the definition of ''Litigant'' to refer to ''Bonneville trial staff'' rather than ''Bonneville.'' NCU Comments at 9. NCU separately suggests adopting ''separation of functions'' rules and revising the proposed *ex parte* rule to prohibit *ex parte* communications between ''Bonneville trial staff'' and the Administrator or other Bonneville employees during section 7(i) proceedings. Bonneville has not adopted separation of functions rules or the distinction of a separate ''trial staff'' for the reasons explained in the discussion of the *ex parte* rule in Section 1010.5 below.

Section 1010.3 Hearing Officer

Avangrid/IOU states that Section 1010.3(f) of the proposed rules, which requires Litigants to ''direct communications regarding procedural issues to the Hearing Clerk,'' could be interpreted to preclude communications between Litigants on procedural issues. Avangrid/IOU Comments at 1–2. The intent of this section was to ensure that parties would contact the Hearing Clerk with any inquiries about administrative matters arising during the hearing instead of contacting Bonneville counsel or staff. The provision was not intended to limit discussions among Litigants on procedural issues. Section 1010.3(f) has been revised accordingly.

Section 1010.5 Ex Parte Communications

Avangrid/IOU states that Section 1010.5(d) of the proposed rules requires notice of an anticipated ''*ex parte* meeting'' but fails to require Bonneville to prepare and make available a statement setting forth the substance of any *ex parte* communication that takes place at any such meeting. Avangrid/IOU Comments at 2–3. Section 1010.2(j) of the proposed rules, however, provides that an *ex parte* communication ''means an oral or written communication (1) relevant to the merits of any issue in the pending proceeding; (2) that is not on the Record; and (3) *with respect to which reasonable prior notice to Parties has not been given.*'' (Emphasis added.) Under this definition, oral or written statements at noticed meetings are not *ex parte* communications and therefore do not require the preparation of a memorandum summarizing the meeting. This is not a change from Bonneville's existing procedural rules. When public notice is provided for a meeting, all Litigants have the opportunity to attend, to identify the attendees, and to note any issues discussed, positions taken, and statements made by any other attendees. However, in order to ensure that there is no ambiguity, Bonneville has added oral or written statements made at noticed meetings to the list in Section 1010.5(b) of communications that are not *ex parte.*

NCU urges Bonneville to adopt ''separation of function'' rules that would distinguish separate Bonneville ''trial staff'' that work on section 7(i) proceedings and prohibit *ex parte* communications between the trial staff and the Administrator or other Bonneville employees. NCU Comments at 19. NCU notes that Bonneville added language to the existing rules to prohibit *ex parte* communications between the Hearing Officer and Bonneville staff members and argues that the principle behind this prohibition applies equally to communications between Bonneville staff working on a section 7(i) proceeding and the Administrator. NCU suggests that such prohibitions are critical to fair and transparent proceedings. *Id.*

Bonneville added the language explicitly prohibiting *ex parte* communications with the Hearing Officer in recognition of the Hearing Officer's unique responsibility in proceedings under section 212(i)(2)(A) of the Federal Power Act. Section 212(i)(2)(A) requires the Hearing Officer to issue a recommended decision to the Administrator on the substantive issues in a proceeding to establish terms and conditions of transmission service. This requirement does not appear in the Northwest Power Act or apply to proceedings to establish rates. In proceedings to establish rates, the Hearing Officer's decision-making is limited to procedural issues.

NCU states that the inclusion of Bonneville staff members among those who are prohibited from having *ex parte* communications with the Hearing Officer under the revised rules implicitly acknowledges shortcomings in the existing rules. *Id.* This is incorrect. Bonneville has been conducting a public process in recent months (separate from revision of the procedural rules) to address the use of the section 212(i)(2)(A) procedures for the adoption of terms and conditions of transmission service. Stakeholders in that process expressed concern about the need to explicitly prohibit *ex parte* communications between the Hearing Officer and all participants in section 212(i)(2)(A) proceedings given that the Hearing Officer would make a recommended decision on the substantive issues in those proceedings. Bonneville added the language in response to those concerns, not because of a lack of transparency or fairness in the existing rules or complaints about such issues in the proceedings that Bonneville has conducted under those rules for many years.

NCU acknowledges that Bonneville's statutes do not require adoption of rules governing the separation of functions. NCU Comments at 21. Instead, the separation of functions requirement applies only to certain adjudications under the Administrative Procedure Act. 5 U.S.C. 554. Bonneville's section 7(i) proceedings, in contrast, are formal rulemakings. Indeed, the Northwest Power Act provides that ''[n]othing in this section shall be construed to require a hearing pursuant to section 554, 556, or 557 of title 5.'' 16 U.S.C. 839f(e)(2). Legislative history confirms that ''[t]he adjudication provisions of 5 U.S.C. 554 and 557 do not apply to hearings under this bill.'' H.R. Rep. 96–976, Pt. I, 96th Cong., 2d Sess. 71 (1980). Bonneville's section 7(i) proceedings establish generally applicable rates or terms and conditions of transmission service. These proceedings do not determine the legal status of particular persons or practices. Because these proceedings are not adjudications, Bonneville is not required to adopt separation of function rules.

Aside from the lack of legal requirements, adopting separation of function rules would lead to nonsensical results. It would effectively isolate the Administrator and the rest of Bonneville from the very subject matter experts that Bonneville employs to work on rates and terms and conditions of transmission service. Bonneville staff plays a critical role in providing expertise to the agency's establishment of rates. Sound decision-making in the context of formal rulemaking requires the input of subject matter experts.

Bonneville has not adopted NCU's suggestion regarding the separation of functions or associated *ex parte* provisions in the final rule.

Section 1010.6 Intervention

The Alliance of Western Energy Consumers (''AWEC'') states that Bonneville should decline to adopt proposed revisions to Section 1010.6(b), which provide that petitioners other than those ''that directly purchase power or transmission services under Bonneville's rate schedules, or trade organizations representing those entities'' must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the proceeding. AWEC Comments at 2. AWEC believes that the interests of end-use industrial consumer groups have been directly addressed in Federal case law, that customers and Bonneville understand the rights provided under the existing rules, and that making minor adjustments to the existing language runs the risk of creating confusion and disputes. *Id.*

The revisions in the proposed rules were not intended to change the rights or standards governing intervention in Bonneville's section 7(i) proceedings. The proposed rules use more specific language to clarify that the ''customers and customer groups'' referred to in the previous rules are entities that directly purchase power or transmission services under Bonneville's rate schedules (or trade organizations representing those entities). Those entities are permitted to intervene upon filing a petition that conforms to Section 1010.6. Any petitioners other than those entities will continue to be permitted to intervene if they submit petitions that demonstrate a relevant interest in the proceeding.

NCU seeks clarification that a Party that is granted intervention after the deadline for petitions to intervene may introduce evidence, conduct discovery, and participate in other ways if the time for doing so under the procedural schedule has not yet lapsed. NCU Comments at 9–10. Bonneville has not made changes in the rules in response to this comment, but ''late'' intervenors have the same rights and obligations as other parties with respect to participation in accordance with the procedural schedule.

Section 1010.11 Pleadings

NCU seeks clarification of the proposed rule governing interlocutory appeal of a Hearing Officer's decision to the Administrator. NCU Comments at 10. The proposed rule requires a Litigant to submit a motion for the Hearing Officer to certify a decision for interlocutory review by the Administrator, and the Hearing Officer must grant the motion in order for any review by the Administrator to occur. NCU requests that Bonneville revise the rule to allow a Litigant to appeal an issue directly to the Administrator if the Hearing Officer denies a Litigant's motion for certification. *Id.*

As the rule states, interlocutory appeal is discouraged. Bonneville included the ''certification'' requirement in the proposed rule to provide more guidance with respect to the process for seeking interlocutory appeal and to have the Hearing Officer assess whether appeal is justified based on specific criteria set forth in the rule. If the Hearing Officer finds that the appeal does not meet those criteria, the consideration of interlocutory review ends. The Hearing Officer acts as a gatekeeper to ensure that the Administrator is not burdened with unwarranted requests. Allowing Litigants to appeal directly to the Administrator notwithstanding the Hearing Officer's denial of certification would undermine the certification requirement. Bonneville has not made this proposed change.

Section 1010.12 Clarification Sessions and Data Requests

a. Section 1010.12(a) Clarification Sessions

NCU seeks clarification of Section 1010.12(a)(1) that statements made during clarification sessions may be used for the limited purpose of impeachment on cross-examination and as a basis for data requests. NCU Comments at 10–11. Clarification sessions are not transcribed or otherwise recorded. Parties, however, may submit data requests about statements made in clarification sessions, subject to the limitations of the rules. Absent a data response regarding such statements, using alleged statements from clarification sessions for purposes of impeachment during cross-examination would be problematic because of the lack of a record of such statements. If a Party believes that it might want to use such a statement as part of its case, it may submit a data request to confirm the statement in writing. The Hearing Officer will decide all issues regarding data requests based on the circumstances at the time.

b. Section 1010.12(b) Data Requests and Responses

Multiple entities commented on the proposed rules governing data requests, which included significant changes to the existing rules. Within the last four or five section 7(i) rate proceedings, Bonneville has had multiple experiences of a single Party in the proceeding submitting hundreds of data requests to Bonneville on a single issue. In the most recent rate proceeding, a Party submitted significant numbers of data requests to parties other than Bonneville, and the Hearing Officer was required to resolve a contentious dispute over requests that raised issues about, among other things, the potential disclosure of commercially sensitive information to a business competitor. Bonneville has drawn upon these experiences in developing the proposed revisions to the rules governing data requests and has attempted to balance (1) the need for procedures that facilitate the submission of data requests that could help further the development of a full and complete record, with (2) the discouragement of requests that are disproportionate to the needs of the case or the efficient completion of the section 7(i) process. Several commenters acknowledged Bonneville's attempt to strike such a balance, but the comments reveal differing perspectives on issues related to that balance, such as the scope of permissible data requests, access to commercially sensitive information, and the treatment of claims of privilege.

1. Section 1010.12(b)(1) Scope in General

Section 1010.12(b)(1) of the proposed rules allows data requests ''relevant to any issue in the proceeding'' and includes factors that are intended to help otherwise define the scope of permissible data requests and ensure that such requests are proportional to the needs of the case. Section 1010.12(b)(1)(i) of the proposed rules requires each Litigant to be ''reasonable'' in the number and breadth of its data requests in consideration of these factors, and Section 1010.12(e)(4) requires the Hearing Officer to consider these factors in deciding any motion to compel. The Public Power Council, Eugene Water & Electric Board, Seattle

City Light, Public Utility District No. 1 of Snohomish County, PNGC Power, Northwest Requirements Utilities, and Western Public Agencies Group (''Joint Customers'') note that the factors in Section 1010.12(b)(1) and (e)(4) appear to limit the scope of discovery and prevent abuse and suggest that Bonneville acknowledge this intent in the Final FRN. Joint Customers Comments at 2. They believe such an acknowledgement would assist the Hearing Officer in applying Section 1010.12. Other commenters made similar suggestions that Bonneville comment on or clarify the potential application of the rules under specific scenarios that could arise in the future. Bonneville is not addressing any specific scenario in this notice or determining how the Hearing Officer should resolve any specific issue. In principle, however, Bonneville agrees that its comments regarding the intent of the rules could prove useful for parties and the Hearing Officer in the future. The Joint Customers' observations about the intent behind the factors included in Section 1010.12(b)(1) and (e)(4) are correct: Those factors are intended by Bonneville to limit the scope of discovery and prevent abuse.

Powerex comments that the relevancy standard in Section 1010.12(b)(1) creates the ''potential for broad, invasive, and burdensome discovery'' and that such a standard could be applied in a manner at odds with Bonneville's statutory requirement to conduct section 7(i) proceedings expeditiously and develop a full and complete record. Powerex Comments at 2. Powerex also maintains that the scope of data requests under Section 1010.12(b)(1) appears to be substantially broader than the statutory requirement that the hearing give parties ''adequate opportunity to offer refutation or rebuttal of any material submitted by any other person. . . .'' *Id. quoting* 16 U.S.C. 839(e)(i)(2)(A). Powerex believes that the factors limiting the scope of discovery and preventing abuse are necessary for conducting expeditious hearings and for reducing the disincentive to participate in Bonneville's proceedings.

Bonneville appreciates Powerex's concern about broad, invasive, and burdensome data requests. All of the provisions in Section 1010.12(b)(1) are intended to comprehensively define the scope of permissible data requests. The relevancy standard for data requests was the subject of significant debate within Bonneville and among stakeholders. Bonneville ultimately opted for allowing data requests relevant to any issue in the proceeding, as limited by other aspects of the rules. This includes the requirement that each Litigant must be ''reasonable'' in the number and breadth of its requests. Bonneville intentionally used ''breadth'' in Section 1010.12(b)(1)(i) because that term could encompass a variety of situations or requests (or patterns of requests) of an objectionable nature. Moreover, by allowing a Responding Litigant to object to an ''unreasonable'' request or pattern of requests, Section 1010.12(b)(1)(i) is intended to help ensure that a Requesting Litigant will observe its obligation with respect to reasonableness at the time it is submitting requests. In the event of a dispute over a data request, Section 1010.12(e)(2) explicitly places the burden on a Litigant filing a motion to compel to demonstrate that the request is within the scope of Section 1010.12(b)(1). This includes demonstrating that the request is reasonable. Bonneville believes these limitations help limit the potential for broad, invasive, and burdensome data requests.

Bonneville disagrees that the provisions in Section 1010.12(b)(1) are inconsistent with the Northwest Power Act's requirements to conduct proceedings expeditiously, develop a full and complete record, and provide an adequate opportunity to rebut any other person. *See* Powerex Comments at 2. As described above, Bonneville's goal in this section was to create a balance that implements and adheres to those standards.

NCU urges Bonneville to revise the factor in Section 1010.12(b)(1) that considers ''the extent of the Responding Litigant's testimony on the subject.'' NCU Comments at 7. NCU maintains that the focus on the extent of a Litigant's testimony is an ''inferior proxy for the extent of a Responding Litigant's stake in the outcome of the issue.'' *Id.* It suggests revising the rule to refer to the Litigant's stake in the outcome.

Bonneville has not adopted the revision suggested by NCU. Bonneville is concerned that the concept of a Litigant's ''stake'' in an issue is ambiguous and would be difficult to assess by an objective measure using available information. This would pose problems for the Hearing Officer in resolving disputes over data requests and for Litigants submitting those requests in the first place. Indeed, because the factors in Section 1010.12(b)(1) help define the scope of permissible data requests, a Litigant should consider those factors when drafting and submitting a data request. It is unclear how a Litigant could know another Litigant's ''stake'' in the outcome of an issue at the time of the request. In contrast, both a Litigant submitting a data request and a Hearing Officer addressing a dispute over a request can easily assess the extent of a Litigant's testimony on an issue.

As an alternative to its suggestion to replace the factor referring to ''the extent of the Responding Litigant's testimony,'' NCU asks Bonneville to clarify that a Party cannot avoid producing relevant information *solely* by claiming that it has not offered testimony on the subject. *Id.* at 8. In response, the extent of a Litigant's testimony is just one of the factors for the Hearing Officer to consider when resolving data request issues, but this factor is intended to provide a Party some ability to manage the extent of its exposure to data requests. The scope in Section 1010.12(b)(1) is not so broad as to expose a Party to broad or invasive requests about every issue in the proceeding simply because the Party intervened. In addition, although nothing in the rules prohibits submitting a data request to a Litigant about another Litigant's testimony, Bonneville expects that, absent unusual circumstances, a request will seek information relevant to issues raised in the testimony of the Litigant to which the request is submitted.

NCU also raises an issue related to a dispute over the scope of data requests in the BP–18 rate proceeding, arguing that Bonneville had ''promised'' to address the issue in the revision of the procedural rules. NCU Comments at 15. The issue in BP–18 stemmed from the Hearing Officer's denial of a motion to compel filed by Joint Party 3 (''JP03''), which consisted of the same entities that comprise NCU. In the order denying the motion to compel, the Hearing Officer found that for ''information to be relevant in a rate proceeding, it must fall within the scope of the testimony put forward by the witness and the information used by the witness to produce that testimony.'' Order on JP03 Motion to Compel JP01's Response to Data Requests, BP–18–HOO–21, at 2. NCU argued in BP–18 that requiring information to be ''used by'' a witness to be relevant and subject to data requests created the potential to shield information from discovery by not providing it to a witness. The BP–18 Final Record of Decision acknowledged this issue and stated that ''Staff and stakeholders should consider these arguments in the review of Bonneville's procedural rules after the BP–18 proceeding has concluded.'' Administrator's Final Record of Decision, BP–18–A–04, at 183–84.

As an initial matter, Bonneville did not ''promise'' that the revised procedural rules would expressly address this issue. *See* NCU Comments at 15. The Final Record of Decision instructed Staff and stakeholders to consider NCU's arguments as part of the process for revising the procedural rules, and all stakeholders have now had opportunity to advocate for what they believe the rules should include. Whereas the previous rule governing data requests includes relatively undefined language that had not been interpreted in detail since it was adopted, Staff and stakeholders have had considerable discussion about the language in the revised rules and the attempts to strike the right balance concerning data requests.

As for the specific issue NCU raises, Section 1010.12(b)(1) defines the scope of permissible data requests, and nothing in that section explicitly excludes information or materials from that scope solely because a witness did not use or rely on that information or material in the development of his or her testimony. The final rule is not intended to limit data requests to only the information that a witness relied on in developing testimony. However, Bonneville expects that the Hearing Officer will resolve any dispute over data requests based on all of the facts and information available at the time.

Avangrid/IOU notes Section 1010.12(b)(1)(vi) of the proposed rules, which provides: Bonneville shall not be required to produce documents that, in the opinion of Counsel for Bonneville, *may* be exempt from production under the Freedom of Information Act, 5 U.S.C. 552, or the Trade Secrets Act, 18 U.S.C. 1905.

Avangrid/IOU Comments at 3 (emphasis added). Avangrid/IOU believes this language is too broad and suggests the following language:

Bonneville shall not be required to produce documents that, in the opinion of Counsel for Bonneville, would be determined to be exempt from production under the Freedom of Information Act, 5 U.S.C. 552, or the Trade Secrets Act, 18 U.S.C. 1905.

Id. at 3–4. This is a reasonable suggestion for clarification of this provision; however, Bonneville must be mindful not to predetermine the applicability of any particular exemption under the Freedom of Information Act (''FOIA'') before it receives an actual FOIA request. Bonneville has revised the final rule to be more consistent with the language used in the existing rule. Under this subsection, Bonneville's Counsel will make a good faith effort to make a reasonable determination.

2. Section 1010.12(b)(2) Submitting Data Requests

Avangrid/IOU suggests Section 1010.12(b)(2)(i) of the proposed rules should be revised as follows:

A Data Request must identify the Prefiled Testimony and Exhibits (page and line numbers *insofar as is practicable*) or other material addressed in the request.

Avangrid/IOU Comments at 4. Avangrid/IOU notes that it may be impracticable to specify a page and line number in a data request if, for example, a data request asks where in a prefiled testimony or exhibit a topic is addressed. *Id.* Although Bonneville understands the intent behind the proposed revision, it is important that Litigants specifically identify the source material to which a data request is addressed. Avangrid/IOU's proposed language could be interpreted to allow Parties to ignore the basic rule and determine independently that a specific citation was not ''practicable.'' Therefore, Bonneville will not adopt the proposed language. However, in the event the source material cannot be cited by page and line number, Litigants must take steps to ensure the material is cited in a manner that allows the Responding Litigant to easily identify it.

NCU takes issue with Section 1010.12(b)(2)(iii) of the proposed rules, which prohibits submitting data requests to any Litigant but Bonneville during the period immediately following Bonneville's initial proposal. NCU Comments at 11–12. NCU maintains that Bonneville has not explained the reason for this limitation and that the rule could make the hearing process less efficient and fair. *Id.* at 11.

One of the themes that has emerged during discussions about the revising the procedural rules is that Bonneville should be the primary focus of data requests submitted by a Party in a section 7(i) proceeding. The comments of the Joint Customers and Powerex make clear their concerns about rules that create opportunities for expansive or invasive Party-to-Party data requests, particularly among competitors. Bonneville takes those concerns seriously. Moreover, Bonneville shares the perspective that Bonneville should be the primary focus in section 7(i) proceedings, particularly during the period after publishing its initial proposal.

Bonneville adopted the limitation in Section 1010.12(b)(2)(iii) of the proposed rules out of concern that Litigants other than Bonneville potentially could be exposed to data requests over a lengthy period of time at a point in the proceeding when the Parties must be preparing their answering cases to Bonneville's extensive initial proposal. The testimony in Bonneville's initial proposal is the *only* testimony that would have been filed at this point. The circumstances that would justify a Party submitting data requests about Bonneville's initial proposal to a Litigant other than Bonneville would be rare.

Bonneville acknowledges that Party-to-Party data requests about Bonneville's initial proposal have not been an issue in previous section 7(i) proceedings, but this is because such requests have never been submitted in the 38–year history of such proceedings. As explained above, however, Bonneville has seen use of the data request procedures in the last several rate proceedings that it would not have contemplated, and this is one area where Bonneville feels it is appropriate to exercise its discretion over the rules governing data requests to address this concern even if the specific situation has not yet presented itself.

NCU's primary point is that a blanket prohibition on the submission of Party-to-Party data requests immediately following the initial proposal is overly restrictive, because a Responding Party will still have the opportunity to raise all applicable objections to a request. NCU Comments at 12. Bonneville is concerned about adopting rules that may increase the likelihood of disputes over data requests at a time in the proceeding when Parties are preparing their direct testimony, but NCU's point that a blanket prohibition lacks balance has merit. There could be limited circumstances when Party-to-Party data requests immediately following the publication of Bonneville's initial proposal might be appropriate, and a Party should not be foreclosed from the opportunity to submit such requests if it would be essential to the development of the Party's case. Bonneville has made changes in the final rule to provide the opportunity to seek leave from the Hearing Officer to submit such requests in limited circumstances. To be clear, the standard for justifying the need for such requests has intentionally been set very high, and Bonneville believes that the circumstances in which such requests would be justified are rare.

NCU also requests clarification that the requirement in Section 1010.12(b)(2)(iv) that subparts of a data request ''must address only one section or other discrete portion of *a* Litigant's Prefiled Testimony and Exhibits'' was not intended to require that the data requests must be directed to the

Responding Litigant's testimony. *Id.* NCU correctly notes that the intent of this provision is to ensure that the subparts of a multipart data request are limited in number and related to the same general subject matter.

3. Section 1010.12(b)(3) Responding to Data Requests

Powerex notes that Section 1010.12(b)(3)(iii) of the proposed rules provides that as soon as a Responding Litigant believes it will not be able to respond to one or more data requests by the due date because ''of the volume of or other burden caused by the request(s),'' the Responding Litigant must contact the Requesting Litigant and confer about a possible delay in the due date. Powerex Comments at 4. If the Litigants have not resolved the issues by the due date, the Responding Litigant must object and then supplement the objection with a response in good faith as soon as possible thereafter. *Id.* Powerex notes the rules provide that a Responding Litigant has five business days to respond to a data request, but Section 1010.12(b)(3)(iii) permits informal extension of that deadline to some undefined time to allow Responding Litigants to respond to broad and/or voluminous data requests. *Id.* Powerex believes only the Hearing Officer has authority to extend the due date of a data response. *Id.* Powerex also suggests that, in such circumstances, the Litigants should confer about the scope and burden of the data request(s) and seek to refine the request(s) to permit production within the five-day response period. *Id.*

Bonneville has revised Section 1010.12(b)(3)(i) to clarify that Litigants attempting to resolve a data request dispute also have the ability to agree to a response date outside the five-day deadline. Although Powerex is correct to be concerned about an extension resulting in a response being received too late to be incorporated into a Litigant's testimony, Bonneville believes this will be avoided by the Litigants' resolution of the issue; in other words, a Requesting Litigant would not agree to a date for a response that would arrive too late to be used. In the event the Litigants cannot resolve the response date, the Hearing Officer would resolve the issue based on a motion filed by the Requesting Litigant and a response filed by the Responding Litigant.

4. Section 1010.12(c) Information That Is Attorney-Client Privileged or Attorney Work Product

Section 1010.12(c) of the proposed rules provides that a Litigant may be required to identify materials that the Litigant has withheld from a response to a data request on the basis of the attorney-client privilege or the work product doctrine. This section also prohibits the Hearing Officer, however, from ordering an *in camera* review or releasing such information.

NCU requests clarification that the Hearing Officer may apply the sanctions provided for in Section 1010.12(f) if he or she determines that the Responding Litigant's claim of privilege is unsubstantiated. NCU Comments at 13. The proposed rule governing attorney-client privilege and work product information intentionally limits the Hearing Officer's ability to order the review or disclosure of such information. Bonneville believes that disputes about materials that are claimed to be attorney-client privileged or attorney work product are unlikely to be a productive use of resources, particularly given the requirement that, upon request, Counsel for a Responding Litigant must declare under penalty of perjury that the materials are protected from disclosure.

Bonneville believes that a sworn declaration provided by Counsel for a Responding Litigant should be sufficient to address any questions about claims of privilege or work product in almost all cases. Nevertheless, if a Requesting Litigant believes that the information provided in such a declaration is unsubstantiated, nothing in the rules prohibits the Requesting Litigant from filing a motion to compel. If the Hearing Officer were to grant the motion to compel, failure to comply with the Hearing Officer's order would be a basis to impose sanctions under Section 1010.12(f).

5. Section 1010.12(d) Commercially Sensitive Information and Critical Energy/Electric Infrastructure Information

Powerex urges revision of the proposed rules related to commercially sensitive information (''CSI''). Powerex Comments at 3. Powerex argues that the permissiveness of the rules threatens the development of a full and complete record because parties are less likely to fully participate to avoid having to produce commercially sensitive information in response to data requests. *Id.*

The production of commercially sensitive information has not been a significant issue in most section 7(i) proceedings. Other than a provision allowing the Hearing Officer to adopt a protective order, the previous rules do not address the disclosure of such information. In response to the discovery dispute in the BP–18 proceeding, described above, the final record of decision identified the requirements around commercially sensitive information as one of the topics to address in the revision of the procedural rules. Administrator's Final Record of Decision, BP–18–A–04, at 185.

The proposed rules require the disclosure of commercially sensitive information (for a data request that is otherwise within the scope), subject to a protective order. The rules specify certain requirements that Bonneville needs in any protective order for procedural reasons, but the rules otherwise provide for the Requesting and Responding Litigants to negotiate the terms of the order. Notwithstanding the rules providing for disclosure of commercially sensitive information, subsection (d)(3) discourages the *use* of such information in any filing because of the administrative burden associated with having such information in the record.

Powerex urges revising the rules to discourage both the *discovery* and *use* of commercially sensitive information in section 7(i) proceedings. *Id.* Bonneville has made no changes in response to Powerex's comments but acknowledges the concerns about discovery of commercially sensitive information. Bonneville does not typically designate information or materials as commercially sensitive in response to data requests, so the primary concern here relates to disclosure of commercially sensitive information by a Party. Some aspects of the revised rules should help to address such concerns. First, given the primary focus on Bonneville's proposals in section 7(i) proceedings, only unusual circumstances would make it important to seek a Party's commercially sensitive information to assess a Bonneville proposal. All Litigants should be particularly attentive to the requirement to be ''reasonable'' in the breadth of a request that might seek commercially sensitive information, particularly for a request to a competitor. Section 7(i) proceedings are not a forum to seek information to adjudicate the status of particular persons or practices or to gain strategic advantage over competitors. Bonneville will monitor this issue in upcoming proceedings to assess whether revisions to the rules are necessary to prevent abuse.

Second, in many types of administrative proceedings, protective orders are commonly used to protect against unauthorized disclosure or misuse of confidential information provided in response to data requests. For the most part, the rules put the

terms of that protective order in the hands of the Requesting and Responding Litigants. The rules allow the Responding Litigant to make a proposal for almost all of the substantive terms of the protective order, which should provide the opportunity to develop acceptable terms.

Third, the rules provide for a ''highly confidential'' designation for information or materials that require heightened protection. Furthermore, the rules authorize the Hearing Officer, as a form of heightened protection, to allow the Responding Litigant to withhold the information altogether. In other words, a Litigant will have the opportunity to convince the Hearing Officer that the sensitivity of particular information justifies excusing the Responding Litigant from disclosing the information.

Finally, Powerex urges Bonneville to revise Section 1010.13(f) to disallow the Hearing Officer to impose sanctions under certain circumstances. Powerex Comments at 3–4. Powerex maintains that ''if a party files no testimony or its filed testimony does not rely on or reference CSI, then the responding party should not be penalized for protecting its own legitimate business interests when it refuses to produce CSI.'' *Id.* at 3. Powerex's proposal would be unworkable as it relates to the provisions of the rules governing disputes over data requests and motions to compel. If the Hearing Officer grants a motion to compel a Responding Litigant to produce commercially sensitive information in response to a data request, permitting a Litigant to refuse to comply with the order would undermine the rules that govern disputes over data requests. Bonneville has not adopted Powerex's suggestion for this reason.

With respect to Powerex's concern about being required to disclose commercially sensitive information in a situation where a Litigant files no testimony or does not rely on such information, the rules already require consideration of that factor in assessing whether a request is within the scope established in Section 1010.12(b)(1) and is ''reasonable'' under Section 1010.12(b)(1)(i). In addition, Section 1010.12(e)(4) requires the Hearing Officer to consider that factor in resolving a motion to compel. As described above, that factor is intended to provide a Litigant some ability to manage its exposure to data requests. A Litigant that is concerned about potentially having to provide commercially sensitive information in response to a data request certainly should not put that information at issue in its testimony. Bonneville is not directly addressing the specific situation that Powerex raises. The Hearing Officer will resolve any dispute over data requests based on the facts and information available at the time.

In considering Powerex's comments and an NCU comment that Bonneville addresses in the next section, Bonneville found that the reference in Section 1010.12(e)(4) to whether a Litigant filed testimony related to the data request effectively repeated the factor in Section 1010.12(b)(1) referring to ''the extent of the Responding Litigant's testimony on the subject.'' Bonneville has removed the reference in Section 1010.12(e)(4) of the final rules, but the intent of this provision has not changed. In resolving a motion to compel, the Hearing Officer must consider the extent of a Litigant's testimony as one of the factors under Section 1010.12(b)(1).

6. Section 1010.12(e)(4) Resolution of Dispute by the Hearing Officer

Powerex notes that Section 1010.12(e)(4) provides that the Hearing Officer may hold a telephone conference ''to discuss and attempt to resolve a data request dispute . . .'' and suggests that Bonneville should clarify whether the rules allow or intend the Hearing Officer to rule on motions to compel orally during teleconferences, and if so, the rules should clarify how the Hearing Officer must document such an order. Powerex Comments at 4. Powerex states that the rules should clarify that a Hearing Officer's order on a motion to compel should be memorialized in writing if either Party so requests, in order to provide adequate opportunity for appeal, if necessary. *Id.* Bonneville believes the Hearing Officer should have the authority to orally rule on a data request dispute, including a motion to compel, during a teleconference. Bonneville also agrees that any oral ruling by the Hearing Officer in a teleconference must be memorialized in writing, regardless of whether a Party so requests. All Litigants should be able to know the resolution of discovery disputes arising during the proceeding. Section 1010.12(e)(4) has been revised accordingly.

Powerex also suggests that Bonneville should clarify whether Section 1010.19, governing telephone conferences, applies to telephone conferences attempting to resolve data request disputes. Powerex Comments at 4. Section 1010.19 provides:

> Telephone conferences may be permitted in appropriate circumstances, provided that: (1) There is a proposed agenda for the conference concerning the points to be considered and the relief, if any, to be requested during the conference; and (2) Litigants are provided notice and given an opportunity to be represented on the line. If the Hearing Officer schedules a telephone conference, the Hearing Officer may require that a court reporter be present on the line.

Section 1010.19 does not apply to conferences under Section 1010.12(e)(4) to resolve data request disputes. Section 1010.19 is intended to apply to telephone conferences regarding issues in which all Litigants might have an interest and which all Litigants should have the opportunity to attend. Data request disputes should be resolved, if possible, by the Litigants involved in the dispute and the Hearing Officer. As such, conferences to address data request disputes should not be subject to the notice and other requirements in Section 1010.19. Conferences regarding such disputes should involve only matters of procedure and not substantive matters that would result in *ex parte* communications with the Hearing Officer. In the event that communications relevant to the merits of any issue in the proceeding are made to the Hearing Officer during such a conference, the requirements of Section 1010.5(f) apply. Section 1010.12(e)(4) has been revised to remove the reference to a ''telephone'' conference to reflect that the requirements of Section 1010.19 do not apply to conferences regarding data request disputes.

NCU urges Bonneville to modify Section 1010.12(e)(4) to require the Hearing Officer to consider a Litigant's ''stake in the outcome'' of an issue in deciding a motion to compel rather than whether the Litigant ''filed testimony related to the data request'' before it received the request. NCU Comments at 14–15. NCU raises the same concern that it did under Section 1010.12(b)(1), discussed above. Bonneville is not adopting this factor for the reasons discussed previously.

Section 1010.13 Prefiled Testimony and Exhibits

Avangrid/IOU suggests Section 1010.13(a)(5) of the proposed rules should be revised as follows:

> Rebuttal testimony must *insofar as is practicable* refer to the specific material being addressed (pages, lines, topic).

Avangrid/IOU Comments at 4. Avangrid/IOU notes that it may be impracticable to specify pages and lines being addressed—for example, if the rebuttal testimony points out that the testimony being rebutted fails to address a factor. *Id.* Although Bonneville understands the intent of Avangrid/IOU's proposed revision, it will not be adopted for the reasons stated in

response to Avangrid/IOU's comments on Section 1010.12(b)(2)(i) above. If the testimony being rebutted fails to address a factor, a Litigant should cite where the other factors are addressed.

Section 1010.14 Cross-Examination

Avangrid/IOU notes Section 1010.14(k)(1) of the proposed procedures:

A Litigant must file each Cross-examination Exhibit to be presented to a witness for any purpose two Business Days before the witness is scheduled to appear.

Avangrid/IOU Comments at 4. Avangrid/IOU suggests that this sentence be clarified to explain how a Cross-Examination Exhibit is to be filed. *Id.* In response, Section 1010.10(a) of the proposed rules provides that ''[u]nless otherwise specified, a Litigant shall make any filing provided for by these rules with the Hearing Officer through the Secure Website.'' This provision governs the manner in which Cross-Examination Exhibits are to be filed.

Section 1010.20 Hearing Officer's Recommended Decision

NCU argues that the Hearing Officer should issue a recommended decision in Bonneville's rate cases. NCU Comments at 22–24. NCU suggests this would ensure that the first look at the Bonneville staff's proposal would be an independent one, not influenced by communications from the same Bonneville staff advocating for its adoption. *Id.* at 22. This proposal, however, is not supported by the language or the intent behind section 7(i) of the Northwest Power Act and is contrary to 38 years of administrative practice.

Section 7(i) of the Northwest Power Act prescribes the procedures Bonneville uses to establish its power and transmission rates. 16 U.S.C. 839e(i). Section 7(i) provides that, when establishing rates, ''[o]ne or more hearings shall be conducted as expeditiously as practicable by a Hearing Officer to develop a full and complete record and to receive public comment in the form of written and oral presentation of views, data, questions, and argument related to such proposed rates.'' *Id.* Thus, the Hearing Officer's role in the section 7(i) ratemaking hearings is to develop the record. Section 7(i) does not grant the Hearing Officer the authority to make *any* decision regarding the merits of the issues in the ratemaking proceedings, nor to make any substantive or recommended decision on the merits.

This is in contrast to Section 212 of the Federal Power Act, which provides that when the Bonneville Administrator provides an opportunity for a hearing under section 7(i)(1)–(3) of the Northwest Power Act, ''the hearing officer *shall* . . . make a recommended decision to the Administrator that states the hearing officer's findings and conclusions, and the reasons or basis thereof, on all material issues of fact, law, or discretion presented on the record . . . .'' 16 U.S.C. 824k(i)(2)(A)(ii)(II) (emphasis added). Congress explicitly requires a Hearing Officer to make a recommended decision to the Administrator in a section 212 proceeding, but there is no such requirement for the Hearing Officer in Bonneville's power and transmission rate cases.

Furthermore, as noted previously, the adjudication requirements of the Administrative Procedure Act do not apply. The Northwest Power Act explicitly provides that ''[n]othing in this section shall be construed to require a hearing pursuant to section 554, 556, or 557 of title 5.'' 16 U.S.C. 839f(e)(2). The legislative history confirms that ''[t]he adjudication provisions of 5 U.S.C. 554 and 557 do not apply to hearings under this bill.'' H.R. Rep. 96–976, Pt. I, 96th Cong., 2d Sess. 71 (1980).

Finally, sound decision-making regarding Bonneville's rates necessitates access to Bonneville staff with subject matter expertise. This is particularly necessary to determine whether Bonneville's rates are set to satisfy the applicable statutory requirements. It would be impractical for the Administrator to delegate substantive rate decision-making authority to the Hearing Officer or limit access to Bonneville staff expertise.

NCU argues that despite the fact that section 7(i) does not mandate that a Hearing Officer issue a recommended decision, the functions of advising the agency head and litigating the rate case should be handled by separate personnel to preserve the actual and perceived fairness of the process. NCU Comments at 22–23. NCU also argues that having agency staff assist with preparing the Administrator's draft and final records of decision reduces the value of the rule prohibiting *ex parte* communications between Bonneville employees and the Hearing Officer. *Id.* at 24. Bonneville addressed NCU's comments regarding separation of functions and the *ex parte* rule in the discussion of Section 1010.5 of the rules above. Bonneville has been conducting section 7(i) proceedings to establish rates for almost 40 years and has not heard public concern about actual or perceived unfairness in those proceedings during that time. Bonneville is following the process prescribed by Congress to establish rates, and there is nothing novel or unfair about having agency staff prepare a rulemaking proposal and assist the decision-maker in developing a final proposal. Also, the Hearing Officer addresses only procedural matters in Bonneville's rate cases, so the rule prohibiting *ex parte* communications between Bonneville employees and the Hearing Officer only increases the value of Bonneville's *ex parte* rule compared to Bonneville's previous rules. Agency staff's work on records of decision does not reduce this value.

NCU also argues that the reasonableness of Bonneville's transmission rates may be affected by the terms and conditions of its transmission services and vice versa, and having the Hearing Officer responsible for fashioning recommendations on both rates and terms and conditions of transmission service in a single recommended decision could reduce the potential for incompatible outcomes. NCU Comments at 23. Bonneville believes NCU's concerns are best addressed on a case-by-case basis rather than through general procedural rules. For example, the potential interrelationship between issues in a terms and conditions proceeding and a ratemaking proceeding could be addressed through the adjustment of the terms and conditions proceeding's procedural schedule. Although Bonneville believes that incompatible outcomes in the draft decisions in the two proceedings would be unlikely, the Administrator's authority with respect to final decisions on all issues would avoid any inconsistencies.

NCU argues that Bonneville recognizes the benefits of having one decision-maker (the Hearing Officer) write a draft decision on terms and conditions while another decision-maker (the Administrator) writes the final opinion. *Id.* at 23–24. It is the law, however, that requires the Hearing Officer to write a recommended decision in the terms and conditions proceeding. Thus, Bonneville has not chosen to delegate authority to the Hearing Officer in a terms and conditions proceeding to write a recommended decision because of any particular ''benefits.'' This is the same reason Bonneville does not require a recommended decision for Bonneville's ratemaking; it is not required by law and was not intended by Congress.

The Los Angeles Department of Water and Power (''LADWP'') encourages

Bonneville to revise Section 1010.20 to add the standard that the Hearing Officer will apply to make decisions on the terms and conditions of transmission service in section 212(i) proceedings. LADWP Comments at 1. The scope of the rules, which is set forth in Section 1010.1(d), includes the ''procedures and processes'' for Bonneville proceedings. The rules do not establish substantive standards for the Administrator's final decisions in those proceedings. Adding a substantive standard for the Administrator's decisions would be at odds with the purpose of the rules. Bonneville is conducting a separate public process to discuss the use of FPA section 212(i) to adopt the terms and conditions of transmission service, and Bonneville encourages stakeholders to direct comments about the substantive standards for section 212(i) proceedings to that process.

Section 1010.21 Final Record of Decision

Powerex notes that in Section 1010.21 governing Final Records of Decision, Bonneville deleted the requirement that any Final Record of Decision (either in a rate case or a section 212(i) hearing) should set forth the reasons for reaching any findings and conclusions or a full and complete justification for the rates. Powerex Comments at 4. Powerex suggests that Bonneville retain the deleted language or clarify why it should be deleted. *Id.* As described in the preceding paragraph, the rules establish the procedures governing the conduct of section 7(i) proceedings, not the substantive standards for deciding any issue in such proceedings on the merits. Removing substantive standards for the Administrator's decisions is consistent with the purpose of the rules.

Miscellaneous

Mr. Charles Pace states that Bonneville appears to be conflating the section 7(i) Bonneville ratemaking and section 212 transmission terms and conditions proceedings without providing a cogent reason for doing so. Pace Comments at 1. Bonneville, however, is not conflating the ratemaking proceedings with section 212 terms and conditions proceedings. To the contrary, each type of proceeding is conducted independently based on its particular subject matter and in a separate docket. The fact that the two proceedings are conducted using most of the same provisions of Bonneville's section 7(i) procedures does not mean the substantive proceedings are the same.

Mr. Pace suggests that the section 7(i) ratemaking process will be used to divert attention from the section 212 terms and conditions process, and vice versa. *Id.* This argument is unclear. Each proceeding will receive the same ''attention'' because Bonneville will publish separate notices in the **Federal Register** for each proceeding, and each hearing will be conducted by an independent Hearing Officer with the intervening Litigants.

Mr. Pace states that the procedural rule revisions are intended to devise a ''crosswalk'' between the section 7(i) ratemaking and section 212 terms and conditions proceedings that allows Bonneville to avoid compliance with the requirements of both. *Id.* This argument is also unclear. Bonneville's procedures simply establish the rules by which the respective proceedings are conducted. Bonneville must still comply with all statutory requirements regarding the establishment of rates and all statutory requirements regarding the establishment of transmission terms and conditions. The procedures do not allow Bonneville to avoid compliance with any applicable substantive statutory standards.

Mr. Pace states that the ratemaking process envisioned by Congress is ''infused'' with direct public involvement, but that this is not reflected in the rules of procedure, which are therefore contrary to law. *Id.* To the contrary, Bonneville's procedural rules are designed to implement, and supplement, the procedural requirements of section 7(i) of the Northwest Power Act for Bonneville's ratemaking and terms and conditions proceedings. The rules allow formal public participation in the section 7(i) ratemaking hearings by Bonneville and intervening Parties. *See* Section 1010.6. The rules also allow informal participation in the ratemaking process by members of the general public. *See* Section 1010.8. Members of the general public, called ''participants,'' may submit written comments regarding Bonneville's ratemaking for the record or present oral comments in legislative-style hearings when scheduled. *Id.* In the event new issues arise after a deadline for participant comments, the Hearing Officer may extend the deadline for such comments. *Id.* Also, participant comments are made available on Bonneville's website. *Id.* Bonneville believes these provisions enable and encourage direct public involvement in Bonneville's ratemaking.

The Joint Customers urge Bonneville to closely monitor the hearing officer's interpretation of the rules in the BP–20 and TC–20 proceedings and correct any misapplication of the rules in the agency's records of decision or through subsequent revisions. Joint Customers Comments at 2. They note that although having durable, predictable procedural rules is important to all Litigants, Bonneville should update the rules as regularly as necessary to keep them robust and up-to-date. *Id.* Bonneville agrees that the BP–20 and TC–20 proceedings will be the first proceedings in which Bonneville will implement the new procedural rules. Only by using the rules in actual proceedings will Bonneville be able to identify any problems. For this reason, Bonneville will monitor the implementation of the rules in the BP–20 and TC–20 proceedings, and in subsequent proceedings, and will address any problems in records of decision or through revisions of the rules.

Part III—Final Rules of Procedure

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Section 1010.1 General Provisions

(a) General rule of applicability. These rules apply to all proceedings conducted under the procedural requirements contained in Section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839e(i), for the purpose of:

(1) Revising or establishing rates under Section 7 of the Northwest Power Act;

(2) Revising or establishing terms and conditions of general applicability for transmission service on the Federal Columbia River Transmission System pursuant to Section 212(i)(2)(A) of the Federal Power Act, 16 U.S.C. 824k(i)(2)(A); or

(3) Addressing other matters the Administrator determines are appropriate for such rules.

(b) Exceptions to general rule of applicability. These rules do not apply to:

(1) Proceedings regarding implementation of rates or formulae previously adopted by the Administrator and approved, on either an interim or final basis, by the Federal Energy Regulatory Commission; or

(2) Proceedings required by statute or by contract, in which the Administrator does not propose either (a) a new rate, formula rate, discount, credit, surcharge, or other rate change, or (b) any new terms and conditions of transmission service or revisions thereto.

(c) Effective date. These rules will become effective 30 days after publication of the final rules in the **Federal Register**.

(d) Scope of rules. These rules are intended to establish procedures and processes for all proceedings described in paragraph (a) of this section. These rules do not establish substantive standards for the Administrator's final decisions on issues in such proceedings.

(e) Waiver. To the extent permitted by law, the Administrator may waive any section of these rules or prescribe any alternative procedures the Administrator determines to be appropriate.

(f) Computation of time. Except as otherwise required by law, any period of time specified in these rules or by order of the Hearing Officer is computed to exclude the day of the event from which the time period begins to run and any day that is not a Business Day. The last day of any time period is included in the time period, unless it is not a Business Day. If the last day of any time period is not a Business Day, the period does not end until the close of business on the next Business Day.

Section 1010.2 Definitions

Capitalized terms not otherwise defined in these rules have the meanings specified below.

(a) ''Administrator'' means the Bonneville Administrator or the acting Administrator.

(b) ''Bonneville'' means the Bonneville Power Administration.

(c) ''Business Day'' means any day that is not a Saturday, Sunday, day on which Bonneville closes and does not reopen prior to its official close of business, or legal public holiday as designated in 5 U.S.C. 6103.

(d) ''Commercially Sensitive Information'' means information in the possession of a Litigant (including its officers, employees, agents, or experts) that is not otherwise publicly available and has economic value or could cause economic harm if disclosed, including but not limited to information that is copyrighted, licensed, proprietary, subject to a confidentiality obligation, or contains trade secrets or similar information that could provide a risk of competitive disadvantage or other business injury.

(e) ''Counsel'' means any member in good standing of the bar of the highest court of any state, commonwealth, possession, territory, or the District of Columbia. Counsel appearing in a proceeding must conform to the standards of ethical conduct required of practitioners in the Federal courts of the United States.

(f) ''Critical Energy/Electric Infrastructure Information'' or ''CEII'' means information related to (1) a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters; or (2) specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and (iv) does not simply give the general location of the critical infrastructure.

(g) ''Cross-examination Exhibit'' means any document or other material to be presented to a witness for any purpose on cross-examination.

(h) ''Data Request(s)'' means a written request for information in any form, including documents, or an admission submitted in accordance with Section 1010.12(b).

(i) ''Draft Record of Decision'' means the document that sets forth the Administrator's proposed decision on each issue in the pending proceeding.

(j) ''*Ex Parte* Communication'' means an oral or written communication (1) relevant to the merits of any issue in the pending proceeding; (2) that is not on the Record; and (3) with respect to which reasonable prior notice to Parties has not been given.

(k) ''Evidence'' means any material admitted into the Record by the Hearing Officer.

(l) ''**Federal Register** Notice'' means the notice identified under Section 1010.4.

(m) ''Final Record of Decision'' means the document that sets forth the Administrator's final decision on each issue in the pending proceeding.

(n) ''Hearing Clerk'' means the individual(s) assisting the Hearing Officer as designated in the **Federal Register** Notice.

(o) ''Hearing Officer'' means the official designated by the Administrator to conduct a proceeding under these rules.

(p) ''Hearing Officer's Recommended Decision'' means the document that sets forth the Hearing Officer's recommendation to the Administrator on each issue in a proceeding pursuant to Section 1010.1(a)(2).

(q) ''Litigant(s)'' means Bonneville and all Parties to the pending proceeding.

(r) ''Participant'' means any Person who is not a Party and who submits oral or written comments pursuant to Section 1010.8.

(s) ''Party'' means any Person whose intervention is effective under Section 1010.6. A Party may be represented by its Counsel or other qualified representative, provided that such representative conforms to the ethical standards prescribed in Section 1010.2(e).

(t) ''Person'' means an individual; partnership; corporation; limited liability company; association; an organized group of persons; municipality, including a city, county, or any other political subdivision of a state; state, including any agency, department, or instrumentality of a state; a province, including any agency, department, or instrumentality of a province; the United States or other nation, or any officer, or agent of any of the foregoing acting in the course of his or her employment or agency.

(u) ''Prefiled Testimony and Exhibits'' means any testimony, exhibits, studies, documentation, or other materials in a Litigant's direct or rebuttal case submitted in accordance with the procedural schedule. Prefiled Testimony and Exhibits do not include pleadings, briefs, or Cross-examination Exhibits.

(v) ''Rate'' means the monetary charge, discount, credit, surcharge, pricing formula, or pricing algorithm for any electric power or transmission service provided by Bonneville, including charges for capacity and energy. The term excludes, but such exclusions are not limited to, transmission line losses, leasing fees, or charges from Bonneville for operation and maintenance of customer-owned facilities. A rate may be set forth in a contract; however, other portions of a contract do not thereby become part of the rate for purposes of these rules.

(w) ''Record'' means (1) Evidence; (2) transcripts, notices, briefs, pleadings, and orders from the proceeding; (3) comments submitted by Participants; (4) the Hearing Officer's Recommended Decision, if applicable; (5) the Draft Record of Decision, if any; and (6) such other materials and information as may have been submitted to, or developed by, the Administrator.

(x) ''Secure website'' means the website established and maintained by Bonneville for proceedings under these rules.

Section 1010.3 Hearing Officer

(a) The Hearing Officer is responsible for conducting the proceeding, managing the development of the Record, and resolving procedural matters. In addition, in a proceeding pursuant to Section 1010.1(a)(2), the Hearing Officer is responsible for making a Recommended Decision to the Administrator as set forth in Section 1010.20.

(b) The Hearing Officer shall not expand the scope of the proceeding beyond the scope established in the **Federal Register** Notice. If the Hearing Officer is uncertain whether a potential action would improperly allow information outside the scope to be entered into Evidence, the Hearing Officer shall certify the question directly to the Administrator for a determination.

(c) The Hearing Officer may, in his or her discretion, issue special rules of practice to implement these rules, provided that such special rules are consistent with these rules.

(d) Except as provided in Section 1010.12(c), the Hearing Officer may issue protective orders or make other arrangements for the review of information requested in a Data Request.

(e) The Hearing Officer may reject or exclude all or part of any document or materials not submitted in accordance with these rules, or order a Litigant to conform such document or materials to the requirements of these rules.

(f) Litigants with questions about administrative issues should contact the Hearing Clerk. The Hearing Clerk's contact information will be provided in the **Federal Register** Notice.

Section 1010.4 Initiation of Proceeding

(a) Any proceeding conducted under these rules will be initiated on the day a notice of Bonneville's initial proposal is published in the **Federal Register**.

(b) The **Federal Register** Notice will:

(1) State, as applicable, the proposed rates and/or the proposed new or revised terms and conditions of transmission service, the justification and reasons supporting such proposals, and any additional information required by law;

(2) State the procedures for requesting access to the Secure Website for purposes of filing petitions to intervene and the deadline for filing such petitions;

(3) State the deadline and the procedures for Participants to submit comments;

(4) If applicable, state that the proceeding is an expedited proceeding under Section 1010.22 and explain the reasons for the expedited proceeding;

(5) State the date on which the Hearing Officer will conduct the prehearing conference;

(6) In a proceeding pursuant to Section 1010.1(a)(2), state the date on which the Hearing Officer will issue the Hearing Officer's Recommended Decision, which date shall be used by the Hearing Officer in establishing the procedural schedule for the proceeding;

(7) State the date(s) on which the Administrator expects to issue the Draft Record of Decision, if any, and the Final Record of Decision, which date(s) shall be used by the Hearing Officer in establishing the procedural schedule for the proceeding;

(8) Define the scope of the proceeding and specify:

(i) Issues that are not within the scope of the proceeding;

(ii) That only Bonneville may prescribe or revise the scope of the proceeding;

(iii) That Bonneville may revise the scope of the proceeding to include new issues that arise as a result of circumstances or events occurring outside the proceeding that are substantially related to the rates or terms and conditions under consideration in the proceeding; and

(iv) That, if Bonneville revises the scope of the proceeding to include new issues, Bonneville will provide public notice, a reasonable opportunity to intervene, testimony or other information regarding such issues, and an opportunity for Parties to respond to Bonneville's testimony or other information.

(9) Provide other information that is pertinent to the proceeding.

Section 1010.5 Ex Parte Communications

(a) *General Rule.* No Party or Participant in any proceeding under these rules shall make *Ex Parte* Communications to the Administrator, other Bonneville executives, any Bonneville staff member, the Hearing Officer, or the Hearing Clerk. In addition, no Bonneville staff member shall make *Ex Parte* Communications to the Hearing Officer or the Hearing Clerk. The Administrator, other Bonneville executives, Bonneville staff members, and the Hearing Officer shall not initiate or entertain *Ex Parte* Communications; however, communications among the Administrator, other Bonneville

executives, and Bonneville staff members are not *Ex Parte* Communications.

(b) *Exceptions.* The following communications will not be considered *Ex Parte* Communications subject to paragraph (a) of this section:

(1) Relating to matters of procedure only;

(2) If otherwise authorized by law or other portions of these rules;

(3) From or to the Federal Energy Regulatory Commission;

(4) Which all Litigants agree may be made on an *ex parte* basis;

(5) Relating to communications in the ordinary course of business, information required to be exchanged pursuant to contracts, or information that Bonneville provides in response to a Freedom of Information Act request;

(6) Relating to a request for supplemental information necessary for an understanding of factual materials contained in documents filed in a proceeding under these rules and which is made after coordination with Counsel for Bonneville;

(7) Relating to a topic that is only secondarily the object of a proceeding, for which Bonneville is statutorily responsible under provisions other than Northwest Power Act Section 7, or which is eventually decided other than through a Section 7(i) proceeding;

(8) Between the Hearing Officer and Hearing Clerk or other staff supporting the Hearing Officer; or

(9) Oral or written statements in meetings for which reasonable prior notice has been given.

(c) *Application.* The prohibitions contained in this Section 1010.5 apply from the day on which Bonneville publishes the **Federal Register** Notice and continue until the day the Administrator issues the Final Record of Decision in the proceeding.

(d) *Notice of meetings.* Bonneville will give reasonable prior notice to all Parties of any meeting that it intends to hold with any customer, customer group, or member of the public when it reasonably appears that matters relevant to any issue in the pending proceeding will be discussed.

(e) *Written communications.* Any written *Ex Parte* Communication received by the Administrator, other Bonneville executives, any Bonneville staff member, the Hearing Officer, or the Hearing Clerk will be promptly delivered to Counsel for Bonneville. The document will be posted for public review in a section of Bonneville's website for *ex parte* materials.

(f) *Oral communications.* If the Administrator, other Bonneville executives, any Bonneville staff member, the Hearing Officer, or the Hearing Clerk receives an oral offer of any *Ex Parte* Communication, they shall decline to listen to such communication and explain that such communication is prohibited by this Section 1010.5. If unsuccessful in preventing such communication, the recipient thereof shall advise the communicator that he or she will not consider the communication. The recipient shall promptly prepare a statement setting forth the substance of the communication and the circumstances thereof and deliver the statement to Counsel for Bonneville. The statement will be posted for public review on the *ex parte* website identified in paragraph (e) of this section.

(g) *Notice and opportunity for rebuttal.* Bonneville will notify Parties when any *Ex Parte* Communication has been posted on the *ex parte* website identified in paragraph (e) of this section. A motion seeking the opportunity to rebut any facts or contentions in an *Ex Parte* Communication must be filed within five Business Days of Bonneville's notification that the communication has been posted on Bonneville's website. Any such motion shall include a copy of the *Ex Parte* Communication at issue. The Hearing Officer will grant such a motion if he or she finds that providing the opportunity to rebut the *Ex Parte* Communication is necessary to prevent substantial prejudice to a Litigant.

(h) *Ex Parte Communications not included in the Record.* No *Ex Parte* Communication will be included in the Record except as allowed by the Hearing Officer in an order granting a motion filed pursuant to paragraph (g) of this section.

Section 1010.6 Intervention

(a) *Filing.* A Person seeking to become a Party in a proceeding under these rules must request access to the Secure Website pursuant to the procedures set forth in the **Federal Register** Notice initiating the proceeding. After being granted access, such Person shall file a petition to intervene through the Secure website.

(b) *Contents.* A petition to intervene must state the name, address, and email address of the Person and the Person's interests in the outcome of the proceeding. Petitioners may designate no more than eight individuals on whom service will be made. If the petitioner requires additional individuals to be added to the service list, it may request such relief from the Hearing Officer. Entities that directly purchase power or transmission services under Bonneville's rate schedules, or trade organizations representing those entities, will be granted intervention, based on a petition filed in conformity with this Section 1010.6. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the proceeding.

(c) *Time.*

(1) Petitions must be filed by the deadline specified in the **Federal Register** Notice, unless Bonneville provides a subsequent opportunity to intervene pursuant to Section 1010.4(b)(8)(iv).

(2) Late interventions are strongly disfavored. Granting an untimely petition to intervene must not be a basis for delaying or deferring any procedural schedule. A late intervenor must accept the Record developed prior to its intervention. In acting on an untimely petition, the Hearing Officer shall consider whether:

(i) The petitioner has a good reason for filing out of time;

(ii) Any disruption of the proceeding might result from granting a late intervention;

(iii) The petitioner's interest is adequately represented by existing Parties; and

(iv) Any prejudice to, or extra burdens on, existing Parties might result from permitting the intervention.

(d) *Opposition.* Any opposition to a timely petition to intervene must be filed within two Business Days after the deadline for filing petitions to intervene. Any opposition to a late-filed petition to intervene must be filed within two Business Days after service of the petition.

Section 1010.7 Joint Parties

(a) Parties with common interests or positions in a pending proceeding are encouraged to form a Joint Party for purposes of filing pleadings, Prefiled Testimony and Exhibits, and briefs, and for conducting cross-examination. Such grouping will be without derogation to the right of any Party to represent a separate point of view where its position differs from that of the Joint Party in which it is participating.

(b) To form a Joint Party, one member of the proposed Joint Party must email a list of proposed Joint Party members to the Hearing Clerk and to Counsel for each proposed member and represent that all of the named members are in concurrence with the formation of the Joint Party. The Hearing Clerk will form the Joint Party, assign a Joint Party code, and email notice to all Litigants, stating the Joint Party code and listing the Joint Party members.

Section 1010.8 Participants

(a) Any Participant may submit written comments for the Record or present oral comments in legislative-style hearings, if any, for the purpose of receiving such comments. The **Federal Register** Notice will set forth the procedures and deadline for Participant comments. In the event new issues arise after such deadline due to unforeseen circumstances, the Hearing Officer may extend the deadline for Participant comments. Participant comments will be made available on Bonneville's website.

(b) The Hearing Officer may allow reasonable questioning of a Participant by Counsel for any Litigant if the Participant presents oral comments at a legislative-style hearing.

(c) Participants do not have the rights of Parties. The procedures in Sections 1010.6, 1010.7, and 1010.9 through 1010.19 are not available to Participants.

(d) Parties may not submit Participant comments. Employees of organizations that have intervened may submit Participant comments as private individuals (that is, not speaking for their organizations), but may not use the comment procedures to further promote specific issues raised by their intervenor organizations.

Section 1010.9 Prehearing Conference

A prehearing conference will be held on the date specified in the **Federal Register** Notice. During the conference, the Hearing Officer shall establish (1) a procedural schedule, and (2) any special rules of practice in accordance with Section 1010.3(c).

Section 1010.10 Filing and Service

(a) Unless otherwise specified, a Litigant shall make any filing provided for by these rules with the Hearing Officer through the Secure website. Such filing will constitute service on all Litigants. If the Secure website is unavailable for filing, a Litigant shall serve the document to be filed on the Hearing Officer, Hearing Clerk, and all Litigants through email and thereafter file the document on the Secure website as soon as practicable when the Secure website becomes available.

(b) In addition to Parties whose petitions to intervene are granted by the Hearing Officer, the Administrator may designate additional Persons upon whom service will be made.

(c) Except as provided in paragraph (b) of this section, service will not be made upon Participants.

(d) Submission of Data Requests and responses to such requests is governed by Section 1010.12(b), except that paragraph (e) of this section governs the timing of such requests and responses.

(e) All filings provided for by these rules must be made, and Data Requests and responses must be submitted, on Business Days no later than 4:30 p.m., Pacific Time, in accordance with the procedural schedule adopted by the Hearing Officer. Filings made outside of these times are deemed to have been filed on the next Business Day and, if such day is after an applicable deadline, may be rejected by the Hearing Officer.

Section 1010.11 Pleadings

(a) *Types of pleadings.* Pleadings include petitions to intervene, motions, answers, and replies to answers. Pleadings do not include Prefiled Testimony and Exhibits, Cross-examination Exhibits, Data Requests and responses, or briefs.

(b) *Content.* Pleadings must include the docket number and title of the proceeding, the name of the Litigant filing the pleading, the specific relief sought, any relevant facts and law, and an electronic signature (typed as ''*/s/ Name*'') of the Litigant's representative. Pleadings must follow the document numbering system established by the Hearing Officer and display the document number in the footer of the pleading.

(c) *Format.* Pleadings must be filed as text-recognized PDFs converted directly from a word processing software and conform to the following format: (1) Page size must be 8½ by 11 inches; in portrait orientation; (2) margins must be at least 1 inch on all sides; (3) text must be double-spaced, with the exception of headings, block quotes, and footnotes; and (4) font size must be comparable to 12-point Times New Roman (10-point Times New Roman for footnotes) or larger. Parties are encouraged to conform legal citations to the most current edition of *The Bluebook: A Uniform System of Citation,* published by The Harvard Law Review Association.

(d) *Answers to pleadings.* Unless otherwise determined by the Hearing Officer, answers to pleadings must be filed within four Business Days of service of the pleading.

(e) *Replies to answers.* Unless otherwise determined by the Hearing Officer, replies to answers are not allowed.

(f) *Interlocutory appeal.* Interlocutory appeal to the Administrator of an order issued by the Hearing Officer is discouraged. Such an appeal will only be permitted upon a motion filed within five Business Days of the order being appealed and an order by the Hearing Officer certifying the ruling to the Administrator. The Hearing Officer shall certify the ruling to the Administrator upon finding that:

(1) The order terminates a Party's participation in the proceeding and the Party's inability to participate thereafter could cause it substantial and irreparable harm;

(2) Review is necessary to prevent substantial prejudice to a Litigant; or

(3) Review could save the Administrator, Bonneville, and the Parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review.

The Administrator may accept or reject the Hearing Officer's certification of a ruling at his or her discretion. An answer to a motion for interlocutory appeal must be filed in accordance with paragraph (d) of this section.

Section 1010.12 Clarification Sessions and Data Requests

(a) *Clarification sessions.*

(1) The Hearing Officer may schedule one or more informal clarification sessions for the purpose of allowing Litigants to question witnesses about the contents of their Prefiled Testimony and Exhibits and the derivation of their recommendations and conclusions. The Hearing Officer will not attend the clarification sessions. Clarification sessions will not be used to conduct cross-examination, and discussions in clarification sessions will not be transcribed or become part of the Record. Litigants may participate in clarification sessions by phone or other technology made available by Bonneville.

(2) If a Litigant does not make any witness available for a clarification session, the witness's Prefiled Testimony and Exhibits may be subject to a motion to strike.

(b) *Data Requests and responses.* All Data Requests and responses to Data Requests must be submitted according to the rules in this Section 1010.12(b) and Section 1010.10(e). For purposes of this Section 1010.12(b), ''Requesting Litigant'' means the Litigant that submitted the Data Request at issue, and ''Responding Litigant'' means the Litigant that received the Data Request.

(1) *Scope in general.* Except as otherwise provided in this Section 1010.12(b), a Data Request may seek information or an admission relevant to any issue in the proceeding; *provided, however,* that such requests must be proportional to the needs of the proceeding considering the importance of the issues at stake, the amount in controversy, the Litigants' relative access to relevant information, the

Litigants' resources, the extent of the Responding Litigant's testimony on the subject and participation in the proceeding, the importance of the information sought to develop Evidence on the issue, and whether the burden or expense of responding to the request outweighs the likely benefit if the response were admitted into Evidence.

(i) Each Litigant shall be reasonable in the number and breadth of its Data Requests in consideration of the factors listed in paragraph (b)(1) of this section. A Litigant that believes it has received one or more unreasonable Data Request(s) from another Litigant may object to the request(s) on that basis. Any dispute over such an objection will be resolved in accordance with the procedures in paragraph (e) of this section.

(ii) A Litigant shall not be required to perform any new study or analysis, but a Litigant may, in its sole discretion and without waiving any objection to any Data Request, agree to perform such study or analysis.

(iii) A Litigant shall not be required to produce publicly available information.

(iv) A Litigant shall not be required to produce information that is unduly burdensome to provide, or produce the same information multiple times in response to cumulative or duplicative Data Requests.

(v) A Litigant shall not be required to produce any information that is protected from disclosure by the attorney-client privilege or attorney work product doctrine.

(vi) Bonneville shall not be required to produce documents that, in the opinion of Counsel for Bonneville, may be withheld on the basis of exemptions under the Freedom of Information Act, 5 U.S.C. 552, or the Trade Secrets Act, 18 U.S.C. 1905.

(2) *Submitting Data Requests.* All Data Requests must be submitted through the Secure website.

(i) A Data Request must identify the Prefiled Testimony and Exhibits (page and line numbers) or other material addressed in the request.

(ii) A Litigant shall not submit a Data Request seeking the response to another Data Request.

(iii) Except as allowed by the Hearing Officer pursuant to this Section 1010.12(b)(2)(iii), during the period established in the procedural schedule for submitting Data Requests immediately following the filing of Bonneville's Initial Proposal, a Party may submit Data Requests only to Bonneville. The Hearing Officer may allow the submission of limited Data Requests to a Party during such period upon motion by a Litigant providing the proposed Data Request(s) and demonstrating that: (1) The proposed Data Request(s) are within the scope described in paragraph (b)(1) of this section; (2) Bonneville is unlikely to have the requested information or materials in its possession; and (3) the Litigant's ability to develop its direct case would be significantly prejudiced without the requested information or materials. In resolving a motion filed pursuant to this Section 1010.12(b)(2)(iii), the Hearing Officer shall consider, among other things, the factors listed above, the number of proposed Data Requests, and whether the burden of responding to the requests would prejudice the Responding Litigant's ability to prepare such Litigant's direct case.

(iv) A multi-part Data Request must include a reasonably limited number of subparts, and all subparts must address only one section or other discrete portion of a Litigant's Prefiled Testimony and Exhibits. Each subpart of a multi-part Data Request will be considered a separate Data Request for purposes of this Section 1010.12(b).

(3) *Responding to Data Requests.* All Responses to Data Requests, except responses containing Commercially Sensitive Information or CEII, must be submitted through the Secure website.

(i) Except as otherwise allowed by the Hearing Officer or as provided in paragraph (b)(3)(iii) of this section, a Litigant must provide a response to each Data Request no later than five Business Days after the day that the Data Request is submitted through the Secure website. The Hearing Officer may specify exceptions to this rule and establish alternative deadlines, for example, for periods spanning holidays.

(ii) An objection to a data request will be considered a response for purposes of this Section 1010.12(b). In any response that includes one or more objections, the Litigant must state the grounds for the objection(s) and why any information or admission is being withheld.

(iii) As soon as a Responding Litigant estimates that it will not be able to respond to one or more Data Requests by the due dates because of the volume of or other burden caused by the request(s), the Responding Litigant shall contact the Requesting Litigant and confer about a possible delay in the due date. If the Litigants have not resolved the matter by the due date, the Responding Litigant shall file an objection on the due date and supplement the objection with a response in good faith as soon as possible thereafter. Any dispute over such an objection will be resolved in accordance with the procedures in paragraph (e) of this section.

(c) *Information that is attorney-client privileged or attorney work product.* If a Responding Litigant withholds information from a response to a Data Request on the basis of attorney-client privilege or the attorney work product doctrine, it must object and so state in its response. Upon written request by Counsel for the Requesting Litigant, the Responding Litigant must submit a supplemental response to the Data Request that includes a declaration made by Counsel for such Litigant in accordance with 28 U.S.C. 1746 stating that the information withheld is protected from disclosure by attorney-client privilege or the attorney work product doctrine, and identifying, without revealing information that itself is privileged or protected, the information withheld. The Hearing Officer may not order *in camera* review or release of information that a Litigant has withheld from a response to a Data Request on the basis of attorney-client privilege or the attorney work product doctrine.

(d) *Commercially Sensitive Information and CEII.*

(1) When a Responding Litigant has determined that responding to a Data Request will require it to produce Commercially Sensitive Information or CEII that is otherwise discoverable, the Litigant shall notify and confer with the Requesting Litigant to attempt to agree to the terms of a proposed protective order, including a non-disclosure certificate, to govern exchange and use of the Commercially Sensitive Information or CEII. If the conferring Litigants agree to the terms of a proposed protective order, they must file the proposed order with the Hearing Officer along with a motion seeking adoption of the order. If the conferring Litigants are unable to agree to the terms of a protective order within three Business Days of starting to confer, each Litigant shall file a proposed protective order, and the Hearing Officer shall enter an order adopting a protective order to govern the exchange and use of Commercially Sensitive Information or CEII. Such protective order may be, but is not required to be, based upon the proposed protective orders filed by the Litigants and must be consistent with the requirements in paragraph (d)(2) of this section. Once the Hearing Officer has adopted a protective order, and the Requesting Litigant has filed its signed non-disclosure certificate(s), the Responding Litigant must provide the Commercially Sensitive Information or CEII to the Requesting Litigant within three Business Days.

(2) Any protective order proposed by a Litigant or adopted by the Hearing Officer must be consistent with the following requirements but is not limited to these requirements:

(i) Prior to receiving any Commercially Sensitive Information or CEII, a Litigant that wants access to such information must file on the Secure website signed non-disclosure certificate(s) for any individual that the Litigant intends to have access to such information.

(ii) Any documents or other materials that include Commercially Sensitive Information or CEII, including any copies or notes of such documents, must be plainly marked on each page with the following text: ''Commercially Sensitive Information [or CEII]—Subject to Protective Order No. ____.'' Any electronic files must include the same text in the file name. The requirements of this paragraph do not preclude any additional marking required by law.

(iii) Responses to Data Requests that contain Commercially Sensitive Information or CEII must not be submitted via the Secure website. The protective order must prescribe a secure manner for providing such a response to any Litigant that files a signed non-disclosure certificate(s).

(iv) Any Prefiled Testimony and Exhibits, Cross-examination Exhibits, briefs, or other documents that include Commercially Sensitive Information or CEII must not be filed via the Secure website. The protective order must prescribe a secure manner for making such a filing directly with the Hearing Officer such as via encrypted email or on physical media (CD, USB stick, etc.) and for simultaneously serving the document on all Litigants that have filed signed non-disclosure certificates. Any Litigant that makes a filing with Commercially Sensitive Information or CEII must simultaneously file a redacted or public version of the document via the Secure website.

(v) The protective order must authorize Bonneville to file or otherwise submit any Commercially Sensitive Information or CEII from a proceeding under these rules with the Federal Energy Regulatory Commission or any other administrative or judicial body in accordance with any applicable requirements of that body.

(vi) The protective order must authorize Bonneville to retain any Commercially Sensitive Information or CEII from a proceeding under these rules until the decision in the proceeding is no longer subject to judicial review.

(vii) The protective order must include provisions that govern the return or destruction of Commercially Sensitive Information and CEII.

(viii) A protective order may include a ''Highly Confidential'' designation for Commercially Sensitive Information or CEII that is of such a sensitive nature that the producing Litigant is able to justify a heightened level of protection. The Hearing Officer shall determine the appropriate level or means of protection for such information, including the possible withholding of such information altogether.

(3) Notwithstanding the requirement in paragraph (d)(2)(iv) of this section that a protective order must provide a secure manner of filing documents that include Commercially Sensitive Information or CEII, Litigants are discouraged from making filings with such information because of the administrative burden that would result from the inclusion of such information in the Record. A Litigant should not file a document with such information unless it believes in good faith that its ability to present its argument would be significantly hindered by the absence of the information from the Record. Instead, Litigants are encouraged to summarize, describe, or aggregate Commercially Sensitive Information or CEII in filings in a manner that does not result in the inclusion of the information itself or otherwise effectively disclose the information.

(4) The rules governing CEII in this Section 1010.12(b) do not preclude the application of any federal regulations regarding CEII that apply to Bonneville and are adopted after the effective date of these rules.

(e) Disputes regarding responses to Data Requests. Litigants are strongly encouraged to informally resolve disputes regarding Data Requests and responses.

(1) *Duty to Confer.* Before filing a motion to compel a response to a Data Request, the Requesting Litigant must confer with the Responding Litigant to attempt to informally resolve any dispute. Each Litigant must confer in good faith to attempt to informally resolve the dispute.

(2) *Motion to Compel.* If a dispute is not resolved informally, the Requesting Litigant may file a motion to compel no more than four Business Days after the earlier of the date a response to the Data Request is provided or the due date for the response. A motion to compel must demonstrate that the Data Request(s) at issue are within the scope described in paragraph (b)(1) of this section, and the Requesting Litigant must certify in the motion that it attempted to informally resolve the dispute in accordance with paragraph (e)(1) of this section.

(3) *Answer to motion to compel.* Any answer to a motion to compel must be filed in accordance with Section 1010.11(d).

(4) *Resolution of dispute by the Hearing Officer.* The Hearing Officer may hold a conference to discuss and attempt to resolve a dispute regarding a response to a Data Request. In ruling on any motion to compel, the Hearing Officer shall consider, among other things, the factors listed in paragraph (b)(1) of this section and the potential impact of the decision on completing the proceeding according to the procedural schedule. For any oral ruling made by the Hearing Officer during a conference, the Hearing Officer shall memorialize that ruling in a written order as soon as practicable thereafter.

(f) *Sanctions.* The Hearing Officer may remedy any refusal to comply with an order compelling a response to a Data Request or a violation of a protective order by:

(1) Striking the Prefiled Testimony and Exhibits to which the Data Request relates;

(2) Limiting Data Requests or cross-examination by the Litigant refusing to comply with the order; or

(3) Recommending to the Administrator that an appropriate adverse inference be drawn against the Litigant refusing to comply with the order.

(g) *Moving responses to Data Requests into Evidence.* A response to a Data Request must be admitted into Evidence to be considered part of the Record. A Litigant that intends to introduce a response to a Data Request into Evidence must either: (1) Attach the full text of each such response as an exhibit in the Litigant's Prefiled Testimony and Exhibits; or (2) submit a motion to admit the response, by the deadline(s) established by the Hearing Officer.

Section 1010.13 Prefiled Testimony and Exhibits

(a) *General rule.*

(1) All Prefiled Testimony and Exhibits must identify the witness(es) sponsoring the testimony and exhibits. Each Litigant that submits Prefiled Testimony and Exhibits must separately file a qualification statement for each witness sponsoring the testimony and exhibits. The qualification statement must describe the witness's education and professional experience as it relates to the subject matter of the Prefiled Testimony and Exhibits.

(2) Except as otherwise allowed by the Hearing Officer, all prefiled testimony must be in written form and conform to the format of pleadings in Section 1010.11(c). Each section of prefiled

testimony must include a heading setting forth its subject matter. Prefiled testimony must include line numbers in the left-hand margin of each page.

(3) If prefiled testimony is based on the witness's understanding of the law, the witness shall so state in the testimony and, in order to provide context for the testimony, describe the witness's understanding of the law as it applies to the witness's position. In all other cases, legal arguments and opinions must not be included in Prefiled Testimony and Exhibits.

(4) A witness qualified as an expert may testify in the form of an opinion. Any conclusions by the witness should, if applicable, be supported by data and explanation.

(5) Litigants shall be provided an adequate opportunity to offer refutation or rebuttal of any material submitted by any other Party or by Bonneville. Any rebuttal to Bonneville's direct case must be included in a Party's direct testimony, along with any affirmative case that Party wishes to present. Any subsequent rebuttal testimony must be limited to rebuttal of the Parties' direct cases. New affirmative material may be submitted in rebuttal testimony only if in reply to another Party's direct case. No other new affirmative material may be introduced in rebuttal testimony. Rebuttal testimony must refer to the specific material being addressed (pages, lines, topic).

(6) For documents or materials of excessive length that a Litigant wants to include in its Prefiled Testimony and Exhibits, the Litigant should create and include an excerpt of the document or materials that excludes irrelevant or redundant material.

(b) *Items by reference.* Any materials that are incorporated by reference or referred to via electronic link in Prefiled Testimony and Exhibits will not be considered part of the testimony and exhibits for purposes of introducing the materials into Evidence. Only materials included as exhibits to Prefiled Testimony and Exhibits will be considered part of the testimony and exhibits for purposes of introducing the materials into Evidence.

(c) *Moving Prefiled Testimony and Exhibits into Evidence.* Prefiled Testimony and Exhibits must be admitted into Evidence to be considered part of the Record. If a Litigant's witness(es) sponsoring Prefiled Testimony and Exhibits are cross-examined, the Litigant shall move the witnesses' Prefiled Testimony and Exhibits into Evidence at the conclusion of the cross-examination. If there is no cross-examination of a Litigant's witness(es), a Litigant that intends to introduce the witness(es)'s Prefiled Testimony and Exhibits into Evidence shall, by any deadline established by the Hearing Officer, file a declaration of the witness(es) made in accordance with 28 U.S.C. 1746 that lists the Prefiled Testimony and Exhibits and certifies that the material is the same material previously filed in the proceeding and is true and correct to the best of their knowledge and belief. Upon filing of the declaration, the witnesses' Prefiled Testimony and Exhibits will be admitted into Evidence.

(d) *Motions to strike.* Motions to strike Prefiled Testimony and Exhibits must be filed by the deadlines established in the procedural schedule. An answer to a motion to strike must be filed in accordance with Section 1010.11(d). If the Hearing Officer grants a motion to strike, the Litigant sponsoring the stricken material shall file conformed copies with strikethrough deletions of such material within five Business Days of the Hearing Officer's order. Conformed copies must be filed with the same document number as the original exhibit, but with the designation ''–CC'' at the end (*e.g.,* BP–20–E–BPA–16–CC). Material stricken by the Hearing Officer shall not be admitted into Evidence but will be considered part of the Record for purposes of reference regarding whether the motion should have been granted.

Section 1010.14 Cross-Examination

(a) Except as otherwise allowed by the Hearing Officer, witnesses generally will be cross-examined as a panel for Prefiled Testimony and Exhibits that they co-sponsor, provided that each panel member (1) has submitted a qualification statement, and (2) is under oath.

(b) At the time specified in the procedural schedule, a Litigant intending to cross-examine a witness shall file a cross-examination statement. The statement shall:

(1) Identify the witnesses the Litigant intends to cross-examine and the Prefiled Testimony and Exhibits sponsored by the witnesses that will be the subject of the cross-examination;

(2) Briefly describe the subject matter and portions of the Prefiled Testimony and Exhibits for cross-examination;

(3) Specify the amount of time requested for cross-examination of each witness; and

(4) Provide any other information required in an order issued by the Hearing Officer.

(c) A Litigant waives cross-examination for any witnesses not listed in its cross-examination statement, except that any Litigant may ask follow-up questions of witnesses appearing at the request of another Litigant.

(d) After the Litigants file cross-examination statements, the Hearing Officer shall issue a schedule setting forth the order of witnesses to be cross-examined.

(e) Cross-examination is limited to issues relevant to the Prefiled Testimony and Exhibits that (1) are identified in the Litigant's cross-examination statement, or (2) arise in the course of the cross-examination.

(f) Witnesses are not required to perform calculations on the stand or answer questions about calculations that they did not perform. Witnesses appearing as a panel shall determine in good faith which witness will respond to a cross-examination question.

(g) A Litigant may only cross-examine witnesses whose position is adverse to the Litigant seeking to cross-examine. Notwithstanding the preceding sentence, a Litigant whose position is not adverse to the witnesses subject to cross-examination may, immediately following any redirect testimony by those witnesses, seek leave from the Hearing Officer to ask limited follow-up questions of the witnesses. Any such follow-up questions allowed by the Hearing Officer must be limited to the scope of the cross-examination of the witnesses.

(h) Only a Litigant's Counsel may conduct cross-examination. Only Counsel for the witnesses being cross-examined may object to questions asked during cross-examination, except that Counsel for any Litigant may object to friendly cross-examination.

(i) To avoid duplicative cross-examination, the Hearing Officer may impose reasonable limitations if the Litigants conducting cross-examination have substantially similar positions.

(j) The Hearing Officer may impose reasonable time limitations on the cross-examination of any witness.

(k) Cross-examination Exhibits.

(1) A Litigant must file each Cross-examination Exhibit to be presented to a witness for any purpose two Business Days before the witness is scheduled to appear. For example, for a witness appearing on a Monday, the due date for documents is the preceding Thursday at 4:30 p.m.

(2) A Litigant must provide physical copies of each Cross-examination Exhibit to the Hearing Officer, the Hearing Clerk, each panel witness, witness's Counsel, and the court reporter at the beginning of cross-examination on the day the witness is scheduled to appear.

(3) A Cross-examination Exhibit must be limited to material the Litigant intends to introduce into Evidence.

(4) If a document is introduced into Evidence during cross-examination, and only part of the document is admitted into Evidence, the document must be conformed by the Litigant to include only that part of the document admitted into Evidence. The conformed document must be filed through the Secure Website.

(l) All other matters relating to conduct of cross-examination are left to the Hearing Officer's discretion.

Section 1010.15 Stipulations

The Hearing Officer may admit into Evidence stipulations on any issue of fact.

Section 1010.16 Official Notice

The Administrator or the Hearing Officer may take official notice of any matter that may be judicially noticed by Federal courts or any matter about which Bonneville is an expert. A Litigant requesting official notice shall provide a precise citation for the material for which official notice is requested and file the material on the Secure Website at the time the request is granted or as soon as practicable thereafter. The Hearing Officer may afford any Litigant making a timely request an opportunity to show the contrary of an officially noticed fact.

Section 1010.17 Briefs

(a) *General rule.* Briefs must be filed at times specified in the procedural schedule. All evidentiary arguments in briefs must be based on cited material admitted into Evidence. Material not admitted into Evidence must not be attached to or relied upon in any brief, except to address disputes regarding the admissibility of specific material into Evidence. Incorporation by reference is not permitted. The Hearing Officer may impose page limitations on any brief. All briefs must comply with the format requirements in Section 1010.11(c) and the template provided in Attachment A, as may be amended.

(b) *Initial brief.* At the conclusion of the evidentiary portion of a proceeding, each Party may file an initial brief. The purpose of an initial brief is to identify separately each legal, factual, and policy issue to be resolved by the Administrator and present all arguments in support of a Party's position on each of these issues. The initial brief should also rebut contentions made by adverse witnesses in their Prefiled Testimony and Exhibits. The initial brief must contain a final revised exhibit list reflecting the status of all of the Party's Prefiled Testimony and Exhibits, Cross-examination Exhibits, and any other exhibits, including those admitted, withdrawn, conformed, and rejected.

(c) *Brief on exceptions.* After issuance of Bonneville's Draft Record of Decision, each Party may file a brief on exceptions. The purposes of the brief on exceptions are to (1) raise any alleged legal, policy, or evidentiary errors in the Draft Record of Decision; or (2) provide additional support for draft decisions contained in the Draft Record of Decision. All arguments raised by a Party in its initial brief will be deemed to have been raised in the Party's brief on exceptions, regardless of whether such arguments are included in the brief on exceptions.

(d) *Additional briefing rule for proceedings pursuant to Section 1010.1(a)(2).* In a proceeding pursuant to Section 1010.1(a)(2), Bonneville is considered a Party for purposes of filing briefs in accordance with this Section 1010.17, except that Section 1010.17(f) does not apply to Bonneville. In addition, in such a proceeding, the Hearing Officer or the Administrator may provide Litigants with additional briefing opportunities not otherwise set forth in these rules. Such additional briefing opportunities may include briefs on exceptions in addition to those set forth in Section 1010.17(c), above.

(e) *Optional brief and memorandum of law.* The Hearing Officer may allow the filing of a brief and memorandum of law not otherwise provided for by this section.

(f) *Waiver of issues or arguments.* A Party whose briefs do not raise and fully develop the Party's position on any issue shall be deemed to take no position on such issue. Arguments or alleged errors not raised in initial briefs in accordance with Section 1010.17(b), briefs on exceptions in accordance with Section 1010.17(c), or briefs permitted by Section 1010.17(d) are deemed to be waived.

Section 1010.18 Oral Argument

(a) An opportunity for each Litigant to present oral argument will be provided in proceedings conducted under these rules.

(b) At the time specified in the procedural schedule, each Litigant that intends to present oral argument shall file a notice of intent to present oral argument. The notice must identify the speaker(s), a brief description of the subject matter to be addressed, and the amount of time requested.

(c) After Litigants file notices of intent to present oral argument, the Hearing Officer shall issue an order setting forth the schedule of oral argument.

Section 1010.19 Telephone Conferences

Telephone conferences may be permitted in appropriate circumstances, provided that: (1) There is a proposed agenda for the conference concerning the points to be considered and the relief, if any, to be requested during the conference; and (2) Litigants are provided notice and given an opportunity to be represented on the line. If the Hearing Officer schedules a telephone conference, the Hearing Officer may require that a court reporter be present on the line.

Section 1010.20 Hearing Officer's Recommended Decision

In a proceeding pursuant to Section 1010.1(a)(2), the Hearing Officer shall, unless he or she becomes unavailable, issue the Hearing Officer's Recommended Decision stating the Hearing Officer's findings and conclusions, and the reasons or basis thereof, on all material issues of fact, law, or discretion.

Section 1010.21 Final Record of Decision

(a) The Administrator will make a decision adopting final proposed rates for submission to the Federal Energy Regulatory Commission for confirmation and approval based on the Record.

(b) In a proceeding pursuant to Section 1010.1(a)(2), the Administrator will make a determination in a Final Record of Decision on any terms and conditions of transmission service, or revisions thereto, at issue in the proceeding.

(c) Any Final Record of Decision will be uploaded to the Secure Website and made available to Participants through Bonneville's external website.

Section 1010.22 Expedited Proceedings

(a) *General rule.* The Administrator will determine, in his or her discretion, whether to conduct an expedited proceeding. The Final Record of Decision in a proceeding conducted under this section will be issued on an expedited basis in 90 to 120 days from the date of the **Federal Register** Notice. The Hearing Officer may establish procedures or special rules as set forth in Section 1010.3(c) necessary for the expedited schedule.

(b) *Extensions.* The Hearing Officer may extend the schedule in response to a written motion by a Litigant showing good cause for the extension.

Attachment A—Brief Template

I. Category [all issues pertaining to a particular category, for example: Power Rates, Transmission Rates, Transmission Terms and Conditions, Joint Issues, Procedural Issues]

A. General Topic Area [for example: Secondary Sales]

Issue 1: The specific issue to be addressed [for example: Whether Bonneville's forecast of energy prices should be revised upward].

Summary of Party's Position

A brief statement summarizing the party's position.

[For example: Bonneville staff's forecast of energy prices for secondary sales is too conservative. The record demonstrates that the trend in market prices is upward. The Administrator should revise the forecast for the price of secondary energy upward consistent with Party X's proposal.]

Party's Position and Argument

Statements of argument, including citations to the record.

Requested Action or Decision

A brief description of the requested action or decision the party wants the Administrator to make.

[For example: The projection of energy prices for Bonneville's secondary sales should be revised consistent with Party's X's proposal.]

Issue 2: The specific issue to be addressed [for example: Whether Bonneville's surplus power sales forecast is reasonable.]

Summary of Party's Position

[For example: Bonneville's surplus power sales forecast is flawed because it does not account for extraregional power sales.]

Party's Position and Argument

Statements of argument, including citations to the record.

Requested Action or Decision

[For example: Bonneville's surplus power sales forecast should be increased to reflect extraregional power sales.]

POST-HEARING LIST OF EXHIBITS

Filing code	Title	Date filed	Status
XX–XX–E–XX–01	Direct Testimony	mm/dd/yyyy	Admitted.
XX–XX–E–XX–02	Rebuttal Testimony	mm/dd/yyyy	Rejected.

End of Brief Template

Issued this 2nd day of August, 2018.

Elliot E. Mainzer,

Administrator and Chief Executive Officer.

[FR Doc. 2018–17223 Filed 8–10–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–388–A]

Application to Export Electric Energy; TEC Energy Inc.

AGENCY: Office of Electricity, DOE.

ACTION: Notice of application.

SUMMARY: TEC Energy Inc. (Applicant or TEC) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before September 12, 2018.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. §§ 7151(b) and 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. § 824a(e)).

On December 19, 2013, DOE issued Order No. EA–388 to TEC, which authorized the Applicant to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. That authority expires on December 19, 2018. On July 30, 2018, TEC filed an application with DOE for renewal of the export authority contained in Order No. EA–388 for an additional five-year term.

In its application, the Applicant states that it ''does not own or control any electric generation or transmission facilities'' and ''does not hold a franchise or service territory for the transmission, distribution or sale of electric power.'' The electric energy that the Applicant proposes to export to Canada would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by TEC have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five (5) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning TEC's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–388–A. An additional copy is to be provided directly to both Etienne Lapointe, CPA, CA, MSc, TEC Energy Inc., 88 Prince St, Suite 202, Montreal, Quebec H3C 2M8, and Legalinc Corporate Services Inc., 35–15 84th Street 2H Jackson Heights, New York, NY 11372.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE determines that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Signed in Washington, DC, on August 7, 2018.

Christopher Lawrence,

Electricity Policy Analyst, Office of Electricity.

[FR Doc. 2018–17313 Filed 8–10–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Case No. CAC–050]

Notice of Petition for Waiver of Johnson Controls, Inc. From the Department of Energy Central Air Conditioners and Heat Pumps Test Procedure, and Notice of Grant of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, grant of an interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes a petition for waiver from Johnson Controls, Inc. (JCI) seeking an exemption from the U.S. Department of Energy (DOE) test procedure for determining the efficiency of central air conditioners and heat pumps. JCI seeks to use an alternate test procedure to address issues involved in testing certain basic models identified in its amended petition. According to JCI, testing the basic models of the central air conditioners listed in its amended petition as outdoor units with no match will overstate their energy usage as they will be rated using default indoor unit parameters that are representative of an old, inefficient indoor unit. JCI seeks to use an alternate test procedure to test and rate the basic models listed in its amended petition as matched systems. JCI proposes to waive the DOE test procedure requirement to test these basic models as outdoor units with no match and instead, test these basic models as matched systems. This notice also announces that DOE grants JCI an interim waiver from the DOE central air conditioners and heat pumps test procedure for its specified basic models, subject to use of the alternative test procedure as set forth in the Order. DOE solicits comments, data, and information concerning JCI's amended petition and its suggested alternate test procedure.

DATES: DOE will accept comments, data, and information with respect to the JCI Petition until September 12, 2018.

ADDRESSES: You may submit comments, identified by case number ''CAC–050'' and Docket number ''EERE–2017–BT–WAV–0039,'' by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: JCI2017WAV0042@ee.doe.gov.* Include the case number CAC–050 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

• *Postal Mail:* U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, Petition for Waiver Case No CAC–050, 1000 Independence Avenue SW, Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

• *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Docket: The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *https://www.regulations.gov/docket?D=EERE-2017-BT-WAV-0039.* The docket web page will contain simple instruction on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–9496. Email: *Peter.Cochran@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, which includes central air conditioners and heat pumps.[2] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B requires the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs during a representative average-use cycle, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for central air conditioners and heat pumps is contained in 10 CFR part 430, subpart B, appendix M (referred to in this notice as ''appendix M'').

DOE's regulations set forth at 10 CFR 430.27 contain provisions that allow a person to seek a waiver from the test procedure requirements for a particular basic model of a covered product when the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that either (1) prevent testing according to the prescribed test procedure, or (2) cause the prescribed test procedures to evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii).

DOE may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(f)(2). As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. 10 CFR 430.27(l).

The regulations governing the waiver process also allow DOE to grant an

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

[2] All references to EPCA in this document refer to the statute as amended through the EPS Improvement Act of 2017, Public Law 11–115 (January 12, 2018).

interim waiver if it appears likely that the petition for waiver will be granted or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(e)(2). Within one year of issuance of an interim waiver, DOE will either: (i) Publish in the **Federal Register** a determination on the petition for waiver; or (ii) publish in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver. 10 CFR 430.27(h)(1). When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. 10 CFR 430.27(h)(2).

II. JCI's Petition for Waiver of Test Procedure and Application for Interim Waiver

On April 6, 2017, JCI filed a petition for waiver and an application for interim waiver from the CAC and HP test procedure set forth in 10 CFR part 430, subpart B, appendix M. JCI filed an amended petition for waiver and application for interim waiver on June 5, 2018. According to JCI, the basic models listed in its amended petition [3] are offered as new, matched systems and testing them as outdoor units with no match (as required by the DOE test procedure) will overstate their energy usage. Energy usage for these models will be overstated because these R–407C outdoor units will be rated using default indoor unit parameters that approximate the performance of an old, previously installed indoor unit. JCI seeks to use an alternate test procedure to test and rate the basic models listed in its amended petition. JCI proposes to waive the DOE test procedure requirement to test these basic models as outdoor units with no match and instead, test these basic models as matched systems in accordance with 10 CFR part 430, subpart B, as applicable.

JCI also requests an interim waiver from the existing DOE test procedure. An interim waiver may be granted if it appears likely that the petition for waiver will be granted, and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. See 10 CFR 430.27(e)(2).

[3] The specific basic models are listed in Attachment A to JCI's June 5, 2018 letter (attached at the end of this notice).

III. Requested Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures to make representations about the energy consumption and energy consumption costs of products covered by the statute. (42 U.S.C. 6293(c)) Consistent representations are important for manufacturers to use in making representations about the energy efficiency of their products and to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations applicable to waivers and interim waivers from applicable test procedures at 10 CFR 430.27, and after consideration of public comments on the petition, DOE will consider setting an alternate test procedure for the equipment identified by JCI in a subsequent Decision and Order.

As an alternate test procedure, JCI proposes that the basic models listed in the amended petition be tested according to the test procedure for central air conditioners and heat pumps prescribed by DOE at 10 CFR part 430, subpart B, appendix M, as applicable, except for the provisions under 10 CFR 429.16(a)(3)(i) that require JCI's R–407C outdoor units to be tested, at a minimum, as outdoor units with no match. Under JCI's proposed alternative test procedure, the basic models listed in the amended petition would be tested as new, matched systems.

IV. Grant of an Interim Waiver

DOE conducted a review of JCI's public-facing materials, including websites, marketing materials, Air-conditioning, Heating, and Refrigeration Institute (AHRI) system matches, and technical guides for the 1,187 system combinations listed in JCI's amended petition that use GAW Series outdoor units and are certified in DOE's Compliance Certification Management System to confirm that these materials support JCI's assertions that these basic models are offered as new, matched systems. All materials reviewed by DOE can be found in the docket. Based on a review of the amended petition and JCI's public-facing materials, it is DOE's current understanding that these basic models, similar to central air conditioners that use other refrigerants, are offered as both matched, new systems and as replacement outdoor units for existing systems. JCI proposes to evaluate the basic models listed in its amended petition in a manner that is representative of the true energy consumption of these products when installed as new, matched systems, similar to how central air conditioners that use other refrigerants and are sold both as new, matched systems and as replacement outdoor units are treated under DOE's test procedures. Consequently, DOE has determined that JCI's amended petition for waiver will likely be granted. Furthermore, as central air conditioners that use other refrigerants and are sold both as new, matched systems and as replacement units are currently not subject to the outdoor unit with no match testing provisions, DOE has determined that it is also desirable for public policy reasons to grant JCI immediate interim relief pending a determination of the amended petition for waiver.

For the reasons stated, DOE has granted JCI's application for interim waiver for its specified basic models of central air conditioners. The substance of DOE's Interim Waiver Order is summarized below.

Therefore, DOE has issued an Order, stating:

(1) JCI must test and rate the CAC and HP basic models listed in paragraph (A) as new, matched systems with the alternate test procedure set forth in paragraph (2):

(A) GAW14L18C2*S, GAW14L24C2*S, GAW14L30C2*S, GAW14L36C2*S, GAW14L42C2*S, GAW14L48C2*S, GAW14L60C2*S

(2) The applicable method of test for the JCI basic models listed in paragraph (1)(A) is the test procedure for CACs and HPs prescribed by DOE at 10 CFR part 430, subpart B, appendix M, except that 10 CFR part 429.16(a)(3)(i) shall be as detailed below. All other requirements of 10 CFR part 429.16 remain applicable.

In 429.16(a), *Determination of Represented Value:*

(3) *Refrigerants.* (i) If a model of outdoor unit (used in a single-split, multi-split, multi-circuit, multi-head mini-split, and/or outdoor unit with no match system) is distributed in commerce and approved for use with multiple refrigerants, a manufacturer must determine all represented values for that model using each refrigerant that can be used in an individual combination of the basic model (including outdoor units with no match or ''tested combinations''). This requirement may apply across the listed categories in the table in paragraph (a)(1) of this section. A refrigerant is considered approved for use if it is listed on the nameplate of the outdoor unit. If any of the refrigerants approved for use is HCFC–22 or if there are no refrigerants designated as approved for use, a manufacturer must determine represented values (including SEER, EER, HSPF, SEER2, EER2, HSPF2, $P_{W,OFF}$, cooling capacity, and heating capacity, as applicable) for, at a minimum, an outdoor unit with no match. If a model of outdoor unit is not charged with a specified refrigerant from the point of manufacture (unless either (a) the factory charge is equal to or greater than 70% of the outdoor unit internal volume times the liquid density of

refrigerant at 95 °F or (b) an A2L refrigerant is approved for use and listed in the certification report), a manufacturer must determine represented values (including SEER, EER, HSPF, SEER2, EER2, HSPF2, $P_{W,OFF}$, cooling capacity, and heating capacity, as applicable) for, at a minimum, an outdoor unit with no match.

(3) *Representations.* JCI is permitted to make representations about the efficiency of basic models that meet the requirements of paragraph (1) for compliance, marketing, or other purposes only to the extent that the basic model has been tested in accordance with the provisions set forth above and such representations fairly disclose the results of such testing in accordance with 10 CFR 429.16 and 10 CFR part 430, subpart B, appendix M.

(4) This interim waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(h) and (k).

(5) DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic model's true energy consumption characteristics.

(6) Granting of this interim waiver does not release JCI from the certification requirements set forth at 10 CFR part 429, other than those explicitly stated in paragraph (2).

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. JCI may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models of central air conditioners and heat pumps. Alternatively, if appropriate, JCI may request that this interim waiver (or subsequent waiver, if applicable) be extended to additional basic models employing the same technology as basic models specifically set out in this petition (see 10 CFR 430.27(g)).

V. Summary and Request for Comments

Through this notice, DOE announces receipt of JCI's petition for waiver from the DOE test procedure for certain basic models and announces DOE's decision to grant JCI an interim waiver from the test procedure for the basic models listed in JCI's amended petition. DOE is publishing JCI's amended petition for waiver in its entirety, pursuant to 10 CFR 430.27(b)(1)(iv). The amended petition contains no confidential information. The amended petition includes a suggested alternate test procedure, as specified in section III of this notice, to determine the energy consumption of JCI's specified CAC basic models. DOE may consider including the alternate procedure specified in the Order in a subsequent Decision and Order.

DOE invites all interested parties to submit in writing by September 12, 2018, comments and information on all aspects of the amended petition, including the suggested alternate test procedure and calculation and rating methodology. DOE also seeks comment and data on JCI's assertion that it offers R–407C outdoor units as matched systems. Pursuant to 10 CFR 430.27(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is Steve Tice, Johnson Controls, Inc., 3110 N Mead St., Wichita, KS 67219.

Submitting comments via *http://www.regulations.gov.* The *http://www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Signed in Washington, DC, on August 3, 2018.

Cathy Tripodi,

Acting Assistant Secretary for Energy Efficiency and Renewable Energy.

Johnson Controls, Inc.
3110 N. Mead St. Wichita, KS 67219
Tel 316-239-2925 Fax 316-832-6598

June 5, 2018

VI. VIA E-MAIL: AS_Waiver_Requests@ee.doe.gov

Ashley Armstrong
Building Technologies Program
Office of Energy Efficiency and Renewable Energy
U.S. Department of Energy
Mailstop EE-5B
1000 Independence Avenue, SW
Washington, DC 20585-0121

Re: Amended Petition for Waiver and Interim Waiver of "Outdoor Unit with No Match" Test Procedure Provisions for JCI's GAW Series Central Air Conditioners

Dear Ms. Armstrong:

Pursuant to 10 C.F.R. § 430.27, Johnson Controls, Inc. (JCI) respectfully submits this amended petition for waiver and interim waiver[1] from certain provisions of the Department of Energy's (DOE) test procedure for central air conditioners (CAC).[2] Specifically, as explained herein, JCI seeks waiver of two requirements codified at 10 C.F.R. § 429.16(a)(3) with respect to its GAW Series of central air conditioners, which use R-407C as the refrigerant: (i) the requirement that represented values for a model of outdoor unit that is approved for use with any refrigerant that has a 95 °F midpoint saturation absolute pressure within 18% of the 95 °F midpoint saturation absolute pressure for HCFC-22, be determined under the "outdoor unit with no match" provisions of the CAC test procedure found at 10 C.F.R., Part 430, Subpart B, Appendix M, Sections 2.2e, 3.2.1, and 3.5.3 (No Match Provisions); and (ii) the requirement that represented values for a model of outdoor unit that is shipped requiring the addition of more than two pounds of refrigerant to meet the charge required for testing be determined under the same No Match Provisions (together, these requirements are referred to herein as the "R-407C No Match Requirements").[3] If applied to the GAW Series basic models, each of the R-407C No Match Requirements would result in evaluation of the products under the test procedure in a manner so

[1] JCI submitted a petition for test procedure waiver and interim waiver with respect to its GAW Series products on April 6, 2017. JCI, Petition for Waiver and Interim Waiver of "Outdoor Unit with No Match" Test Procedure Provisions for JCI's GAW Series Central Air Conditioners (Apr. 6, 2017) ("April 6, 2017 Petition"). DOE has not yet acted on the April 6, 2017 Petition. This amended petition updates and amends the April 6, 2017 Petition, seeking relief from the same test procedure provisions for the same basic models.
[2] 10 C.F.R. Part 430, Subpart B, Appendix M.
[3] *Id.* § 429.16(a)(3).

unrepresentative of the GAW Series' true energy consumption characteristics as to provide materially inaccurate comparative data.[4]

To evaluate the GAW Series products in a manner representative of their true energy characteristics, JCI asks for waiver of the R-407C No Match Requirements. Under JCI's proposed alternative test procedure, the GAW Series products would be subject to the full Appendix M test procedure except for the No Match Provisions, so that the GAW series basic models would be tested in the same manner as other matched CAC systems. This approach allows for rating of JCI's R-407C systems for purposes of determining compliance with efficiency standards based on an evaluation of the performance of a new matched system combination, which is consistent with the development of DOE's CAC efficiency standards themselves, which were based on consideration of the performance of matched combinations of new components. The basis for this test procedure waiver, and the corresponding interim test procedure waiver, are explained below.

I. Johnson Controls

JCI is a diversified equipment and technology company with its operational headquarters in Milwaukee, Wisconsin. Our employees provide intelligent buildings, energy efficient solutions and integrated infrastructure to optimize energy efficiency and to create the smart buildings and communities of the future. Through its Ducted Systems business, JCI manufactures and sells heating and air conditioning systems for residential uses.

JCI manufactures a line of environment-friendly central air conditioners known as its GAW Series that utilize R-407C as the refrigerant. R-407C is a non-ozone-depleting refrigerant that is readily available, less expensive than R-410A, the current industry standard refrigerant, and approved for use in CAC systems under the Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) Program.[5] All of these products are manufactured in the United States, in Wichita, Kansas.

II. Background

A. Promulgation of the R-407C No Match Requirements

DOE's CAC test procedure found at 10 C.F.R. Part 430, Subpart B, Appendix M provides that the efficiency rating for an "outdoor unit with no match" must be determined using default parameters representative of an inefficient, old CAC system that would not meet today's standards.[6] "Outdoor unit with no match" is defined in Appendix M as an outdoor unit "that is not distributed in commerce with any indoor units."[7]

The No Match Provisions were adopted in a June 2016 final rule to specify how to test and rate outdoor units using the refrigerant R-22.[8] DOE found that EPA Clean Air Act regulations prohibited the

[4] *Id.* § 430.27(f)(2) ("DOE will grant a waiver from the test procedure requirements if DOE determines . . . that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy or water consumption characteristics as to provide materially inaccurate comparative data.").
[5] *See* Protection of Stratospheric Ozone: New Listings of Substitutes; Changes of Listing Status; and Reinterpretation of Unacceptability for Closed Cell Foam Products Under the Significant New Alternatives Policy Program; and Revision of Clean Air Act Section 608 Venting Prohibition for Propane, 81 Fed. Reg. 86,778, 86,806 (Dec. 1, 2016) (Table 4).
[6] 10 C.F.R. Part 430, Subpart B, Appendix M §§ 2.2(e), 3.2.1, and 3.5.3.
[7] *Id.*
[8] *See* Test Procedures for Central Air Conditioners and Heat Pumps, 81 Fed. Reg. 36,991 (June 8, 2016).

sale of matched CAC combinations using R-22 as the refrigerant.[9] Because the DOE test procedure required the testing of matched outdoor and indoor CAC components to calculate a CAC energy efficiency rating, DOE determined that the No Match Provisions were needed to specify how to test and rate R-22 outdoor units that could not, by law, be matched with an indoor unit for sale.

In a subsequent final rule promulgated in January 2017, DOE further amended the CAC test procedures to, *inter alia*, adopt the R-407C No Match Requirements, which require that R-407C products must be rated under the No Match Provisions, regardless of whether they are matched products.[10] For R-407C matched systems to be certified as compliant with applicable standards under Appendix M as revised by the 2017 Final Rule, the matched system must be rated compliant under the matched system test provisions of Appendix M, and the R-407C outdoor unit must be separately rated compliant under the No Match Provisions.[11]

The 2017 Final Rule required compliance with the R-407C No Match Requirements as of July 5, 2017.[12]

B. Requests for Relief from the R-407C No Match Requirements

After promulgation of the R-407C No Match Requirements in the 2017 Final Rule, JCI sought relief via several avenues. First, JCI filed a petition for review of the 2017 Final Rule in the United States Court of Appeals for the Seventh Circuit.[13] The parties to this case, including DOE, agreed to place the case in mediation on April 28, 2017, at which time the briefing schedule was suspended.[14] That case remains pending before the Court of Appeals.

Second, JCI sought, and DOE granted, a 180-day extension of the Final Rule's July 5, 2017 compliance deadline pursuant to Section 323(c)(3) of the Energy Policy and Conservation Act (EPCA), which permits DOE to authorize such an extension if it determines that the original compliance deadline "would impose an undue hardship" on the petitioner.[15] In granting that request, DOE found that "JCI has met the criteria for granting such a request," and delayed JCI's compliance date for testing in accordance with the R-407 No Match Requirements for the GAW Series models until January 1, 2018.[16]

Third, JCI sought,[17] and DOE granted,[18] an administrative stay of the R-407C No Match Requirements, pending judicial review in the Seventh Circuit, under Section 705 of the Administrative

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[9] *Id.* at 37,008.
[10] Test Procedures for Central Air Conditioners and Heat Pumps, 82 Fed. Reg. 1426 (Jan. 5, 2017) (2017 Final Rule).
[11] *Id.*
[12] *Id.*
[13] Petition for Review, *Johnson Controls, Inc. v. U.S. Dep't of Energy*, No. 17-1470 (7th Cir. Mar. 3, 2017).
[14] Notice of Mediation, *Johnson Controls, Inc. v. U.S. Dep't of Energy*, No. 17-1470 (7th Cir. Apr. 28, 2017); Circuit Rule 33 Order Suspending Briefing Schedule, *Johnson Controls, Inc. v. U.S. Dep't of Energy*, No. 17-1470 (7th Cir. Apr. 28, 2017).
[15] 42 U.S.C. § 6293(c)(3).
[16] Letter from Daniel R. Simmons, Acting Assistant Secretary, DOE Office of Energy Efficiency and Renewable Energy, to Elizabeth A. Haggerty, Vice-President & General Manager, JCI Unitary Products Group at 1 (June 2, 2017), *available at* https://www.energy.gov/sites/prod/files/2017/06/f34/jci-180-day-letter-2017-6-9.pdf (180-Day Hardship Extension).
[17] Request of Johnson Controls, Inc. for Administrative Stay Pending Judicial Review of Certain Elements of January 5, 2017 Final Rule on Test Procedures for Central Air Conditioners and Heat Pumps, and Request for Expedited Action (May 31, 2017).

Procedure Act.[19] In issuing the administrative stay, DOE "determined that, during the pendency of the lawsuit brought by JCI, it is in the interests of justice to postpone the effectiveness of the [R-407C No Match Requirements]."[20] Additionally, DOE explained that it "determined to postpone the effectiveness of these provisions based on JCI's submissions to DOE that raise concerns about significant potential impacts on JCI."[21]

Fourth, JCI submitted a petition for test procedure waiver, and interim test procedure waiver, of the R-407C No Match Requirements to DOE on April 6, 2017.[22] DOE has not yet taken action on the April 6, 2017 Petition. This amended petition for test procedure waiver and interim test procedure waiver updates the April 6, 2017 Petition.

III. Grounds for Test Procedure Waiver - Applying the No Match Provisions to the JCI GAW Series Combinations Results in Materially Inaccurate Comparative Data.

DOE's regulations explain that "DOE will grant a waiver from the test procedure requirements if DOE determines . . . that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy or water consumption characteristics as to provide materially inaccurate comparative data." [23] JCI seeks a waiver from certain elements of the applicable CAC test procedure for its GAW Series products. Because JCI's GAW Series products use the refrigerant R-407C, the R-407C No Match Requirements require that such systems be tested under the No Match Provisions found in Appendix M. However, applying the No Match Provisions to the GAW Series products, as the R-407C No Match Requirements mandate, provides materially inaccurate comparative data.

Rating R-407C system combinations using the No Match Requirements provides materially inaccurate data for purposes of comparing basic model performance to the applicable efficiency standards. CAC test procedures are used to determine efficiency ratings of CAC basic models, as a basis for evaluating compliance of the basic models with mandatory efficiency standards. The R-407C No Match Requirements require that ratings for matched combinations of CAC products using R-407C be determined under the No Match Provisions, which evaluate the R-407C outdoor unit along with default indoor unit parameters that approximate the performance of an old, previously installed indoor unit. The CAC standards against which the products are judged, however, were developed based upon consideration of the efficiency of matched CAC combinations in which both the indoor and outdoor components are new. DOE did not consider, in developing its current standards, what standard level is technically feasible and economically justified for a CAC combination consisting of a new outdoor unit and an old, inefficient indoor unit. Because of this discrepancy, the R-407C No Match Requirements produce ratings for R-407C matched systems, such as the GAW Series basic models, that are materially inaccurate for purposes of judging compliance with the efficiency standards.

JCI's GAW Series products have many matched combinations – they are not "outdoor units with no match." Because the GAW Series products use the refrigerant R-407C, the CAC test procedure requires that the systems be tested and rated as outdoor units with no match. However, JCI certifies and offers its GAW Series products as matched systems. JCI has certified its GAW Series to DOE in more

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[18] Test Procedures for Central Air Conditioners and Heat Pumps, 82 Fed. Reg. 32,227 (July 13, 2017) (pending judicial review in *Natural Resources Defense Council v. U.S. Dep't of Energy*, No. 17-cv-6989 (S.D.N.Y.)) (Administrative Stay).
[19] 5 U.S.C. § 705.
[20] Administrative Stay, 82 Fed. Reg. at 32,227-28.
[21] *Id.* at 32,228.
[22] April 6, 2017 Petition.
[23] 10 C.F.R. § 430.27(f)(2).

than 1,100 unique matched CAC system combinations that represent a wide range of possible indoor and outdoor unit installation scenarios.[24] The certified ratings range from 14 to 16 SEER, based on the matched components. Requiring the GAW Series to be tested under the No Match Provisions would result in each of these ratings falling below 13 SEER, thus producing "materially inaccurate" representations of the performance of the matched offerings of the GAW Series products.

Unlike R-22 products, sales of matched R-407C systems are not barred by law. The rationale for establishing the outdoor unit with no match requirements for R-22 outdoor units does not apply to the GAW Series. DOE found that sale of matched R-22 systems was barred by EPA regulation under the Clean Air Act, and thus it needed to provide special test procedures, including specification of a default indoor unit, for purposes of testing R-22 outdoor units, because "the EPA prohibits distribution of new HCFC-22 condensing unit and coil combinations (i.e., complete systems)."[25] There is no such legal limitation on the distribution of matched systems using R-407C. Thus, while R-22 outdoor units can only be rated under the No Match Provisions, R-407C systems can be rated as matched systems, as reflected by the 1100+ combinations certified in DOE's Compliance Certification Management System by JCI.

Granting a waiver will ensure accurate comparative data for CAC components. Although CACs are rated as matched systems, many CAC components including outdoor units, regardless of refrigerant type, are also used to replace failed components of previously-installed systems. An R-410A outdoor unit used to replace a failed R-22 outdoor unit is rated based on testing with its certified matches; it is not rated based on an approximation of its efficiency performance when matched with outdated, already installed components. Thus, requiring JCI's R-407C outdoor units to be rated using default indoor unit parameters representative of an old, inefficient indoor unit results in materially inaccurate comparative data for consumers. For instance, under the R-407C No Match Requirements, although an R-407C outdoor unit and an R-410A outdoor unit might operate at the same efficiency when matched with the same new indoor coil, the R-407C unit will nonetheless be rated at a substantially lower efficiency because it is required to be rated under the No Match Provisions. This R-407C penalty will lead to distorted comparative ratings, and in this case would result in noncompliance determinations for the R-407C products and thus the unavailability to consumers of R-407C products.

Granting a test procedure waiver will give effect to the requirements of EPCA § 323(e). Section 323(e)(2) of EPCA provides that if a test procedure amendment "will alter the measured efficiency" of a covered product, DOE shall amend the efficiency standards so that minimally compliant products under the old test procedure will comply under the amended test procedure. Further, Section 323(e)(3) of EPCA provides that products that comply with the standards before a test procedure amendment "shall be deemed to comply" after the amendment takes effect.[26] The GAW Series products for which a test procedure waiver is sought were compliant with applicable efficiency standards under the applicable Appendix M test procedure prior to the effective date of the 2017 Final Rule. The 2017 Final Rule's R-407C No Match Requirements from which JCI seeks waiver, if applied to the GAW Series products, would render those products noncompliant with DOE efficiency standards. Thus the R-407C No Match

[24] The list of GAW Series outdoor unit/indoor coil combination matches certified by JCI is attached as Attachment A. JCI has certified to DOE individual combinations under each separate R-407C basic model in its GAW Series. For each basic model, there are a number of matched outdoor unit/indoor coil combinations, and for each such combination, JCI has certified a number of matched ducted air movers. For example, for Evcon outdoor unit basic model GAW14L18C22S, there are 18 indoor coil matches, which are certified with several different ducted air movers, in addition to 4 different air handler matches for a total of 219 matched combinations. GAW Series outdoor unit/indoor coil combinations are distributed under several brand names, including Guardian, Evcon and York; as a result, DOE's Compliance Certification Management System (CCMS) shows more than 2,700 certified combinations of GAW Series products.

[25] Test Procedures for Central Air Conditioners and Heat Pumps, 81 Fed. Reg. at 37,008.

[26] *See* 42 U.S.C. § 6293(e)(3).

Requirements alter the measured efficiency of the GAW Series, and pursuant to EPCA Section 323(e), the GAW Series should be deemed to comply under the revised test procedure that includes the R-407C No Match Requirements.[27] Granting this requested test procedure waiver would be an appropriate means of giving effect to these requirements of Section 323(e) of EPCA.

For the reasons discussed above, DOE should grant the requested test procedure waiver and allow JCI to test its GAW series products according to an appropriate alternative test procedure, i.e., the Appendix M test procedure except for the requirement to test under the No Match Provisions, consistent with the test procedure applicable to all other matched CAC systems.

IV. Test Procedures From Which Waiver Is Requested

JCI requests waiver with respect to its GAW Series from the provisions of 10 C.F.R. § 429.16(a)(3) requiring that: (i) represented values for a model of outdoor unit that is approved for use with any refrigerant that has a 95 °F midpoint saturation absolute pressure within 18% of the 95 °F midpoint saturation absolute pressure for HCFC-22, be determined under the outdoor unit with no match provision of the CAC test procedure found at Appendix M, Sections 2.2e, 3.2.1, and 3.5.3; and (ii) represented values for a model of outdoor unit that is shipped requiring the addition of more than two pounds of refrigerant to meet the charge required for testing be determined under the same outdoor unit with no match" provision. If DOE grants this limited waiver, the GAW Series products would remain subject to all of Appendix M's requirements applicable to matched systems.

V. Basic Models for Which Waiver Is Requested

JCI requests waiver for all individual combinations it has certified under the following basic model designations: GAW14L18C2*S, GAW14L24C2*S, GAW14L30C2*S, GAW14L36C2*S, GAW14L42C2*S, GAW14L48C2*S, and GAW14L60C2*S. These basic models include a large number of unique outdoor unit/indoor unit/ducted air mover combinations. As shown in Attachment A, JCI has certified more than 1,100+ unique combinations. These products are marketed under the Guardian, Evcon, and York brands, so CCMS shows a total of over 2,700 certified combinations under these basic models.

VI. Alternative Test Procedures

DOE's Appendix M test procedure, except for the requirement to test using the No Match Provisions, constitutes the appropriate alternate test procedure. This will evaluate the performance of JCI's GAW Series in a manner representative of its energy consumption characteristics. Therefore, JCI proposes to test its GAW Series basic models by applying Appendix M to 10 C.F.R. Part 430, Subpart B, as it would apply to matched systems that are not subject to the R-407C No Match Requirements. JCI would apply the entirety of Appendix M, with the revision to 10 C.F.R. § 429.16(a)(3)(i) shown below:

> If a model of outdoor unit (used in a single-split, multi-split, multi-circuit, multi-head mini-split, and/or outdoor unit with no match system) is distributed in commerce and approved for use with multiple refrigerants, a manufacturer must determine all

[27] EPCA § 323(e) is designed to ensure that test procedure amendments (as opposed to efficiency standard amendments) will not create hardship by interfering with continued sales of covered products. DOE has acknowledged that imposition of the R-407C No Match Requirements on the GAW Series would impose hardship on JCI. DOE granted JCI's request for a 180-day compliance deadline extension based on a finding of "undue hardship," and granted an administrative stay of the R-407C No Match Requirements because of "significant potential impacts on JCI." *See* 180-Day Hardship Extension at 1; Administrative Stay, 82 Fed. Reg. at 32,228.

represented values for that model using each refrigerant that can be used in an individual combination of the basic model (including outdoor units with no match or "tested combinations"). This requirement may apply across the listed categories in the table in paragraph (a)(1) of this section. A refrigerant is considered approved for use if it is listed on the nameplate of the outdoor unit. If any of the refrigerants approved for use is HCFC-22 ~~*or has a 95 °F midpoint saturation absolute pressure that is +/− 18 percent of the 95 °F saturation absolute pressure for HCFC-22*~~, or if there are no refrigerants designated as approved for use, a manufacturer must determine represented values (including SEER, EER, HSPF, SEER2, EER2, HSPF2, PW,OFF, cooling capacity, and heating capacity, as applicable) for, at a minimum, an outdoor unit with no match. If a model of outdoor unit is not charged with a specified refrigerant from the point of manufacture ~~*or if the unit is shipped requiring the addition of more than two pounds of refrigerant to meet the charge required for testing per section 2.2.5 of appendix M or appendix M1*~~ (unless either (a) the factory charge is equal to or greater than 70% of the outdoor unit internal volume times the liquid density of refrigerant at 95 °F or (b) an A2L refrigerant is approved for use and listed in the certification report), a manufacturer must determine represented values (including SEER, EER, HSPF, SEER2, EER2, HSPF2, PW,OFF, cooling capacity, and heating capacity, as applicable) for, at a minimum, an outdoor unit with no match.

Thus, the only change would be to eliminate application of the No Match Provisions for JCI's GAW Series. The resulting test procedure would be the same as that which applies, for instance, to R-410A products.

VII. Similar Products

Based on market information, it appears that two other manufacturers manufacture, or have manufactured, residential split-system central air conditioners designed to use R-407C: Broadair (Allstyle) and Thermal Zone (Rheem).

VIII. Petition for Interim Waiver

Pursuant to 10 C.F.R. § 430.27, JCI also requests an interim waiver of the R-407C No Match Requirements of the CAC test procedure for the GAW Series basic model families described in Section V. DOE's regulations provide that an interim waiver will be granted if it appears likely that the petition for waiver will be granted or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver.[28]

An interim waiver is important in this case because compliance with the R-407C No Match Requirements in the 2017 Final Rule would be required for JCI but for DOE's administrative stay of those requirements. The Administrative Stay is currently the subject of litigation, and if the stay is dissolved, JCI's GAW Series would become subject to the R-407C No Match Requirements. Interim relief is important to ensure that JCI can continue to offer the GAW Series products in the event DOE's stay of the R-407C No Match Requirements is dissolved and DOE has not yet completed its consideration of JCI's petition for test procedure waiver.

Likely Success of the Petition for Waiver. For the reasons outlined above in Section III, JCI believes that there are strong arguments for granting the petition for waiver on the merits. Specifically:

[28] 10 C.F.R. § 430.27(e)(2).

- Rating R-407C system combinations using the No Match Provisions in the Appendix M test procedure provides materially inaccurate data for purposes of comparing basic model performance to the applicable efficiency standards, because the applicable efficiency standards were developed based upon consideration of the performance of new, matched systems, and not outdoor units with no match;

- JCI's GAW Series products have many matched combinations, and are not "outdoor units with no match," for which the No Match Provisions are intended;

- Unlike R-22 products, for which the No Match Provisions were originally developed, sales of matched R-407C systems are not barred by law;

- Granting a waiver will ensure accurate comparative data for CAC components, so that GAW Series products are not disadvantaged as compared to comparable R-410A products; and

- Given that the R-407C No Match Requirements would render the GAW Series products noncompliant with DOE standards, granting a test procedure waiver will give effect to the requirements of EPCA § 323(e), which requires that DOE deem products that are compliant with applicable standards prior to a test procedure amendment compliant with the standards after the test procedure amendment.

Economic Hardship. DOE has found, in acting on JCI's applications for administrative stay and compliance deadline extension, that requiring JCI to rerate the GAW Series products under the R-407C No Match Requirements would result in economic hardship.[29] If JCI is required to comply with the R-407C No Match Requirements with respect to the GAW Series basic model families, these products will no longer be able to be manufactured in compliance with applicable efficiency standards. JCI would be forced to cease production of the GAW Series, which will cause significant economic harm to JCI, and will eliminate an economic and innovative option currently available to consumers.

Public Policy Reasons to Grant Interim Waiver. The imposition of the R-407C No Match Requirements on JCI's GAW Series products while DOE considers the petition for test procedure waiver will require JCI to stop manufacturing such products and make the products unavailable to consumers. As a practical matter, if these products were taken off the market in the absence of an interim waiver, it is very unlikely that JCI would begin manufacturing them again at a later date in the event that the petition for test procedure waiver was eventually granted. Thus, an interim waiver will allow the GAW Series to continue to be manufactured until the Department has an opportunity to fully consider and act on the petition for waiver set out above. Denial of an interim waiver threatens to take this product line out of the market before DOE considers the issues raised in the petition.

The scope of JCI's request for interim test procedure waiver, and the alternative test procedure that JCI proposes to apply during the effectiveness of an interim test procedure waiver, are identical to JCI's request for waiver and alternative test procedure set forth above.

VII. IX. Conclusion

For the reasons stated above, JCI respectfully requests that DOE grant this request for waiver of the R-407C No Match Requirements for its GAW Series of R-407C central air conditioners. JCI further

[29] *See* 180-Day Hardship Extension at 1; Administrative Stay, 82 Fed. Reg. at 32,228.

requests DOE to grant its request for an interim waiver while its petition for waiver is pending. JCI requests prompt action on the request for interim waiver.

If you have any questions or would like to discuss this request, please contact Steve Tice at (316) 832-6393, Chris Forth at (405) 826-5802, or Doug Smith of Van Ness Feldman, LLP at (202) 298-1902. We greatly appreciate your attention to this matter.

Sincerely,

Steve Tice,
Vice-President, Residential Engineering & Advanced Technologies / Heat Transfer
Ducted Systems,
Johnson Controls, Inc.
steven.a.tice@jci.com

Chris Forth,
Director, Regulatory, Codes and Standards
Ducted Systems,
Johnson Controls, Inc.
chris.m.forth@jci.com

Cc: John Cymbalsky, Office of Energy Efficiency and Renewable Energy
Daniel Cohen, Office of the General Counsel

VIII. Attachment A

CERTIFIED GAW SERIES PRODUCT COMBINATIONS

Outdoor unit models	Indoor models	Number of unique ducted air mover combinations
GAW14L18C2*S	CF/CM/CU42C+TXV	22
	CF/CM/CU42D+TXV	14
	CF/CM/CU48C+TXV	22
	CF/CM/CU48D+TXV	22
	CF/CM42D+ME14DN21+TXV	1
	CF/CM48D+ME14DN21+TXV	1
	CF42B+ME12BN21+TXV	1
	CF42B+TXV	15
	FC/MC/PC37A+TXV	10
	FC/MC/PC43B+TXV	14
	FC/MC/PC43C+TXV	22
	FC/MC/PC48C+TXV	22
	FC/MC/PC48D+TXV	26
	FC/MC43B+MV12BN21+TXV	1
	FC/MC43B+MX12BN21+TXV	1
	FC/MC48D+MX12DN21+TXV	1
	FC/PC60C+TXV	1
	FC1CXT1+TXV	23
GAW14L24C2*S	CF/CM64D+ME14DN21+TXV	1
	CF/CM64D+TXV	38
	FC/MC62D+MX12DN21+TXV	1
	FC/MC62D+TXV	36
	FC3DXT1+MX12DN21+TXV	1
	FC3DXT1+TXV	37
	FC5DXT1+MX12DN21+TXV	1

CERTIFIED GAW SERIES PRODUCT COMBINATIONS—Continued

Outdoor unit models	Indoor models	Number of unique ducted air mover combinations
	FC5DXT1+TXV	36
	FC64D+MX12DN21+TXV	1
	FC64D+TXV	36
GAW14L30C2*S	CF/CM64D+ME14DN21+TXV	1
	CF/CM64D+ME20DN21+TXV	1
	CF/CM64D+TXV	39
	FC/MC62D+MX12DN21+TXV	1
	FC/MC62D+MX20DN21+TXV	1
	FC/MC62D+TXV	37
	FC3DXT1+MX12DN21+TXV	1
	FC3DXT1+MX20DN21+TXV	1
	FC3DXT1+TXV	38
	FC5DXT1+MX12DN21+TXV	1
	FC5DXT1+MX20DN21+TXV	1
	FC5DXT1+TXV	37
	FC64D+MX12DN21+TXV	1
	FC64D+MX20DN21+TXV	1
	FC64D+TXV	37
GAW14L36C2*S	CF/CM64D+ME14DN21+TXV	1
	CF/CM64D+ME20DN21+TXV	1
	CF/CM64D+TXV	41
	FC/MC62D+MV12DN21+TXV	1
	FC/MC62D+MV20DN21+TXV	1
	FC/MC62D+MX12DN21+TXV	1
	FC/MC62D+MX20DN21+TXV	1
	FC/MC62D+TXV	37
	FC3DXT1+MV12DN21+TXV	1
	FC3DXT1+MV20DN21+TXV	1
	FC3DXT1+MX12DN21+TXV	1
	FC3DXT1+MX20DN21+TXV	1
	FC3DXT1+TXV	37
	FC5DXT1+MV12DN21+TXV	1
	FC5DXT1+MV20DN21+TXV	1
	FC5DXT1+MX12DN21+TXV	1
	FC5DXT1+MX20DN21+TXV	1
	FC5DXT1+TXV	37
	FC64D+MV12DN21+TXV	1
	FC64D+MV20DN21+TXV	1
	FC64D+MX12DN21+TXV	1
	FC64D+MX20DN21+TXV	1
	FC64D+TXV	37
	AE60DX21+TXV	1
	AHE60D3X(H,T)21+TXV	1
	RFCX60DE20MP21+TXV	1
	RFCX60DE20MP22+TXV	1
GAW14L42C2*S	CF/CM64D+ME14DN21+TXV	1
	CF/CM64D+ME20DN21+TXV	1
	CF/CM64D+TXV	40
	FC/MC62D+MV20DN21+TXV	1
	FC/MC62D+MX20DN21+TXV	1
	FC/MC62D+TXV	41
	FC3DXT1+MV20DN21+TXV	1
	FC3DXT1+MX20DN21+TXV	1
	FC3DXT1+TXV	42
	FC5DXT1+MV20DN21+TXV	1
	FC5DXT1+MX20DN21+TXV	1
	FC5DXT1+TXV	32
	FC64D+MV20DN21+TXV	1
	FC64D+MX20DN21+TXV	1
	FC64D+TXV	32
	AE60DX21+TXV	1
	AHE60D3X(H,T)21+TXV	1
	RFCX60DE20MP21+TXV	1
	RFCX60DE20MP22+TXV	1
GAW14L48C2*S	CF/CM64D+ME20DN21+TXV	1
	CF/CM64D+TXV	20
	FC5DXT1+MV20DN21+TXV	1
	FC5DXT1+TXV	34
	FC64D+MV20DN21+TXV	1

CERTIFIED GAW SERIES PRODUCT COMBINATIONS—Continued

Outdoor unit models	Indoor models	Number of unique ducted air mover combinations
GAW14L60C2*S	FC64D+TXV	33
	AE60DX21+TXV	1
	RFCX60DE20MP22+TXV	1
	CF/CM64D+ME20DN21+TXV	1
	CF/CM64D+TXV	19
	FC5DXT1+MV20DN21+TXV	1
	FC5DXT1+MX20DN21+TXV	1
	FC5DXT1+TXV	22
	FC64D+MV20DN21+TXV	1
	FC64D+MX20DN21+TXV	1
	FC64D+TXV	21
	AE60DX21+TXV	1
	RFCX60DE20MP22+TXV	1
Total Number of Unique Certified Product Combinations ..		1,178

[FR Doc. 2018–17188 Filed 8–10–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Public Meeting of the Supercritical CO_2 Oxy-Combustion Technology Group

AGENCY: National Energy Technology Laboratory, Office of Fossil Energy, Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: The National Energy Technology Laboratory (NETL) will host a public meeting via WebEx August 29, 2018, of the Supercritical CO_2 Oxy-combustion Technology Group, to address challenges associated with oxy-combustion systems in directly heated supercritical CO_2 (sCO_2) power cycles.

DATES: The public meeting will be held on August 29, 2018, from 1:00 p.m. to 3:00 p.m. EDT.

ADDRESSES: The public meeting will be held via WebEx and hosted by NETL.

FOR FURTHER INFORMATION CONTACT: For further information regarding the public meeting, please contact Seth Lawson or Walter Perry at NETL by telephone at (304) 285–4469, by email at *Seth.Lawson@netl.doe.gov, Walter.Perry@netl.doe.gov,* or by postal mail addressed to National Energy Technology Laboratory, 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV, 26507–0880. Please direct all media inquiries to the NETL Public Affairs Officer at (304) 285–0228.

SUPPLEMENTARY INFORMATION:

Instructions and Information on the Public Meeting

The public meeting will be held via WebEx. The public meeting will begin at 1:00 p.m. and end at 3:00 p.m. Interested parties may RSVP, to confirm their participation and receive login instructions, by emailing *Seth.Lawson@netl.doe.gov.*

The objective of the Supercritical CO_2 Oxy-combustion Technology Group is to promote a technical understanding of oxy-combustion for direct-fired sCO_2 power cycles by sharing information or viewpoints from individual participants regarding risk reduction and challenges associated with developing the technology.

Oxy-combustion systems in directly heated supercritical CO_2 (SCO_2) power cycles utilize natural gas or syngas oxy-combustion systems to produce a high temperature SCO_2 working fluid and have the potential to be efficient, cost effective and well-suited for carbon dioxide (CO_2) capture. To realize the benefits of direct fired SCO_2 power cycles, the following challenges must be addressed: chemical kinetic uncertainties, combustion instability, flowpath design, thermal management, pressure containment, definition/prediction of turbine inlet conditions, ignition, off-design operation, transient capabilities, in-situ flame monitoring, and modeling, among others.

The format of the meeting will facilitate equal opportunity for discussion among all participants; all participants will be welcome to speak. Following a detailed presentation by one volunteer participant regarding lessons learned from his or her area of research, other participants will be provided the opportunity to briefly share lessons learned from their own research. Meetings are expected to take place every other month with a different volunteer presenting at each meeting. Meeting minutes shall be published for those who are unable to attend.

This meeting is considered ''open-to-the-public;'' the purpose for this meeting has been examined during the planning stages, and NETL management has made specific determinations that affect attendance. All information presented at this meeting must meet criteria for public sharing or be published and available in the public domain. Participants should not communicate information that is considered official use only, proprietary, sensitive, restricted or protected in any way. Foreign nationals, who may be present, have not been approved for access to DOE information and technologies.

Dated: July 23, 2018.

Heather Quedenfeld,

Associate Director, Coal Technology Development & Integration Center, National Energy Technology Laboratory.

[FR Doc. 2018–17312 Filed 8–10–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Coal Council

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of open meetings.

SUMMARY: This notice announces a meeting of the National Coal Council (NCC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, September 13, 2018 8:20 a.m. to 11:45 a.m.

ADDRESSES: Hilton Norfolk The Main, 100 East Main Street, Norfolk, VA 23510.

FOR FURTHER INFORMATION CONTACT: Joseph Giove, U.S. Department of Energy, E–136/Germantown Building, 19901 Germantown Road, Germantown, MD 20874–1290; Telephone: 301–903–4130.

SUPPLEMENTARY INFORMATION:

Purpose of the Council: The National Coal Council provides advice and recommendations to the Secretary of Energy on general policy matters relating to coal and the coal industry.

Purpose of Meeting: The National Coal Council (the Council) will hold its Fall 2018 Meeting from 8:20 a.m. to 11:45 a.m. Eastern on September 13, 2018. A portion of the meeting will be dedicated to a discussion and vote to finalize two draft reports: ''Advancing U.S. Coal Exports: An Assessment of Opportunities to Enhance Exports of U.S. Coal'' and ''Power Reset: Optimizing the Existing U.S. Coal Fleet to Ensure a Reliable and Resilient Power Grid.'' The Council membership will be asked to finalize the reports and forward them to the U.S. Secretary of Energy.

The draft reports will be available on the National Coal Council website on August 31, 2018 at the following URLs:

- U.S. Coal Exports—*http://www.nationalcoalcouncil.org/studies/2018/NCC-US-Coal-Exports-2018.pdf*
- Power Reset—Existing Coal Fleet—*http://www.nationalcoalcouncil.org/studies/2018/NCC-Power-Reset-2018.pdf*

Tentative Agenda

1. Call to order and opening remarks by Steven Winberg, NCC Designated Federal Officer, Assistant Secretary for Fossil Energy, U.S. Department of Energy
2. Presentation by Steven Winberg, NCC Designated Federal Officer, Assistant Secretary for Fossil Energy, U.S. Department of Energy
3. Presentation by Matthew Greek, Senior Vice President—Research, Development and Technology, Basin Electric Power Cooperative on Power Reset: Optimizing the Existing Coal Fleet to Ensure a Reliable & Resilient Power Grid
4. Presentation by David Lawson, Vice President Coal, Norfolk Southern Corporation on Advancing U.S Coal Exports: An Assessment of Opportunities to Enhance Export of U.S. Coal
5. Presentation by TBD from Arq Ltd. on Microfine Hydrocarbon: A Novel Approach to Upgrading Coal into Higher-Value Oil Products
6. Presentation by Seth Schwartz, President, Energy Ventures Analysis on Outlook on Future Markets for Coal
7. Public Comment Period and Closing Remarks
8. Adjourn

Attendees are requested to register in advance for the meeting at: *http://www.nationalcoalcouncil.org/page-NCC-Events.html.*

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Council, you may do so either before or after the meeting. If you would like to make oral statements regarding any item on the agenda, you should contact Joseph Giove, 301–903–4130 or *joseph.giove@hq.doe.gov* (email). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include oral statements on the scheduled agenda. The Chairperson of the Council will lead the meeting in a manner that facilitates the orderly conduct of business. Oral statements are limited to 5-minutes per organization and per person.

Minutes: A link to the transcript of the meeting will be posted on the FACA Database website: *https://facadatabase.gov/committee/historymeetings.aspx?cid=408&fy=2017.*

Signed in Washington, DC, on August 7, 2018.

Latanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–17268 Filed 8–10–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a combined meeting of the Environmental Monitoring and Remediation Committee and Waste Management Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico (known locally as the Northern New Mexico Citizens' Advisory Board [NNMCAB]). The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, August 29, 2018 1:00 p.m.–4:00 p.m.

ADDRESSES: NNMCAB Office, 94 Cities of Gold Road, Pojoaque, NM 87506.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board, 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or email: *menice.santistevan@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Purpose of the Environmental Monitoring and Remediation Committee (EM&R): The EM&R Committee provides a citizens' perspective to NNMCAB on current and future environmental remediation activities resulting from historical Los Alamos National Laboratory (LANL) operations and, in particular, issues pertaining to groundwater, surface water and work required under the New Mexico Environment Department Order on Consent. The EM&R Committee will keep abreast of DOE–EM and site programs and plans. The committee will work with the NNMCAB to provide assistance in determining priorities and the best use of limited funds and time. Formal recommendations will be proposed when needed and, after consideration and approval by the full NNMCAB, may be sent to DOE–EM for action.

Purpose of the Waste Management (WM) Committee: The WM Committee reviews policies, practices and procedures, existing and proposed, so as to provide recommendations, advice, suggestions and opinions to the NNMCAB regarding waste management operations at the Los Alamos site.

Tentative Agenda:

- Call to Order and Introductions
- Approval of Agenda
- Approval of Minutes from April 18, 2018
- Old Business
- New Business
- Update from NNMCAB Chair
- Update from Deputy Designated Federal Officer
- Report on DOE Office of Legacy Management's Long-Term Stewardship Conference
- Public Comment Period
- Chromium Update
- Adjourn

Public Participation: The NNMCAB's Committees welcome the attendance of the public at their combined committee meeting and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone

number listed above. Written statements may be filed with the Committees either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the internet at: *http://energy.gov/em/nnmcab/meeting-materials.*

Signed in Washington, DC, on August 7, 2018.

Latanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–17267 Filed 8–10–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–532–000]

Puget Sound Energy, Inc.; SOCCO, Inc.; Sumas Pipeline Company; Sumas Dry Kilns, Inc.; Notice of Application

Take notice that on July 20, 2018 Puget Sound Energy, Inc. (Puget), SOCCO, Inc. (SOCCO), Sumas Pipeline Company (Sumas) and Sumas Dry Kilns, Inc. (Dry Kilns), filed in Docket No. CP18–532–000, a joint application pursuant to section 3 of the Natural Gas Act (NGA), to amend authorization under NGA section 3 and Presidential Permit to reflect that Sumas has transferred a portion of its ownership interest in the border crossing facility and natural gas pipeline located in Whatcom County, Washington to Puget and SOCCO and the subsequent, pending transfer of SOCCO's resulting ownership interest to Sumas Dry Kilns, Inc. Puget, SOCCO, and Dry Kilns propose no construction or modification to the previously-approved facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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 Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Pamela J. Anderson, Perkins Coie LLP, 10885 NE 4th Street, Suite 700, Bellevue, Washington 98033, by phone at (425) 635–1417 or by email at *PJAnderson@perkinscoie.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 below listed comment date, 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 five 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 commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit original and five copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5 p.m. Eastern Time on August 23, 2018.

Dated: August 2, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–17292 Filed 8–10–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt

of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e) (1) (v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Exempt:

Docket No.	File date	Presenter or requester
1. CP16–357–000	7–19–2018	George Chris Lagos.
2. CP15–554–000	7–19–2018	U.S. Congressman Robert Pittenger.
3. CP16–121–000	7–23–2018	City of Providence, Rhode Island. Councilman Seth Yurdin.
4. CP16–357–000	7–24–2018	George Chris Lagos.
5. RP18–877–000	7–24–2018	U.S. Congress.[1]
6. CP16–121–000	7–26–2018	FERC Staff.[2]
7. P–2520–076	7–26–2018	FERC Staff.[3]
8. CP14–96–000	8–1–2018	New York State Legislature.[4]
9. P–516–459	8–2–2018	FERC Staff.[5]
10. P–199–205	8–2–2018	FERC Staff.[6]
11. P–11810–004	8–2–2018	FERC Staff.[7]
12. CP17–40–000	8–2–2018	U.S. Senator Tammy Duckworth.

Dated: August 7, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–17354 Filed 8–10–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–533–000]

Texas Eastern Transmission, LP; Notice of Application

Take notice that on July 24, 2018, Texas Eastern Transmission, LP (Texas Eastern), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP18–533–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, requesting authorization to abandon approximately 30 miles of lateral Line 1–N and related facilities, located in Harrison and Marion Counties, Texas (Line 1–N Abandonment Project), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

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 Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Lisa A. Connolly, Director, Rates & Certificates, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642, or by telephone (713) 627–4102, or fax (713) 627–5947 or by email to *lisa.connolly@enbridge.com.*

Specifically, Texas Eastern proposes to (1) abandon in place and by removal a total of approximately 30 miles of 12-inch, 10-inch, and 8-inch diameter lateral pipeline; (ii) abandon by removal all of the facilities at metering and regulating station 70191; and (iii) abandon by removal other related appurtenances. Texas Eastern states that the project will eliminate the need for future operating and maintenance expenditures on facilities that are no longer needed to provide transportation service and have not been used in over a year. Texas Eastern further states that abandonment of these facilities will not

[1] Senators Roy Blunt and Claire McCaskill. Congressmen Vicky Hartzler and Jason Smith.

[2] Email dated July 26, 2018 with Timothy Timmermann with the EPA, Office of Environmental Review.

[3] Memorandum dated July 26, 2018 forwarding email communication with Kevin Bernier of Great Lakes Hydro America, LLC.

[4] Assemblymen Sandra Galef, David Buchwald, Steven Otis, and Thomas Abinanti.

[5] Memorandum dated August 2, 2018 forwarding email communication with Robert Hoffman of National Marine Fisheries Service.

[6] Memorandum dated August 2, 2018 forwarding email communication with Robert Hoffman of National Marine Fisheries Service.

[7] Memorandum dated August 2, 2018 forwarding email communication with Robert Hoffman of National Marine Fisheries Service.

result in any impact on certificated capacity on its system or in a reduction in firm service to existing customers of Texas Eastern.

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 final environmental impact statement (FEIS) or 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 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 FEIS or 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 five 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 commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit original and five copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on August 28, 2018.

Dated: August 7, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–17289 Filed 8–10–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2960–006]

City of Gonzales; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* 2960–006.

c. *Date Filed:* July 27, 2018.

d. *Applicant:* City of Gonzales.

e. *Name of Project:* Gonzales Hydroelectric Project (Gonzales Project).

f. *Location:* The existing project is located at river mile 167 on the Guadalupe River in the City of Gonzales, in Gonzales County, Texas. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Tim Patek, Superintendent of Public Works, City of Gonzales, 1920 St. Joseph Street, Gonzales, TX 78629; Telephone (830) 672–3192; *tpatek@gonzales.texas.gov.*

i. *FERC Contact:* Rachel McNamara at (202) 502–8340, or at *rachel.mcnamara@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. Project *Description:* The Gonzales Project consists of: (1) A 15-foot-high, 258-foot-long, concrete Ambursen dam with a 178-foot-long ogee-type spillway; (2) a reservoir with a surface area of 300 acres and a storage capacity of 1,400 acre-feet; (3) an intake structure comprised of six wooden water control gates; (4) an 80-foot-long, 20-foot-wide brick powerhouse containing three generating units with a total capacity of 1,140 kilowatts; (5) two 50-foot-long underground 5-kilovolt cables to a step-up transformer; and (6) an above-ground transmission line connecting the step-up transformer to a distribution line near the access road to the project. The Gonzales Project is a conventional project generating 1,314 megawatt-hours of electricity annually.

The project is operated as a run-of-river facility with no impoundment fluctuation. When flows exceed the minimum flow requirement of 200 cubic feet per second (cfs) and a minimum of 9 feet of head height is achieved, generation can commence. When flows exceed the combined capacity of all three turbines (1,161 cfs), excess flows are passed over the spillway dam.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll free at (866) 208–3676, or for TTY at (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. Procedural Schedule: The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target Date
Notice of Acceptance/Notice of Ready for Environmental Analysis	October 2018.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	December 2018.
Commission issues EA	April 2019.
Comments on EA	May 2019.
Modified Terms and Conditions	July 2019.

n. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: August 6, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–17306 Filed 8–10–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1510–018]

City of Kaukauna, Wisconsin; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a new license for the Kaukauna Hydro Project, located on the Lower Fox River, in the City of Kaukauna, Outagamie County, Wisconsin, and has prepared an Environmental Assessment (EA) for the project.

The EA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–1510–018.

For further information, contact Erin Kimsey at (202) 502–8621 or by email at *erin.kimsey@ferc.gov.*

Dated: August 7, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–17290 Filed 8–10–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 619–164]

Pacific Gas and Electric Company and City of Santa Clara, California; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major License.

b. *Project No.:* 619–164.

c. *Date filed:* December 12, 2016.

d. *Applicant:* Pacific Gas and Electric Company (PG&E) and City of Santa Clara, California.

e. *Name of Project:* Bucks Creek Hydroelectric Project.

f. *Location:* The Bucks Creek Project is located on Bucks, Grizzly, and Milk Ranch Creeks in Plumas County, California. Portions of the project are located within the Plumas National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Alan Soneda, PG&E, Mail Code N13C, P. 0. Box 770000, San Francisco, California 94177–0001; (415) 973–4054.

i. *FERC Contact:* Alan Mitchnick at (202) 502–6074 or *alan.mitchnick@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–619–164.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *Project Description:*

Bucks Lake Dam and Reservoir (Bucks Creek Development)

The Bucks Lake Dam consists of a rock-fill with concrete face dam. It has a structural height of 123 feet and a length of 1,320 feet. Bucks Creek Dam impounds Bucks Lake, which extends 5 miles from the dam. Total storage in the 1,827-acre reservoir is approximately 105,605 acre-feet at the normal maximum water surface elevation of approximately 5,157 feet. From Bucks Lake, the project's water flow is released immediately downstream into Lower Bucks Lake.

Three Lakes Dam and Reservoir, and Milk Ranch Conduit (Bucks Creek Development)

The Three Lakes dam consists of a rock-fill dam with a structural height of 30 feet and a length of 584 feet. Three Lakes Dam impounds the flow of Milk Ranch Creek, forming Upper Lake, Middle Lake, and Lower Lake, collectively known as Three Lakes Reservoir. These water bodies are hydraulically linked and are approximately 0.75 mile from the dam. Total storage in the 40-acre reservoir is approximately 605 acre-feet at the normal maximum water surface elevation of approximately 6,078 feet.

Milk Ranch Conduit conveys the project's water flow from Three Lakes Reservoir and feeder diversions to Lower Bucks Lake. The maximum capacity of the approximately 8-mile-long conduit is about 70 cubic foot per second (cfs). It collects additional flow from several diversions located on unnamed tributaries.

Lower Bucks Lake Dam and Reservoir (Bucks Creek Development)

The Lower Bucks Lake Dam consists of a concrete arch dam with a structural height of 99 feet and a length of 500 feet. Lower Bucks Creek Dam impounds Lower Bucks Lake, which extends approximately 1.1 miles from the dam. Total storage in the 136-acre reservoir is approximately 5,843 acre-feet at the normal maximum water surface elevation of approximately 5,022 feet. Water is conveyed from Lower Bucks Lake to the Grizzly Powerhouse by the Grizzly Powerhouse Tunnel.

Grizzly Powerhouse Tunnel (Grizzly Development)

The 12,320-foot-long Grizzly Powerhouse Tunnel (including a 4,900-foot-long buried penstock) conveys the water flow from Lower Bucks Lake to Grizzly Powerhouse. The maximum flow capacity is 400 cfs.

Grizzly Powerhouse (Grizzly Development)

The Grizzly Powerhouse is a 65-foot-long by 55-foot-wide, steel frame and concrete building constructed from reinforced concrete. The powerhouse contains one turbine-generator with a maximum capacity of 20 megawatts (MW). The powerhouse produces an average annual generation production of 47.4 gigawatt-hours (GWh). Grizzly Powerhouse discharges the project's water flow directly into the Grizzly Forebay.

A 4.2-mile-long, 115-kilovolt (kV) transmission line transmits power from Grizzly Powerhouse to PG&E's 115-kV Caribou-Sycamore Transmission Line, part of the interconnected system.

Grizzly Forebay Dam and Reservoir (Bucks Creek Development)

The Grizzly Forebay Dam consists of a concrete arch dam with a structural height of 98 feet and a length of 520 feet. Grizzly Forebay Dam impounds the Grizzly Forebay, forming the Grizzly Forebay Reservoir that extends approximately 0.8 mile. Total storage in the 38-acre reservoir is approximately 1,112 acre-feet at the normal maximum water surface elevation of approximately 4,316 feet.

Grizzly Forebay Tunnel (Bucks Creek Development)

From Grizzly Forebay, the project's water flow is conveyed through the horseshoe-shaped Grizzly Forebay Tunnel. The tunnel is 9,575-foot-long with two 4,786-foot-long penstocks leading to Bucks Creek Powerhouse. The maximum flow capacity is 400 cfs.

Bucks Creek Powerhouse (Bucks Creek Development)

The project's water flow is conveyed through the Grizzly Forebay Tunnel to Bucks Creek Powerhouse. The Bucks Creek Powerhouse is a 47-foot-long by 132-foot-wide, steel frame and concrete building constructed from reinforced concrete, containing two turbine-generators with a total maximum capacity of 65 MW. The powerhouse produces an average annual generation of 223.6 GWh.

There are no associated transmission lines at the Bucks Creek Powerhouse. The powerhouse connects directly to the non-project switchyard adjacent to the powerhouse part of the interconnected transmission system.

Bucks Creek Powerhouse discharges the project's water flow in the North Fork Feather River, 1 mile upstream of Rock Creek Powerhouse, part of PG&E's Rock Creek-Cresta Hydroelectric Project (FERC Project No. 1962).

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or

motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:* The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions	October 2018.
Commission issues Draft Environmental Statement (EIS)	April 2019.
Comments on draft EIS	June 2019.
Modified terms and conditions Commission issues final EIS	August 2019.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in 5.22: (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: August 6, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–17305 Filed 8–10–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP10–996–000.

Applicants: Dominion Cove Point LNG, LP.

Description: Report Filing: DECP—2018 Report of Operational Sales and Purchases of Gas.

Filed Date: 7/31/18.

Accession Number: 20180731–5146.

Comments Due: 5 p.m. ET 8/13/18.

Docket Numbers: RP18–1045–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: Pooling Charges—Zones 5 and 6 to be effective 10/1/2018.

Filed Date: 8/3/18.

Accession Number: 20180803–5034.

Comments Due: 5 p.m. ET 8/15/18.

Docket Numbers: RP18–1046–000.

Applicants: Texas Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (EM Energy OH 35451 to BP 37304) to be effective 8/3/2018.

Filed Date: 8/3/18.

Accession Number: 20180803–5133.

Comments Due: 5 p.m. ET 8/15/18.

Docket Numbers: RP18–1047–000.

Applicants: Global LNG S.A.S.,Total Gas & Power North America, Inc.

Description: Joint Petition for Temporary Waivers of Capacity Release Regulations and Policies, et al. of Global LNG S.A.S., et al.

Filed Date: 8/3/18.

Accession Number: 20180803–5158.

Comments Due: 5 p.m. ET 8/15/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 7, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–17352 Filed 8–10–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN18–7–000]

Footprint Power LLC; Footprint Power Salem Harbor Operations LLC; Notice of Designation of Commission Staff as Non-Decisional

With respect to an order issued by the Commission in the above-captioned docket,[1] with the exceptions noted below, the staff of the Office of Enforcement are designated as non-decisional in deliberations by the Commission in this docket. Accordingly, pursuant to 18 CFR 385.2202 (2017), they will not serve as advisors to the Commission or take part in the Commission's review of any offer of settlement. Likewise, as non-decisional staff, pursuant to 18 CFR 385.2201 (2017), they are prohibited from communicating with advisory staff concerning any deliberations in this docket.

Exceptions to this designation as non-decisional are:

Jeremy Medovoy

Catherine Collins

Katherine Walsh

Mark Nagle

Benjamin Jarrett

John Karp

Alfred Jasins

Jorge Casillas

Dated: August 6, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–17311 Filed 8–10–18; 8:45 am]

BILLING CODE 6717–01–P

[1] *Footprint Power LLC, et al.,* 163 FERC ¶ 61,198 (2018).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2118–000]

Armadillo Flats Wind Project, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request For Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Armadillo Flats Wind Project, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 27, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 7, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–17356 Filed 8–10–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER16–1341–000 and ER16–1341–001]

Southwest Power Pool, Inc.; Notice Affording the Parties an Opportunity To File Briefs

1. On January 5, 2018, Xcel Energy Services Inc. filed with the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) a petition for review of the Commission's orders in *Southwest Power Pool, Inc.,* 156 FERC ¶ 61,020 (2016) and *Southwest Power Pool, Inc.,* 161 FERC ¶ 61,144 (2017). On July 19, 2018, the Commission filed an unopposed motion for voluntary remand of the above-captioned proceedings [1] so that it may consider the implications of the D.C. Circuit's decision in *Old Dominion Electric Cooperative* v. *FERC.*[2] In the Voluntary Remand Motion, the Commission stated that it ''will permit the parties to file, within 30 days of the Court's order on this motion, supplemental pleadings on the significance of the *Old Dominion* decision (or on any matter of relevance).'' [3] On July 31, 2018, the D.C. Circuit granted the Voluntary Remand Motion.[4]

2. Accordingly, the parties are hereby afforded the opportunity to file briefs with the Commission by August 31, 2018, addressing the significance to these proceedings of the *Old Dominion* decision or any other matter of relevance.

[1] *Xcel Energy Serv. Inc.* v. *FERC,* Unopposed Motion of Respondent Federal Energy Regulatory Commission for Voluntary Remand, No. 18–1005 (filed July 19, 2018) (Voluntary Remand Motion).

[2] *Old Dominion Elec. Coop.* v. *FERC,* No. 16–1111, 2018 WL 2993205 (D.C. Cir. 2018) (*Old Dominion*).

[3] Voluntary Remand Motion at 2.

[4] *Xcel Energy Serv. Inc.* v. *FERC,* No. 18–1005, Order (issued July 31, 2018).

Dated: August 6, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–17355 Filed 8–10–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2144–000]

Big Sky North, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Big Sky North, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 27, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's

Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 7, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–17350 Filed 8–10–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD18–13–000]

Notice of Availability of the Final Engineering Guidelines for the Evaluation of Hydropower Projects: Chapter 12—Water Conveyance

The staff of the Federal Energy Regulatory Commission's (FERC or Commission) Office of Energy Projects has finalized its new *Engineering Guidelines for the Evaluation of Hydropower Projects: Chapter 12—Water Conveyance* (*Guidelines*), which was issued in draft form on May 17, 2018, for comment. The *Guidelines* revision reflects the most current thinking and practices of the Division of Dam Safety and Inspections.

The *Guidelines* can be found in Docket Number AD18–13–000. The full text of the *Guidelines* can be viewed on the Commission's website at *https://www.ferc.gov/industries/hydropower/safety/guidelines/eng-guide/chap12.pdf.*

The *Guidelines are* intended to provide guidance to the industry. This document does not substitute for, amend, or supersede the Commission's regulations under the 18 CFR part 12—Safety of Water Power Projects and Project Works. imposes no new legal obligations and grants no additional rights.

In response to the draft *Guidelines,* Commission staff received comments from federal and state agencies, licensees whose portfolio includes arch dams, independent consultants and inspectors, and other interested parties. Staff reviewed and considered each comment and modified several portions of the document in response. Staff declined to modify the document where comments either were already adequately/accurately addressed as written, or regarded topics that were not relevant to the *Guidelines.*

All of the information related to the *Guidelines* and submitted comments can be found on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''Docket Search'' and in the Docket Number field enter the docket number ''AD18–13,'' excluding the last three digits. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to formal documents issued by the Commission, such as orders, notices, and rulemakings.

Dated: August 7, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–17288 Filed 8–10–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 10809–044, 10810–050, 10808–061, 2785–095]

Boyce Hydro Power, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Temporary Variance Application.

b. *Project Nos:* 10809–044, 10810–050, 10808–061, 2785–095.

c. *Date Filed:* July 26, 2018, as clarified on August 7, 2018.

d. *Applicant:* Boyce Hydro Power, LLC.

e. *Name of Project:* Secord, Smallwood, Edenville, and Sanford Hydroelectric Projects.

f. *Location:* These projects are located on the Tittabawassee and Tobacco Rivers in Gladwin and Midland counties, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Lee Mueller, Boyce Hydro Power, LLC, 10120 W. Flamingo Road, Suite 4192, Las Vegas, NV 89147, (702) 367–7302.

i. *FERC Contact:* Dr. Jennifer Ambler, (202) 502–8586, *jennifer.ambler@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* September 6, 2018.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket numbers P–10809–044, P–10810–050, P–10808–061, and/or P–2785–095.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee requests a temporary variance of lake level requirements contained in articles 403, 403, 404, and 411 of its licenses for the Secord, Smallwood, Edenville, and Sanford Projects, respectively. To facilitate focused spillway assessments and gate inspections, the licensee proposes to lower each reservoir about 4 feet to the following elevations: 746.8 ft for Secord, 700.4 ft for Smallwood, 671.8 ft for Edenville, and 626.8 ft for Sanford (all reservoir elevations are at National Geodetic Vertical Datum) beginning September 20, 2018. The licensee would draw down the reservoirs at a rate of 8 inches per day for the inspections to occur on/about October 1, 2018. Potentially beginning on October 2, 2018, the licensee would begin refilling the reservoirs at a rate not to exceed 9 inches per day to return the reservoirs to their normal water surface elevations of 750.8 ft for Secord, 704.8 ft for Smallwood, 675.8 ft for Edenville, and 630.8 ft for Sanford.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A,

Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: August 7, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–17293 Filed 8–10–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC98–2–001; ER18–2162–000.

Applicants: Louisville Gas and Electric Company, Kentucky Utilities Company.

Description: Joint Application under FPA Section 203 and Section 205 of Louisville Gas and Electric Company, et al.

Filed Date: 8/3/18.

Accession Number: 20180803–5189.

Comments Due: 5 p.m. ET 8/24/18.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG18–119–000.

Applicants: Stillwater Wind, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Stillwater Wind, LLC.

Filed Date: 8/7/18.

Accession Number: 20180807–5034.

Comments Due: 5 p.m. ET 8/28/18.

Docket Numbers: EG18–120–000.

Applicants: Crazy Mountain Wind LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Crazy Mountain Wind LLC.

Filed Date: 8/7/18.

Accession Number: 20180807–5037.

Comments Due: 5 p.m. ET 8/28/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–1575–001.

Applicants: NorthWestern Corporation.

Description: Compliance filing: Erratum to Order No. 842 Compliance Filing (South Dakota OATT) to be effective 5/15/2018.

Filed Date: 8/7/18.

Accession Number: 20180807–5058.

Comments Due: 5 p.m. ET 8/28/18.

Docket Numbers: ER18–1791–001.

Applicants: Duke Energy Florida, LLC.

Description: Tariff Amendment: DEF—Notice of Termination (US EcoGen Polk, LLC SA–180) Deficiency Response to be effective 8/15/2018.

Filed Date: 8/6/18.

Accession Number: 20180806–5116.

Comments Due: 5 p.m. ET 8/27/18.

Docket Numbers: ER18–1823–001.

Applicants: Walleye Power, LLC.

Description: Compliance filing: Notice of Reactive Tariff Effective Date—Succession Filing to be effective 7/31/2018.

Filed Date: 8/7/18.

Accession Number: 20180807–5054.

Comments Due: 5 p.m. ET 8/28/18.

Docket Numbers: ER18–2174–000.

Applicants: New England Power Company.

Description: § 205(d) Rate Filing: Filing of G–33 Circuit Support Agreement with Green Mountain Power Corp. to be effective 8/1/2018.

Filed Date: 8/6/18.

Accession Number: 20180806–5112.

Comments Due: 5 p.m. ET 8/27/18.

Docket Numbers: ER18–2175–000.

Applicants: Mid-Atlantic Interstate Transmission, LLC, West Penn Power Company, The Potomac Edison Company, Monongahela Power Company, Trans-Allegheny Interstate Line Company, American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: MAIT et al. submit Interconnection Agreements, SA Nos. 2149, 3743 and 5110 to be effective 10/5/2018.

Filed Date: 8/6/18.

Accession Number: 20180806–5115.

Comments Due: 5 p.m. ET 8/27/18.

Docket Numbers: ER18–2176–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2018–08–07_SA 2484 Meadowlark Wind I–GRE 1st Rev GIA (G830) to be effective 7/24/2018.

Filed Date: 8/7/18.

Accession Number: 20180807–5007.

Comments Due: 5 p.m. ET 8/28/18.

Docket Numbers: ER18–2178–000.

Applicants: Holloman Lessee, LLC.

Description: Baseline eTariff Filing: Initial Market-Based Rate Tariff of Holloman Lessee LLC to be effective 10/7/2018.

Filed Date: 8/7/18.

Accession Number: 20180807–5092.

Comments Due: 5 p.m. ET 8/28/18.

Docket Numbers: ER18–2179–000.

Applicants: Black Hills Colorado Electric, Inc.

Description: § 205(d) Rate Filing: Notice of Succession (OATT) to be effective 7/10/2018.

Filed Date: 8/7/18.

Accession Number: 20180807–5098.

Comments Due: 5 p.m. ET 8/28/18.

Docket Numbers: ER18–2180–000.

Applicants: Black Hills Colorado Electric, Inc.

Description: § 205(d) Rate Filing: Notice of Succession (WestConnect Point-to-Point) to be effective 7/10/2018.

Filed Date: 8/7/18.
Accession Number: 20180807–5099.
Comments Due: 5 p.m. ET 8/28/18.
Docket Numbers: ER18–2181–000.
Applicants: Black Hills Colorado Electric, Inc.
Description: § 205(d) Rate Filing: Notice of Succession (Agreements and Rate Schedules) to be effective 7/10/2018.
Filed Date: 8/7/18.
Accession Number: 20180807–5100.
Comments Due: 5 p.m. ET 8/28/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 7, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–17353 Filed 8–10–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2002–0059; FRL–9982–14–OW]

Proposed Information Collection Request; Comment Request; Safe Drinking Water Act State Revolving Fund Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Safe Drinking Water Act State Revolving Fund Program'' (EPA ICR No. 1803.08, OMB Control No. 2040–0185) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described in the **SUPPLEMENTARY INFORMATION** section. This is a proposed extension of the ICR, which is currently approved through April 30, 2019. 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 October 12, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2002–0059, online using *www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

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: Howard Rubin, Drinking Water Protection Division, Office of Ground Water and Drinking Water, 4606M, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–2051; email address: *Rubin.HowardE@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, the 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. The 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, the 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 Safe Drinking Water Act (SDWA) Amendments of 1996 (Pub. L. 104–182) authorized the creation of the Drinking Water State Revolving Fund (DWSRF; the Fund) program in each state and Puerto Rico, to assist public water systems in financing the costs of infrastructure needed to achieve or maintain compliance with the SDWA requirements and to protect public health. The SDWA, section 1452, authorizes the Administrator of the EPA to award capitalization grants to the states and Puerto Rico which, in turn, provide low-cost loans and other types of assistance to eligible drinking water systems. States can also reserve a portion of their grants to conduct various set-aside activities. The information collection activities will occur primarily at the program level through the (1) Capitalization Grant Application and Agreement/State Intended Use Plan; (2) Biennial Report; (3) Annual Audit; (4) Assistance Application Review; and (5) DWSRF National Information Management System and the Projects and Benefits Reporting System.

(1) Capitalization Grant Application and Agreement/State Intended Use Plan: The state must prepare a Capitalization Grant Application that includes an Intended Use Plan (IUP), outlining in detail how it will use all the funds covered by the capitalization grant. The state may, as an alternative, develop the IUP in a two-part process, with one part identifying the distribution and uses of the funds among the various set-asides in the DWSRF program and the other part dealing with project assistance from the Fund.

(2) Biennial Report: The state must agree to complete and submit a Biennial Report on the uses of the capitalization grant. The scope of the report must cover assistance provided by the Fund and all other set-aside activities included under the Capital Grant Agreement. States that jointly administer DWSRF and Clean Water State Revolving Fund (CWSRF)

programs, in accordance with the SDWA, section 1452(g)(1), may submit reports (according to the schedule specified for each program) that cover both programs.

(3) Annual Audit: A state must comply with the provisions of the Single Audit Act Amendments of 1996. Best management practices suggest and the EPA recommends that a state conduct an annual independent audit of its DWSRF program. The scope of the report must cover the DWSRF and all other set-aside activities included in the Capitalization Grant Agreement. States that jointly administer DWSRF and CWSRF programs, in accordance with the SDWA, section 1452(g)(1), may submit audits that cover both programs but which report financial information for each program separately.

(4) Assistance Application Review: Local applicants seeking financial assistance must prepare and submit DWSRF loan applications. States then review completed loan applications and verify that proposed projects will comply with applicable federal and state requirements.

(5) DWSRF National Information Management System (DWNIMS) and the Projects and Benefits Reporting System (PBR): To ensure that funds are being used in an expeditious and timely manner for eligible projects and expenses, states must annually enter state-level financial data into the DWNIMS and quarterly enter project-level data into the PBR.

Form numbers: None.

Respondents/affected entities: Entities affected by this action are states and local governments.

Respondent's obligation to respond: Required to obtain or retain a benefit per the Safe Drinking Water Act, section 1452(g)(1).

Estimated number of respondents: 379 state and local respondents (total).

Frequency of response: Varies by requirement (*i.e.,* quarterly, semi-annually, and annually).

Total estimated burden: 88,792.5 hours (per year) for state and local respondents. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $3,355,516 (per year) for state and local respondents.

Changes in estimates: The EPA expects a decrease in the total estimated respondent burden cost compared with the ICR currently approved by OMB. The change in cost is due to moving from contractor-provided hourly cost rates to Bureau of Labor Statistics (BLS) provided hourly cost rates. Using BLS rates will ensure that the ICR is more transparent and replicable. The present BLS rates are lower than historical contractor-provided rates.

Dated: August 2, 2018.

Peter Grevatt,

Director, Office of Ground Water & Drinking Water.

[FR Doc. 2018–17372 Filed 8–10–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9982–01–Region 5]

Proposed Prospective Purchaser Agreements for the Greenpoint Landfill Site, the Saginaw Malleable Industrial Land Site and the Saginaw Malleable Peninsula Site in Saginaw, Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Prospective Purchaser Agreements, notice is hereby given of a proposed administrative settlement concerning the Greenpoint Landfill Site, the Saginaw Malleable Industrial Land Site and the Saginaw Malleable Peninsula Site all located in Saginaw, Michigan with the following Settling Parties: Michigan Department of Natural Resources and Saginaw County. The settlements require the Settling Parties to, if necessary, execute and record a Declaration of Restrictive Covenant; provide access to the Sites and exercise due care with respect to existing contamination. The settlement includes a covenant not to sue the Settling Parties pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act or the Resource Conservation and Recovery Act with respect to the Existing Contamination. Existing Contamination is defined as any hazardous substances, pollutants, or contaminants or Waste Material (1) present or existing on or under the Site as of the Effective Date of the Settlement Agreement; (2) that migrated from the Site prior to the Effective Date; and (3) presently at the Site that migrates onto, on, under, or from the Site after the Effective Date.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlements. The Agency will consider all comments received and may modify or withdraw its consent to one or all of the settlements if comments received disclose facts or considerations which indicate that a settlement or settlements are inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA, Region 5, Records Center, 77 W Jackson Blvd., 7th Fl., Chicago, Illinois 60604. Commenters may request an opportunity for a public hearing in the affected area, in accordance with Section 7003(d) of RCRA.

DATES: Comments must be submitted September 12, 2018.

ADDRESSES: The proposed settlement is available for public inspection at the EPA, Region 5, Records Center, 77 W Jackson Blvd., 7th Fl., Chicago, Illinois 60604. A copy of a proposed settlement may be obtained from Peter Felitti, Assoc. Regional Counsel, EPA, Office of Regional Counsel, Region 5, 77 W Jackson Blvd., Mail Code: C–14J, Chicago, Illinois 60604. Comments should reference the Site in question and should be addressed to Peter Felitti, Assoc. Regional Counsel, EPA, Office of Regional Counsel, Region 5, 77 W Jackson Blvd., Mail Code: C–14J, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Peter Felitti, EPA, Office of Regional Counsel, Region 5, 77 W Jackson Blvd., Mail Code: C–14J, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: The Settling Parties propose to acquire ownership of the three former General Motors Corporation North American facilities, at 3300 Salt Road, Saginaw, Michigan, 77 and 79 West Center Street in Saginaw, Michigan. Each Site is one of the 89 sites that were placed into an Environmental Response Trust (the ''Trust'') as a result of the resolution of the 2009 GM bankruptcy. The Trust is administrated by Revitalizing Auto Communities Environmental Response.

Dated: July 31, 2018.

Douglas E. Ballotti,

Acting Director, Superfund Division.

[FR Doc. 2018–17370 Filed 8–10–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2014–0027; FRL—9981–34–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Bulk Gasoline Terminals (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an

information collection request (ICR), NSPS for Bulk Gasoline Terminals (EPA ICR No. 0664.12, OMB Control No. 2060–0006), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through August 31, 2018. Public comments were previously requested via the **Federal Register** on June 29, 2017 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 neither conduct nor 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 September 12, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2014–0027, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@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: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@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, EPA 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.*

Abstract: The New Source Performance Standards (NSPS) for Bulk Gasoline Terminals apply to affected facilities at bulk gasoline terminals that have a throughput greater than 75,700 liters per day, delivering liquid product into gasoline tank trucks. Affected facilities include the loading arms, pumps, meters, shutoff valves, relief valves, and other piping and valves necessary to fill delivery tan trucks. These standards set initial notification, initial performance test, and ongoing recordkeeping requirements. Additionally, required monthly leak detection records are used to determine periods of excess emissions, identify problems at the facility, verify operation/maintenance procedures and for compliance determinations. This information is being collected to assure compliance with 40 CFR part 60, subpart XX.

Form Numbers: None.

Respondents/affected entities: Bulk gasoline terminals.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart XX).

Estimated number of respondents: 40 (total).

Frequency of response: Initially.

Total estimated burden: 13,200 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $1,390,000 (per year), which includes $0 both annualized capital startup and/or operation & maintenance costs.

Changes in the Estimates: The increase in burden from the most recently approved ICR is due to an adjustment. This ICR assumes all existing affected sources will spend one hour per year to re-familiarize with the regulations. In addition, this ICR rounds the total estimated labor hours to three significant digits. These adjustments resulted in a small increase since the last renewal.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–17281 Filed 8–10–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Technological Advisory Council will hold a meeting.

DATES: Thursday, September 20th, 2018 in the Commission Meeting Room, from 12:30 p.m. to 4 p.m.

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

FOR FURTHER INFORMATION CONTACT: Walter Johnston, Chief, Electromagnetic Compatibility Division, 202–418–0807; *Walter.Johnston@FCC.gov.*

SUPPLEMENTARY INFORMATION: At the September 20th meeting, the FCC Technological Advisory Council will discuss progress on and issues involving its work program agreed to at its initial meeting on April 12th, 2018. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. Meetings are also broadcast live with open captioning over the internet from the FCC Live web page at *http://www.fcc.gov/live/.* The public may submit written comments before the meeting to: Walter Johnston, the FCC's Designated Federal Officer for Technological Advisory Council by email: *Walter.Johnston@fcc.gov* or U.S. Postal Service Mail (Walter Johnston, Federal Communications Commission, Room 2–A665, 445 12th Street SW, Washington, DC 20554). Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Office of Engineering and Technology at 202–418–2470 (voice), (202) 418–1944 (fax). Such requests should include a detailed description of the accommodation needed. In addition, please include your contact information. Please allow at least five days advance notice; last minute requests will be accepted, but may not be possible to fill.

Federal Communications Commission.

Ronald Repasi,

Deputy Chief, Office of Engineering and Technology.

[FR Doc. 2018–17298 Filed 8–10–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0165, 0183, and –0196]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of existing information collections, as required by the Paperwork Reduction Act of 1995. The FDIC published a notice of its intent to renew the information collections described below in the **Federal Register** and requested comment for 60 days. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of these collections, and again invites comment on the renewal.

DATES: Comments must be submitted on or before September 12, 2018.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza, Counsel, Room MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Counsel, 202–898–3767, *mcabeza@FDIC.gov,* MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* Interagency Supervisory Guidance for the Supervisory Review Process of Capital Adequacy (Pillar 2) Related to the Implementation of the Basel II Advanced Capital Framework.

OMB Number: 3064–0165.

Form Number: None.

Affected Public: Insured state nonmember banks and certain subsidiaries of these entities.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

	Type of burden	Estimated number of respondents	Estimated time per response	Frequency of response	Total annual estimated burden hours
Pillar 2 Guidance	Record Keeping	2	105 hours	Quarterly	840
Total Estimated Annual Burden					840

General Description of Collection: There has been no change in the method or substance of this information collection. The number of institutions subject to the record keeping requirements has decreased from eight (8) to two (2). In 2008 the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the FDIC issued a supervisory guidance document related to the supervisory review process of capital adequacy (Pillar 2) in connection with the implementation of the Basel II Advanced Capital Framework.[1] Sections 37, 41, 43 and 46 of the guidance include possible information collections. Section 37 provides that banks should state clearly the definition of capital used in any aspect of its internal capital adequacy assessment process (ICAAP) and document any changes in the internal definition of capital. Section 41 provides that banks should maintain thorough documentation of its ICAAP. Section 43 specifies that the board of directors should approve the bank's ICAAP, review it on a regular basis and approve any changes. Section 46 recommends that boards of directors periodically review the assessment of overall capital adequacy and analyze how measures of internal capital adequacy compare with other capital measures such as regulatory or accounting.

2. *Title:* Credit Risk Retention.

OMB Number: 3064–0183.

Form Number: None.

Affected Public: Insured state non-member banks; insured state branches of foreign banks; state savings associations; and certain subsidiaries of these entities.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

	Estimated number of offerings	Estimated annual frequency	Estimated average hours per response	Estimated annual burden hours
Disclosure Burden				
Subpart B:				
§ 373.4 Standard Risk Retention—Horizontal Interest	1	1	5.5	5.5
§ 373.4 Standard Risk Retention—Vertical Interest	40	1	2.0	80
§ 373.4 Standard Risk Retention—Combined Interest	4	1	7.5	30
§ 373.5 Revolving Master Trusts	15	1	7.0	105

[1] 73 FR 44620 (July 31, 2008).

SUMMARY OF ANNUAL BURDEN—Continued

	Estimated number of offerings	Estimated annual frequency	Estimated average hours per response	Estimated annual burden hours
§ 373.6 Eligible ABCP Conduits	15	1	3.0	45
§ 373.7 Commercial MBS	15	1	20.75	311.25
§ 373.8 FNMA and FHLMC	15	1	1.5	22.5
§ 373.9 Open Market CLOs	15	1	20.25	303.75
§ 373.10 Qualified Tender Option Bonds	15	1	6.0	90
Subpart C:				
§ 373.11 Allocation of Risk Retention to an Originator	3	1	2.5	7.5
Subpart D:				
§ 373.13 and .19(g) Exemption for Qualified Residential Mortgages	13	1	1.25	16.25
§ 373.15 Exemption for Qualifying Commercial Loans, Commercial Real Estate and Automobile Loans	16	1	20.0	320
§ 373.16 Underwriting Standards for Qualifying Commercial Loans	6	1	1.25	7.5
§ 373.17 Underwriting Standards for Qualifying CRE Loans	6	1	1.25	7.5
§ 373.18 Underwriting Standards for Qualifying Automobile Loans	6	1	1.25	7.5
Total Estimated Disclosure Burden	.....	.....	.....	1,359.25
Recordkeeping Burden				
Subpart B:				
§ 373.4 Standard Risk Retention—Horizontal Interest	1	1	0.5	0.5
§ 373.4 Standard Risk Retention—Vertical Interest	40	1	0.5	20
§ 373.4 Standard Risk Retention—Combined Interest	4	1	0.5	2
§ 373.5 Revolving Master Trusts	15	1	0.5	7.5
§ 373.6 Eligible ABCP Conduits	15	1	20.0	300
§ 373.7 Commercial MBS	15	1	30.0	450
Subpart C:				
§ 373.11 Allocation of Risk Retention to an Originator	3	1	20.0	60
Subpart D:				
§ 373.13 and .19(g) Exemption for Qualified Residential Mortgages	13	1	40.0	520
§ 373.15 Exemption for Qualifying Commercial Loans, Commercial Real Estate and Automobile Loans	16	1	0.5	8
§ 373.16 Underwriting Standards for Qualifying Commercial Loans	6	1	40.0	240
§ 373.17 Underwriting Standards for Qualifying CRE Loans	6	1	40.0	240
§ 373.18 Underwriting Standards for Qualifying Automobile Loans	6	1	400	240
Total Estimated Recordkeeping Burden	.....	.....	.....	2,088
Total Estimated Annual Burden	.....	.....	.....	3,447.25

There has been no change in the method or substance of this information collection. The above burden estimate is derived from the Federal regulatory agencies' estimate that there are currently approximately 1,400 annual offerings subject to the Credit Risk Retention rule (12 CFR part 373).[2]

General Description of Collection: This information collection request relates to the disclosure and recordkeeping requirements of 12 CFR part 373 (the Credit Risk Retention Rule) which implements section 15G of the Securities Exchange Act of 1934,[3] added by section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act[4] (Section 941). The Credit Risk Retention Rule was jointly issued by the Federal Deposit Insurance Corporation (''FDIC''), the Office of the Comptroller of the Currency (''OCC''), the Federal Reserve Board (''Board''), the Securities and Exchange Commission (''Commission'') and, with respect to the portions of the Rule addressing the securitization of residential mortgages, the Federal Housing Finance Agency (''FHFA'') and the Department of Housing and Urban Development (''HUD'').

Section 941 requires the Board, the FDIC, the OCC (collectively, the ''Federal banking agencies''), the Commission and, in the case of the securitization of any ''residential mortgage asset,'' together with HUD and FHFA, to jointly prescribe regulations that (i) require a securitizer to retain not less than five percent of the credit risk of any asset that the securitizer, through the issuance of an asset-backed security (''ABS''), transfers, sells or conveys to a third party, and (ii) prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain under section 941 and the agencies' implementing rules.

The Credit Risk Retention Rule provides a menu of credit risk retention options from which securitizers can choose and sets out the standards, including disclosure and recordkeeping requirements, for each option; identifies the eligibility criteria, including certification and disclosure requirements, that must be met for asset-backed securities (ABS) offerings to qualify for certain exemptions; specifies the underwriting standards for

[2] The methodology and assumptions used to estimate burden are explained in detail in the agencies' supporting statements for their respective Credit Risk Retention information collections. For example, *see,* FDIC (3064–0183) available at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201501-3064-002* SEC (3235-0712) available at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201803-3235-014* and the OCC 1557-0249) available at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201804-1557-004.*

[3] 15 U.S.C. 78o–11.

[4] Public Law 111–2–3, 124 Stat. 1376 (2010).

commercial real estate (CRE) loans, commercial loans and automobile loans, as well as disclosure, certification and recordkeeping requirements, that must be met for ABS issuances collateralized by such loans to qualify for reduced credit risk retention; and sets forth the circumstances under which retention obligations may be allocated by sponsors to originators, including disclosure and monitoring requirements.

The recordkeeping requirements relate primarily to (i) the adoption and maintenance of various policies and procedures to ensure and monitor compliance with regulatory requirements and (ii) certifications, including as to the effectiveness of internal supervisory controls. The required disclosures for each risk retention option are intended to provide investors with material information concerning the sponsor's retained interest in a securitization transaction (*e.g.,* the amount, form and nature of the retained interest, material assumptions and methodology, representations and warranties). The agencies believe that the disclosure and recordkeeping requirements will enhance market discipline, help ensure the quality of the assets underlying a securitization, and assist investors in evaluating transactions.

3. *Title:* Disclosure Requirements Associated with the Supplementary Leverage Ratio.

OMB Number: 3064–0196.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations that are subject to the FDIC's advanced approaches risk-based capital rules.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

	Type of burden	Estimated number of respondents	Estimated time per response	Frequency of response	Total Annual estimated burden hours
12 CFR 324.172 and 173	Disclosure	2	5 hours	Quarterly	40
Total Estimated Annual Burden					40

There has been no change in the method or substance of this information collection. The number of institutions subject to the disclosure requirements has decreased from eight (8) to two (2).

General Description of Collection: The supplementary leverage ratio regulations strengthen the definition of total leverage exposure and improve the measure of a banking organization's on- and off-balance sheet exposures. The rules are generally consistent with the Basel Committee on Banking Supervision's 2014 revisions and promote consistency in the calculation of this ratio across jurisdictions. All banking organizations that are subject to the advanced approaches risk-based capital rules[5] are required to disclose their supplementary leverage ratios.[6] Advanced approaches banking organizations must report their supplementary leverage ratios on the applicable regulatory reports. The calculation and disclosure requirements for the supplementary leverage ratio in the federal banking agencies' regulatory capital rules are generally consistent with international standards published by the Basel Committee on Banking Supervision. These disclosures enhance the transparency and consistency of reporting requirements for the supplementary leverage ratio by all internationally active organizations.

Request for Comment: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, on August 8, 2018.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2018–17264 Filed 8–10–18; 8:45 am]

BILLING CODE 6714–01–P

[5] 12 CFR 324.100(b)(1).

[6] 12 CFR 324.10(c), 324.172(d), and 324.173.

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012460–002.

Agreement Name: COSCO Shipping/PIL/WHL Vessel Sharing and Slot Charter Agreement.

Parties: COSCO Shipping Lines Co., Ltd.; Pacific International Lines (PTE) Ltd.; Wan Hai Lines (Singapore) Pte. Ltd.; and Wan Hai Lines Ltd.

Filing Party: Eric Jeffrey; Nixon Peabody.

Synopsis: The amendment changes the capacity and port rotation of the shared string and updates the slot exchanges among the Parties.

Proposed Effective Date: 8/3/2018.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/1948.

Agreement No.: 011707–014.

Agreement Name: Gulf/South America Discussion Agreement.

Parties: BBC Chartering & Logistics GmbH & Co. KG and BBC Chartering Carriers GmbH & Co. KG (acting as a single party); Industrial Maritime Carriers, L.L.C.; and Seaboard Marine Ltd.

Filing Party: Wade S. Hooker, Attorney.

Synopsis: The amendment deletes Caytrans BBC LLC as a party to the Agreement.

Proposed Effective Date: 7/31/2018.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/684.

Agreement No.: 201248–001.

Agreement Name: COSCO SHIPPING/PIL/WHL Vessel Sharing and Slot Exchange Agreement.

Parties: COSCO Shipping Lines Co., Ltd.; Pacific International Lines (PTE) Ltd.; Wan Hai Lines (Singapore) Pte. Ltd.; and Wan Hai Lines Ltd.

Filing Party: Eric Jeffrey; Nixon Peabody.

Synopsis: The amendment deletes CMA CGM as a Party to the Agreement, changes the name of the Agreement to reflect the deletion of CMA, changes the capacity and port rotation of the shared string and updates the slot exchanges among the Parties.

Proposed Effective Date: 8/6/2018.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/9158.

Dated: August 7, 2018.

Rachel E. Dickon,

Secretary.

[FR Doc. 2018–17231 Filed 8–10–18; 8:45 am]

BILLING CODE 6731–AA–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10148]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by September 27, 2018.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR*, Email: *OIRA_submission@omb.eop.gov*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

Information Collection

1. *Type of Information Collection Request:* Revision of the currently approved collection.; HIPAA Administrative Simplification (Non-Privacy/Security) Complaint Form; *Use:* The authority for administering and enforcing compliance with the non-privacy/security Health Insurance Portability and Accountability Act (HIPAA) rules has been delegated to the Centers for Medicare & Medicaid Services (CMS). At present, CMS' compliance and enforcement activities are primarily complaint-based. Although our enforcement efforts are focused on investigating complaints, they may also include conducting compliance reviews to determine if a covered entity is in compliance. Potential violations can come through a complaint form or a compliance review.

This standard form collects identifying and contact information of the complainant, as well as, the identifying and contact information of the filed against entity (FAE). This information enables CMS to respond to the complainant and gather more information if necessary, and to contact the FAE to discuss the complaint and CMS' findings.

In addition to the identifying and contact information, the standard form collects a summary which outlines the nature of the complaint. This summary is used to determine the validity of the complaint, and to categorize the complaint as related to transactions, standards, code sets, unique identifiers, and/or operating rules. This ensures the appropriate direction of the complaint process and enables CMS to produce accurate reports regarding complaint activity.

The revision form associated with this submission adds an option for filing complaints under Unique Identifier and Operating Rules. It also requests an email address for filed against entities, if available.

The 60-day notice published on March 29, 2018. It must be noted that the files CMS posted on its PRA website were the incorrect files. CMS acknowledges and apologizes for this oversight. To allow the public extra time to review the correct form, CMS is extending the 30-day comment period to a 45-day comment period. It should be noted that where possible and practical, CMS reviewed and responded to commenters concerns that would still be present in the corrected version of the form. *Form Number:* CMS–10148 (OMB Control number: 0938–0948); *Frequency:* Occasionally; *Affected Public:* Individuals; *Number of Respondents:* 125; *Total Annual Responses:* 125; *Total Annual Hours:* 125. (For policy questions regarding this collections contact Kevin Stewart at 410–786–6149.)

Dated: August 8, 2018.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2018–17318 Filed 8–10–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9110–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—April through June 2018

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice

SUMMARY: This quarterly notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from April through June 2018, relating to the Medicare and Medicaid programs and other programs administered by CMS.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may need specific information and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing contact persons to answer general questions concerning each of the addenda published in this notice.

Addenda	Contact	Phone Number
I CMS Manual Instructions	Ismael Torres	(410) 786-1864
II Regulation Documents Published in the **Federal Register**	Terri Plumb	(410) 786-4481
III CMS Rulings	Tiffany Lafferty	(410)786-7548
IV Medicare National Coverage Determinations	Wanda Belle, MPA	(410) 786-7491
V FDA-Approved Category B IDEs	John Manlove	(410) 786-6877
VI Collections of Information	William Parham	(410) 786-4669
VII Medicare –Approved Carotid Stent Facilities	Sarah Fulton, MHS	(410) 786-2749
VIII American College of Cardiology-National Cardiovascular Data Registry Sites	Sarah Fulton, MHS	(410) 786-2749
IX Medicare's Active Coverage-Related Guidance Documents	JoAnna Baldwin, MS	(410) 786-7205
X One-time Notices Regarding National Coverage Provisions	JoAnna Baldwin, MS	(410) 786-7205
XI National Oncologic Positron Emission Tomography Registry Sites	Stuart Caplan, RN, MAS	(410) 786-8564
XII Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities	Linda Gousis, JD	(410) 786-8616
XIII Medicare-Approved Lung Volume Reduction Surgery Facilities	Sarah Fulton, MHS	(410) 786-2749
XIV Medicare-Approved Bariatric Surgery Facilities	Sarah Fulton, MHS	(410) 786-2749
XV Fluorodeoxyglucose Positron Emission Tomography for Dementia Trials	Stuart Caplan, RN, MAS	(410) 786-8564
All Other Information	Annette Brewer	(410) 786-6580

I. Background

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs and coordination and oversight of private health insurance. Administration and oversight of these programs involves the following: (1) Furnishing information to Medicare and Medicaid beneficiaries, health care providers, and the public; and (2) maintaining effective communications with CMS regional offices, state governments, state Medicaid agencies, state survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, National Association of Insurance Commissioners (NAIC), health insurers, and other stakeholders. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act) and Public Health Service Act. We also issue various manuals, memoranda, and statements necessary to administer and oversee the programs efficiently.

Section 1871(c) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**.

II. Format for the Quarterly Issuance Notices

This quarterly notice provides only the specific updates that have occurred in the 3-month period along with a hyperlink to the full listing that is available on the CMS website or the appropriate data registries that are used as our resources. This is the most current up-to-date information and will be available earlier than we publish our quarterly notice. We believe the website list provides more timely access for beneficiaries, providers, and suppliers. We also believe the website offers a more convenient tool for the public to find the full list of qualified providers for these specific services and offers more flexibility and ''real time'' accessibility. In addition, many of the websites have listservs; that is, the public can subscribe and receive immediate notification of any updates to the website. These listservs avoid the need to check the website, as notification of updates is automatic and sent to the subscriber as they occur. If assessing a website proves to be difficult, the contact person listed can provide information.

III. How To Use the Notice

This notice is organized into 15 addenda so that a reader may access the subjects published during the quarter covered by the notice to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals should view the manuals at *http://www.cms.gov/manuals.*

Dated: August 3, 2018.

Olen D. Clybourn,

Deputy Director, Office of Strategic Operations and Regulatory Affairs.

BILLING CODE 4120–01–P

Publication Dates for the Previous Four Quarterly Notices

We publish this notice at the end of each quarter reflecting information released by CMS during the previous quarter. The publication dates of the previous four Quarterly Listing of Program Issuances notices are: August 4, 2017 (82 FR 36404), October 27, 2017 (82 FR 49819), January 26, 2018 (83 FR 3716) and May 4, 2018 (83 FR 19769). We are providing only the specific updates that have occurred in the 3-month period along with a hyperlink to the website to access this information and a contact person for questions or additional information.

Addendum I: Medicare and Medicaid Manual Instructions (April through June 2018)

The CMS Manual System is used by CMS program components, partners, providers, contractors, Medicare Advantage organizations, and State Survey Agencies to administer CMS programs. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, guidelines, models, and directives. In 2003, we transformed the CMS Program Manuals into a web user-friendly presentation and renamed it the CMS Online Manual System.

How to Obtain Manuals

The Internet-only Manuals (IOMs) are a replica of the Agency's official record copy. Paper-based manuals are CMS manuals that were officially released in hardcopy. The majority of these manuals were transferred into the Internet-only manual (IOM) or retired. Pub 15-1, Pub 15-2 and Pub 45 are exceptions to this rule and are still active paper-based manuals. The remaining paper-based manuals are for reference purposes only. If you notice policy contained in the paper-based manuals that was not transferred to the IOM, send a message via the CMS Feedback tool.

Those wishing to subscribe to old versions of CMS manuals should contact the National Technical Information Service, Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312 Telephone (703-605-6050). You can download copies of the listed material free of charge at: http://cms.gov/manuals.

How to Review Transmittals or Program Memoranda

Those wishing to review transmittals and program memoranda can access this information at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL. This information is available at http://www.gpo.gov/libraries/

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. CMS publication and transmittal numbers are shown in the listing entitled Medicare and Medicaid Manual Instructions. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the manual for Bundled Payments for Care Improvement Advanced (BPCI Advanced Skilled Nursing Facility (SNF) Waiver, use (CMS-Pub. 100-01) Transmittal No. 115.

Addendum I lists a unique CMS transmittal number for each instruction in our manuals or program memoranda and its subject number. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manual. For the purposes of this quarterly notice, we list only the specific updates to the list of manual instructions that have occurred in the 3-month period. This information is available on our website at www.cms.gov/Manuals.

Transmittal Number	Manual/Subject/Publication Number
Medicare General Information (CMS-Pub. 100-01)	
115	Bundled Payments for Care Improvement Advanced (BPCI Advanced Skilled Nursing Facility (SNF) Waiver
116	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
Medicare Benefit Policy (CMS-Pub. 100-02)	
243	Ambulance Transportation for a Skilled Nursing Facility (SNF) Resident in a Stay Not Covered by Part A - Medicare Benefit Policy Manual, Chapter 10 and Medicare Claims Processing Manual, Chapter 15
Medicare National Coverage Determination (CMS-Pub. 100-03)	
243	Ambulance Transportation for a Skilled Nursing Facility (SNF) Resident Stay Not Covered by Part A - Medicare Benefit Policy Manual, Chapter 10 and Medicare Claims Processing Manual, Chapter 15
Medicare Claims Processing (CMS-Pub. 100-04)	
4015	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
4016	Supervised Exercise Therapy (SET) for Symptomatic Peripheral Artery Disease (PAD)

	--Table of Contents/390-Supervised Exercise Therapy (SET) for Treatment of Symptomatic Peripheral Artery Disease (PAD) --General Billing Requirements --Coding Requirements for SET --Special Billing Requirements for Professional Claims --Special Billing Requirements for Institutional Claims --Common Working File (CWF) Requirements --Applicable Medicare Summary Notice (MSN), Remittance Advice --Remark Codes (RARC) and Claim Adjustment Reason Code (CARC) Messaging
4017	Increased Ambulance Payment Reduction for Non-Emergency Basic Life Support (BLS) Transports to and from Renal Dialysis Facilities Payment for Non-Emergency BLS Trips to/from ESRD Facilities
4018	New Waived Tests
4019	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
4020	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
4021	Ambulance Transportation for a Skilled Nursing Facility (SNF) Resident in a Stay Not Covered by Part A - Medicare Benefit Policy Manual, --Chapter 10 and Medicare Claims Processing Manual, Chapter 15
4022	Quarterly Update to the National Correct Coding Initiative (NCCI) Procedure-to-Procedure (PTP) Edits, Version 24.2 Effective July 1, 2018
4023	Update of Internet Only Manual (IOM), Medicare Claims Processing Manual, Publication 100-04, Chapter 37 - Department of Veterans Affairs (VA) Claims Adjudication Services Project
4024	File Conversions Related to the Spanish Translation of the Healthcare Common Procedure Coding System (HCPCS) Descriptions
4025	Quarterly Healthcare Common Procedure Coding System (HCPCS) Drug/Biological Code Changes - July 2018 Update
4026	Revisions to the Telehealth Billing Requirements for Distant Site Services
4027	Inexpensive or Routinely Purchased Durable Medical Equipment (DME) --Payment Classification for Speech Generating Devices (SGD) and Accessories --Inexpensive or Other Routinely Purchased DME --Billing for Inexpensive or Other Routinely Purchased DME --Inexpensive or Other Routinely Purchased DME --Billing for Inexpensive or Other Routinely Purchased DME
4028	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
4029	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
4030	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
4031	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
4032	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
4033	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
4034	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
4035	Enhancements to Processing of Hospice Routine Home Care Payments Payer Only Codes Utilized by Medicare Data Required on the Institutional Claim to A/B MAC (HHH) Input/Output Record Layout
4036	Quarterly Update for the Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Competitive Bidding Program (CBP) – July 2018
4037	Removal of KH Modifier from Capped Rental Claims Showing Whether Rented or Purchased
4038	Notification of Change in Instructions for Handling IRF Active Provider List
4039	New Physician Specialty Code for Medical Genetics and Genomics
4040	Revision to the Skilled Nursing Facility (SNF) Pricer to Support Value-Based Purchasing (VBP) --Billing SNF PPS Services --Input/Output Record Layout --Billing in Benefits Exhaust and No-Payment Situations
4041	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
4042	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
4043	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
4044	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
4045	Quarterly Update for Clinical Laboratory Fee Schedule and Laboratory Services Subject to Reasonable Charge Payment
4046	Inpatient Prospective Payment System (IPPS) and Long-Term Care Hospital (LTCH) PPS Extensions per the Advancing Chronic Care, Extenders, and Social Services (ACCESS) Act Included in the Bipartisan Budget Act 2018
4047	Updates to Publication 100-04, Chapters 1 and 27 to Replace Remittance Advice Remark Code (RARC) MA61 with N382
4048	Quarterly Healthcare Common Procedure Coding System (HCPCS) Drug/Biological Code Changes - July 2018 Update
4049	Supervised Exercise Therapy (SET) for Symptomatic Peripheral Artery Disease (PAD) General Billing Requirements --Coding Requirements for SET --Special Billing Requirements for Institutional Claims --Common Working File (CWF) Requirements Applicable Medicare Summary Notice (MSN), Remittance Advice Remark Codes (RARC) and Claim Adjustment Reason Code (CARC) Messaging
4050	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
4051	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
4052	Removal of KH Modifier from Capped Rental Claims Payment System (PPS)
4053	Quarterly Update to the Medicare Physician Fee Schedule Database (MPFSDB) - July 2018 Update

4054	Implement Operating Rules - Phase III Electronic Remittance Advice (ERA) Electronic Funds Transfer (EFT): Committee on Operating Rules for Information Exchange (CORE) 360 Uniform Use of Claim Adjustment Reason Codes (CARC), Remittance Advice Remark Codes (RARC) and Claim Adjustment Group Code (CAGC) Rule - Update from Council for Affordable Quality Healthcare (CAQH) CORE
4055	Annual Updates to the Prior Authorization/Pre-Claim Review Federal Holiday Schedule Tables for Generating Reports
4056	Instructions for Downloading the Medicare ZIP Code File for October Files
4057	Remittance Advice Remark Code (RARC), Claims Adjustment Reason Code (CARC), Medicare Remit Easy Print (MREP) and PC Print Update
4058	Common Edits and Enhancements Modules (CEM) Code Set Update
4059	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity
4060	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity
4061	July 2018 Quarterly Average Sales Price (ASP) Medicare Part B Drug Pricing Files and Revisions to Prior Quarterly Pricing Files
4062	Diagnosis Code Update for Add-on Payments for Blood Clotting Factor Administered to Hemophilia Inpatients --Payment for Blood Clotting Factor Administered to Hemophilia Inpatients
4063	New Q Code for In-Line Cartridge Containing Digestive Enzyme(s)
4064	July 2018 Update of the Hospital Outpatient Prospective Payment System (OPPS)
4065	July 2018 Integrated Outpatient Code Editor (I/OCE) Specifications Version 19.2
4066	Claim Status Category and Claim Status Codes Update
4067	July 2018 Update of the Ambulatory Surgical Center (ASC) Payment System
4068	E/M Service Documentation Provided by Students (Manual Update)
4069	Alignment of Coordination of Benefits Agreement (COBA) Internet Only Manual References --Assignment of Claims and Transfer Policy --MSN Messages --Returned Medigap Notices --Coordination of Medicare With Medigap and Other Complementary Health Insurance Policies --Standard Medicare Charges for COB Records --Consolidation of the Claims Crossover Process --Coordination of Benefits Agreement (COBA) Full Claim File Repair Process --Coordination of Benefits Agreement (COBA) Eligibility File Claims Recovery Process --Coordination of Benefits Agreement (COBA) Medigap Claim-Based Crossover Process --Electronic Transmission - General Requirements
4070	Quarterly Update for the Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Competitive Bidding Program (CBP) - October 2018
4071	Update of Internet Only Manual (IOM), Medicare Claims Processing Manual, Publication 100-04, Chapter 18- Preventive and Screening Services, and Chapter 35 - Independent Diagnostic Testing Facility (IDTF)
4072	July Quarterly Update for 2018 Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule
4073	Quarterly Update to the End-Stage Renal Disease (ESRD) Prospective Payment System (PPS)
4074	July 2018 Integrated Outpatient Code Editor (I/OCE) Specifications
4075	July 2018 Update of the Hospital Outpatient Prospective Payment System (OPPS)
Medicare Secondary Payer (CMS-Pub. 100-05)	
117	None Remote Identity Proofing (RIDP) and Multi-Factor Authentication (MFA) for Electronic Correspondence Referral System (ECRS) Web Users
118	Individuals Not Subject to the Limitation on Medicare Secondary Payment (MSP)
119	Implement the International Classification of Diseases, Tenth Revision (ICD-10) 2018 General Equivalence Mappings (GEMs) Tables in the Common Working File (CWF) for Purposes of Processing Non-Group Health Plan (NGHP) Medicare Secondary Payer (MSP) Records and Claims
120	Electronic Correspondence Referral System (ECRS) User Guide Medicare Beneficiary Identifier (MBI) Modifications including Updated Enterprise Identity Management (EIDM) Multi-Factor Authentication (MFA)/Remote Identity Proofing (RIDP) Screen Shots
121	Update the International Classification of Diseases, Tenth Revision (ICD-10) 2019 Tables in the Common Working File (CWF) for Purposes of Processing Non- Group IIealth Plan (NGIIP) Medicare Secondary Payer (MSP) Records and Claims
Medicare Financial Management (CMS-Pub. 100-06)	
303	Notice of New Interest Rate for Medicare Overpayments and Underpayments 3rd Qtr Notification for FY 2018
304	New Physician Specialty Code for Medical Genetics and Genomics Part D(1) - Claims Processing Timeliness - All Claims Part E - Interest Payment Data Classification of Claims for Counting Physician/Limited License Physician Specialty Codes Exhibit
Medicare State Operations Manual (CMS-Pub. 100-07)	
178	Revisions to State Operations Manual (SOM) Appendix J, Part I Survey Protocol for Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)
Medicare Program Integrity (CMS-Pub. 100-08)	
785	Clarifying Instructions Related to Proof of Delivery and Dates of Service
786	Reimbursing Providers and Health Information Handlers (HIHs) for Additional Documentation
787	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
788	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
789	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction

790	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
791	Restoring Section 3.2.3 B. and Section 3.2.3 C. to Chapter 3 of Publication (Pub.) 100-08 in the Internet Only Manual (IOM Requesting Additional Documentation During Prepayment and Postpayment Review
792	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
793	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
794	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
795	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
796	Intent to Reopen
797	Reviewing for Adverse Legal Actions (ALA)
798	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
799	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
800	Comprehensive Error Rate Testing (CERT) Update to Chapter 12 of Publication (Pub.) 100-08
Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100-09)	
	None
Medicare Quality Improvement Organization (CMS- Pub. 100-10)	
	None
Medicare End Stage Renal Disease Network Organizations (CMS Pub 100-14)	
	None
Medicaid Program Integrity Disease Network Organizations (CMS Pub 100-15)	
	None
Medicare Managed Care (CMS-Pub. 100-16)	
	None
Medicare Business Partners Systems Security (CMS-Pub. 100-17)	
14	IOM 100-17 Updates Additional Requirements for MACs Principal Systems Security Officer (SSO) Control Components Reporting Requirements Risk Assessment (RA) Certification Annual FISMA Assessment (FA) Plan of Action and Milestones Timing Requirements for Compliance Conditions Security Incident Reporting and Response Patch Management Security Configuration Management Security Technical Implementation Guides (STIG) National Institute of Standards and Technology (NIST) End of Life Technology Components Cloud Computing MAC ARS Control Tailoring Data Loss Prevention
	Wireless Access Monitoring Malicious Software Whitelisting Data Encryption Security Level by Information Type Minimum System Security Requirements—HIGH Internet Security Introduction Safeguards against Employee Fraud Attachment 1/MAC ARS
Demonstrations (CMS-Pub. 100-19)	
193	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
194	Medicare Diabetes Prevention Program (MDPP) Model Expansion Medicare Beneficiary Database (MBD) File Data for the Health Insurance Portability and Accountability Act (HIPAA) Eligibility Transaction System (HETS)
195	Update to CR9341 Oncology Care Model (OCM) Restricted Care Management Code List
196	Comprehensive ESRD Care (CEC) Model Telehealth - Implementation
One Time Notification (CMS-Pub. 100-20)	
2050	Modifications to the Implementation of the Paperwork (PWK) Segment of the Electronic Submission of Medical Documentation (esMD) System
2051	Claims Processing Actions to Implement Certain Provisions of the Bipartisan Budget Act of 2018
2052	Issued to a specific audience, not posted to Internet/ Intranet due to a Sensitivity
2053	Issued to a specific audience, not posted to Internet/ Intranet due to a Sensitivity
2054	Change in Type of Service (TOS) for Current Procedural Terminology (CPT) Code 77067
2055	Update to the Hospital Transfer Policy for Early Discharges to Hospice Care
2056	User CR: Develop Enhanced Claims Search Reporting in Fiscal Intermediary Shared System (FISS) - Phase 1
2057	Common Working File (CWF) to Increase Next Eligible Date Occurrences to 99 for Preventative Services
2058	Issued to a specific audience, not posted to Internet/ Intranet due to a Sensitivity
2059	Issued to a specific audience, not posted to Internet/ Intranet due to a Sensitivity
2060	Issued to a specific audience, not posted to Internet/ Intranet due to a Sensitivity
2061	Issued to a specific audience, not posted to Internet/ Intranet due to a Sensitivity
2062	Updates to Peritoneal Dialysis Claims Processing, Provider Statistical and Reimbursement Report (PSR) and Payment for Ultrafiltration for Beneficiaries with Acute Kidney Injury (AKI)
2063	Processing Instructions to Update the Identification Code Qualifier Being Used in the NM108 Data Element at the 2100 Loop, NM1- Patient Name Segment in the 835 Guide

2064	Part B Detail Line Expansion - Fiscal Intermediary Shared System (FISS)
2065	Part B Detail Line Expansion - Multi-Carrier System (MCS) Phase 9
2066	Enhancement for Undeliverable Pay Medicare Summary Notices (MSNs) for Multi-Carrier System (MCS) Users
2067	Shared System Enhancement 2014: Implementation of Fiscal Intermediary Shared System (FISS) Obsolete On-Request Jobs - Phase 2
2068	Common Working File (CWF) Split Medicare Part A Claims to Carry 50 Lines per Segment Rather than 100 Lines per Segment
2069	Shared System Enhancement 2014: Implementation of Fiscal Intermediary Shared System (FISS) Obsolete On-Request Jobs - Phase 3
2070	Shared System Enhancement 2015: Identify Inactive Medicare Demonstration Projects within the Fiscal Intermediary Shared System - (Removing/Archiving Demonstration Codes 51 and 56)
2071	Phase 4 - Updating the Fiscal Intermediary Shared System (FISS) to Make Payment for Drugs and Biologicals Services for Outpatient Prospective Payment System (OPPS) Providers
2072	Implementation of Business Requirements to Increase Claim Counter Maximum and Create Auto-Deletion Utility
2073	Use the VMAP/4D States Table in all VMS Address Processing
2074	Modifying FISS Part B Claims Overlap Edits
2075	Medicare Cost Report E-Filing (MCReF)
2076	International Code of Diseases, Tenth Revision (ICD-10) and Other Coding Revisions to National Coverage Determinations (NCDs)
2077	Clean-up of Fiscal Intermediary Shared System (FISS) Reason Codes and Quarterly Reports
2078	Issued to a specific audience, not posted to Internet/ Intranet due to a Sensitivity
2079	Identifying and Eliminating Discrepancies between the Provider Enrollment, Chain and Ownership System (PECOS) and the Fiscal Intermediary Shared System (FISS)
2080	Fee-For-Service (FFS) Shared System Maintainers (SSMs) Standardized Release Identification (ID) Format
2081	Transition Letter Writing from Client Letter Software to the Durable Medical Equipment (DME) Medicare Administrative Contractors (MACs)
2082	Analysis for Mandatory Support of Review Contractors to Send Electronic Medical Documentation Requests (eMDR) to Participating Providers via the Electronic Submission of Medical Documentation (esMD) System
2083	Implementation of Changes to the Pre-Payment Additional Documentation Request (ADR) Letters for Medical Review
2084	Analysis and Design for Fiscal Intermediary Shared System (FISS), Multi-Carrier System (MCS), and Viable Information Processing System (VIPS) Medicare System (VMS) Prepayment Review Report
2085	Implementation of Procedures for Undeliverable Medicare Summary Notices (uMSNs) and Summary MSNs for Previously Undeliverable MSNs for FISS and MCS (No-Pay only)
2086	Combined Common Edits/Enhancements Module (CCEM) Updates for Apache POI (version 3.14.0) to Apache POI (version 3.17) and Analysis from JAVA (version 6) to JAVA (version 7)
2087	Issued to a specific audience, not posted to Internet/ Intranet due to a Sensitivity
2088	Issued to a specific audience, not posted to Internet/ Intranet due to a Sensitivity
2089	Standardization of Case File Transmittal and Provider Information Processes, Bankruptcy, Payment Hold, and Cancellation Reporting Between the Medicare Administrative Contractors (MAC) and the Recovery Audit Contractor (RAC)
2090	Use the VMAP/4D States Table in all VMS Address Processing
2091	Identifying and Eliminating Discrepancies between the Provider Enrollment, Chain and Ownership System (PECOS) and the Fiscal Intermediary Shared System (FISS)
2092	Analysis for First Coast Service Options (FCSO) and Novitas for the Security Assertion Markup Language 2.0 (SAML 2.0) Migration
Medicare Quality Reporting Incentive Programs (CMS- Pub. 100-22)	
76	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
Information Security Acceptable Risk Safeguards (CMS-Pub. 100-25)	
5	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction

Addendum II: Regulation Documents Published in the Federal Register (April through June 2018)

Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. To purchase individual copies or subscribe to the **Federal Register,** contact GPO at www.gpo.gov/fdsys. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is available as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) through the present date and can be accessed at http://www.gpoaccess.gov/fr/index.html. The following website http://www.archives.gov/federal-register/ provides information on how to access electronic editions, printed editions, and reference copies.

This information is available on our website at: http://www.cms.gov/quarterlyproviderupdates/downloads/Regs-2Q18QPU.pdf

For questions or additional information, contact Terri Plumb (410-786-4481).

Addendum III: CMS Rulings (April through June 2018)

CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters.

The rulings can be accessed at http://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings. For questions or additional information, contact Tiffany Lafferty (410-786-7548).

Addendum IV: Medicare National Coverage Determinations (April through June 2018)

Addendum IV includes completed national coverage determinations (NCDs), or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCD Manual (NCDM) in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. An NCD is a determination by the Secretary for whether or not a particular item or service is covered nationally under the Medicare Program (title XVIII of the Act), but does not include a determination of the code, if any, that is assigned to a particular covered item or service, or payment determination for a particular covered item or service. The entries below include information concerning completed decisions, as well as sections on program and decision memoranda, which also announce decisions or, in some cases, explain why it was not appropriate to issue an NCD. Information on completed decisions as well as pending decisions has also been posted on the CMS website. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. There were no national coverage determinations (NCDs), or reconsiderations of completed NCDs published in the 3-month period. This information is available at: www.cms.gov/medicare-coverage-database/. For questions or additional information, contact Wanda Belle, MPA (410-786-7491).

Addendum V: FDA-Approved Category B Investigational Device Exemptions (IDEs) (April through June 2018)

Addendum V includes listings of the FDA-approved investigational device exemption (IDE) numbers that the FDA assigns. The listings are organized according to the categories to which the devices are assigned (that is, Category A or Category B), and identified by the IDE number. For the purposes of this quarterly notice, we list only the specific updates to the Category B IDEs as of the ending date of the period covered by this notice and a contact person for questions or additional information. For questions or additional information, contact John Manlove (410-786-6877).

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c) devices fall into one of three classes. To assist CMS under this categorization process, the FDA assigns one of two categories to each FDA-approved investigational device exemption (IDE). Category A refers to experimental IDEs, and Category B refers to non-experimental IDEs. To obtain more information about the classes or categories, please refer to the notice published in the April 21, 1997 **Federal Register** (62 FR 19328).

IDE	Device	Start Date
BB18107	Miltenyi CliniMACS System	04/12/2018
BB18136	Miltenyi CliniMACS TCRalpha/beta, CD19, CD45RA System	05/01/2018
BB18220	Magnetic-Activated Cell Sorter (CliniMACS, Miltenyi) for CD45RA+ Depletion; Allogeneic Unrelated and Partially Matched Related, G-CSF Mobiized Peripheral Blood Stem Cell Addback with TCRab+ and CD19 Depletion following Chemotherapy	06/08/2018
G160220	Stellarex 0.014" OTW Drug-coated Angioplasty Balloon	05/03/2018
G170030	MiStent Sirolimus Eluting Absorbable Polymer Coronary Stent System (MiStent II) in the CRYSTAL Clinical Study	06/15/2018
G170190	AXIOS Stent and Electrocautery Enhanced Delivery System 10mmx10mm; AXIOS Stent and Electrocautery Enhanced Delivery System 15mmx10mm	04/10/2018
G170209	JUVEDERM VOLUX XC	04/26/2018
G170274	AtriCure Synergy Ablation System	04/27//2018
G180001	iStent infinite Model iS3	04/11/2018
G180033	Edwards Transcatheter Atrial Shunt System	05/24/2018
G180045	CENTERA Transcatheter Heart Valve System	04/04/2018
G180048	Boston Scientific Embozene Color-Advanced Microspheres for Embolization	04/05/2018
G180049	Exablate Model 4000 Type-2 for Blood-Brain Barrier Disruption (BBBD)	04/04/2018
G180052	XIENCE Alpine Everolimus Eluting Coronary Stent System, XIENCE Xpedition Everolimus Coronary Stent System	04/13/2018
G180053	t:slim X2 with Control-IQ Technology	04/13/2018
G180057	Effectiveness of spinal cord stimulation for the management of freezing of gait and locomotion in Parkinson's disease	04/19/2018
G180058	SYNCHRONY Cochlear Implant	04/13/2018

IDE	Device	Start Date
G180059	VENTANA PATHWAY HER-2/neu (4B5) Rabbit Monoclonal Primary Antibody Assay	04/20/2018
G180063	Restylane Defyne	04/27/2018
G180064	Juvederm Volite XC	04/27/2018
G180068	Guardant360 CDx Test	05/02/2018
G180070	Slit Stent II Lacrimal Stent	05/04/2018
G180071	PN40082 (with lidocaine) for Lip Augmentation	05/04/2018
G180073	DES BTK Drug-Eluting Vascular Stent System	05/11/2018
G180074	Next-Generation Sequencing Minimal Residual Disease Assay (NGS MRD Assay)	05/16/2018
G180085	MagVenture MagPro R30 transcranial stimulator	06/13/2018
G180090	Synergy Disc	06/06/2018
G180091	Abbott Laboratories Infinity implantable deep brain stimulation system	06/18/2018
G180092	Celcuity CELx HER2 Signaling Function Test	06/07/2018
G180093	NovoTTF-100M System	06/09/2018
G180094	NeVa VS	06/10/2018
G180096	SERF (Saline Enhanced Radio-Frequency) Ablation System	06/14/2018
G180097	Medtronic Summit RC+S System	06/14/2018
G180100	Easytech Reversed Shoulder System	06/14/2018
G180102	Accelerated rTMS as a treatment for post-stroke depression in the subacute phase: an open label pilot study	06/28/2018
G180109	LUM Imaging System	06/29/2018
G180110	Boston Scientific Precision Spectra Spinal Cord Stimulator and CoverEdge X32 Surgical Leads	06/01/2018
G180113	Pneumatic Vitreolysis on Vitreomacular Traction (Protocol AG); Pneumatic Vitreolysis for Macular Hole (Protocol AH)	06/29/2018
G180115	HydroPearl Microspheres	06/29/2018

Addendum VI: Approval Numbers for Collections of Information (April through June 2018)

All approval numbers are available to the public at Reginfo.gov. Under the review process, approved information collection requests are assigned OMB control numbers. A single control number may apply to several related information collections. This information is available at www.reginfo.gov/public/do/PRAMain. For questions or additional information, contact William Parham (410-786-4669).

Addendum VII: Medicare-Approved Carotid Stent Facilities, (April through June 2018)

Addendum VII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients. On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available at: http://www.cms.gov/MedicareApprovedFacilitie/CASF/list.asp#TopOfPage For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Facility	Provider Number	Effective Date	State
The following facilities are new listings for this quarter.			
Western Maryland Health System 12500 Willowbrook Road Cumberland, MD 21502	1609831247	04/10/2018	MD
Methodist Health Centers 17201 Interstate 45 South The Woodlands, TX 77385 Other Information: d/b/a Houston Methodist – The Woodlands Hospital	1184179194	04/23/2018	TX
Garden City Hospital 6425 Inkster Road Garden City, MI 48136	1578550174	05/09/2018	MI
Christ Hospital, CarePoint Health System 176 Palisade Avenue Jersey City, NJ 07306 Other Locations: Bayonne Medical Center 29th Street at Avenue E Bayonne, NJ 07002 Hoboken University Medical Center 308 Willow Avenue Hoboken, NJ 07030	310016	05/25/2018	NJ
The following facilities have editorial changes (in bold).			
Froedtert South Inc. 6308 Eighth Avenue Kenosha, WI 53143-5082Michigan City, IN 46360 Dba Kenosha Medical Center and St. Catherine's Medical Center	520021	12/21/2007	IN

Facility	Provider Number	Effective Date	State
St. Catherine's Medical Center Address: 9555 S 76th St Pleasant Prairie, WI 53158 Provider # 520021			
FROM: Community Health Partners TO: Mercy Health – Regional Medical Center LLC 3700 Kolbe Road Lorain, OH 44053-1697	360172	05/23/2005	OH
The following facility is being removed.			
Mercy Hospital Ardmore, Inc 1011 4th Avenue NW Ardmore, OK 73401Oklahoma City, OK 73120	370047 1386741635	09/06/2006	OK

Addendum VIII: American College of Cardiology's National Cardiovascular Data Registry Sites (April through June 2018)

The initial data collection requirement through the American College of Cardiology's National Cardiovascular Data Registry (ACC-NCDR) has served to develop and improve the evidence base for the use of ICDs in certain Medicare beneficiaries. The data collection requirement ended with the posting of the final decision memo for Implantable Cardioverter Defibrillators on February 15, 2018.

For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum IX: Active CMS Coverage-Related Guidance Documents (April through June 2018)

CMS issued a guidance document on November 20, 2014 titled "Guidance for the Public, Industry, and CMS Staff: Coverage with Evidence Development Document". Although CMS has several policy vehicles relating to evidence development activities including the investigational device exemption (IDE), the clinical trial policy, national coverage determinations and local coverage determinations, this guidance document is principally intended to help the public understand CMS's implementation of coverage with evidence development (CED) through the national coverage determination process. The document is available at http://www.cms.gov/medicare-coverage-database/details/medicare-coverage-document-details.aspx?MCDId=27. There are no additional Active CMS Coverage-Related Guidance Documents for the 3-month period. For questions or additional information, contact JoAnna Baldwin, MS (410-786-7205).

Addendum X: List of Special One-Time Notices Regarding National Coverage Provisions (April through June 2018)

There were no special one-time notices regarding national coverage provisions published in the 3-month period. This information is available at www.cms.hhs.gov/coverage. For questions or additional information, contact JoAnna Baldwin, MS (410-786 7205).

Addendum XI: National Oncologic PET Registry (NOPR) (April through June 2018)

Addendum XI includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.

In January 2005, we issued our decision memorandum on **positron emission tomography** (PET) scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the registry. There were no additions, deletions, or editorial changes to the listing of National Oncologic Positron Emission Tomography Registry (NOPR) in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/NOPR/list.asp#TopOfPage. For questions or additional information, contact Stuart Caplan, RN, MAS (410-786-8564).

Addendum XII: Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities (April through June 2018)

Addendum XII includes a listing of Medicare-approved facilities that receive coverage for ventricular assist devices (VADs) used as destination therapy. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy. On October 1, 2003, we issued our decision memorandum on VADs for the clinical indication of destination therapy. We determined that VADs used

as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy.

For the purposes of this quarterly notice, we are providing only the specific updates to the list of Medicare-approved facilities that meet our standards that have occurred in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/VAD/list.asp#TopOfPage. For questions or additional information, contact Linda Gousis, JD, (410-786-8616).

Facility	Provider Number	Date of Initial Certification	Date of Recertification	State
The following facilities are new listings for this quarter.				
Novant Health Forsyth Medical Center 3333 Silas Creek Parkway Winston Salem, NC 27103 Other information: DNV GL Certified on 2018-04-20	340014	04/20/2018		NC
Northeast Georgia Medical Center 743 Spring Street Gainesville, GA 30501 Other Information: Joint Commission # 6711	110029	04/26/2018		GA
The following facilities have editorial changes (in bold).				
FROM: NYU Hospitals Center **TO: NYU Medical Center, Tisch Hospital** **550 1ST Avenue** **New York, NY 10016** **Joint Commission ID # 5820** **Previous Re-certification Dates: 2014-01-14; 2016-03-08**	330214	02/14/2012	**03/28/2018**	NY
FROM: York Hospital **TO: WellSpan York Hospital** **1001 S. George St.** **York, PA 17403** **Other Information:** **Joint Commission ID # 6228** **Previous Re-certification Dates: 2015-12-15**	390046	11/19/2013	**01/24/2018**	PA
University of California, Davis Medical Center (UCDMC) 2315 Stockton Boulevard Sacramento, CA 95817 **Other Information:** **Joint Commission # 7030**	050599	10/06/2015	**02/07/2018**	CA
Newark Beth Israel Medical Center 201 Lyons Avenue Newark, NJ 07112 **Joint Commission ID # 5965** **Previous Re-certification Dates: 2011-09-20; 2013-10-01; 2015-12-15**	310002	02/06/2009	**02/07/2018**	NJ
Moses H. Cone Memorial Hospital 1200 North Elm Street Greensboro NC 27401-1020 **Joint Commission ID # 6504Joint Commission ID # 6504** **Previous Re-certification Dates: 2016-02-09**	340091	01/08/2014	**02/14/2018**	NC
FROM: University Hospitals - Case Medical Center **TO: University Hospitals Cleveland Medical Center** 11100 Euclid Avenue Cleveland, OH 44106 **Joint Commission ID # 7017** **Previous Re-certification Dates: 2012-01-24; 2014-01-30; 2016-02-23**	360137	02/09/2010	**02/10/2018**	OH
Providence St. Vincent Medical Center 9205 Southwest Barnes Road Portland, OR	380004	12/06/2011	**02/14/2018**	OR

Facility	Provider Number	Date of Initial Certification	Date of Recertification	State
Joint Commission ID # 9705 Previous Re-certification Dates: 2013-12-10; 2016-01-26 Other Information: Joint Commission # 7315				
FROM: Bon Secours - St. Mary's Hospital TO: Bon Secours St. Mary's Hospital 5801 Bremo Road Richmond, VA 23226 **Joint Commission ID # 6387 Previous Re-certification Dates: 2013-12-17; 2016-01-26**	490059	12/11/2007	**02/22/2018**	VA
Johns Hopkins Hospital 600 N Wolfe Street Baltimore, MD 21287 **Joint Commission ID #6252 Previous Re-certification Dates: 2009-12-15; 2011-11-29; 2013-12-03; 2016-01-12**	210009/179070090 4	12/11/2007	**02/14/2018**	MD
TO: University Cincinnati Medical Center FROM: University of Cincinnati Medical Center 234 Goodman Street Cincinnati, OH 45219 **Joint Commission ID # 6988 Previous Re-certification Dates: 2014-01-07; 2016-02-23**	360003	12/13/2011	**03/14/2018**	OH
Mercy General Hospital 4001 J Street Sacramento, CA 95819 **Joint Commission ID # 10053 Previous Re-certification Dates: 2016-03-08**	050017	02/12/2014	**03/14/2018**	CA
FROM: The University of Kansas Hospital Authority TO: University of Kansas Health System 4000 Cambridge Street Kansas City, KS 66160 Joint Commission ID # 8567	17-0040	03/08/2016	**03/07/2018**	KS
The Christ Hospital 2139 Auburn Avenue Cincinnati, OH 45219 **Joint Commission ID # 6987 Previous Re-certification Dates: 2014-02-20; 2016-04-05**	360163	02/17/2012	**03/21/2018**	OH
UPMC Presbyterian 200 Lothrop Street Pittsburgh, PA 15213 **Joint Commission ID # 6169 Previous Re-certification Dates: 2010-05-21; 2012-04-12; 2014-03-25; 2016-04-13**	**390164**	06/10/2008	**03/21/2018**	PA
Saint Cloud Hospital 1406 Sixth Avenue North Saint Cloud, MN 56303 **Joint Commission ID # 8183**	240036	04/13/2016	**04/04/2018**	MN
FROM: University of Utah Hospital TO: University of Utah Health Care – Hospitals and Clinics 50 N Medical Drive Salt Lake City, UT 84132 **DNV GL Certificate #: 264328-2018-VAD Previous Re-certification Dates: 2011-07-13; 2013-06-18; 2015-06-23; 2017-08-08**	460009	01/13/2009	**05/25/2018**	UT

Facility	Provider Number	Date of Initial Certification	Date of Recertification	State
FROM: California Pacific Medical Center **TO: California Pacific Medical Center – Pacific Campus** 2333 Buchanan Street San Francisco, CA 94115 **Joint Commission ID # 5152; De-certified from 3/28/09 to 12/8/09.** **Previous Re-certification Dates: 2011-11-11; 2014-01-07; 2016-02-09**	050047	12/08/2009	**03/21/2018**	CA
Temple University Hospital 3401 N Broad Street Philadelphia, PA 19140 **Joint Commission ID # 6152** **Previous Re-certification Dates: 2014-02-11; 2016-04-07**	390027	02/08/2012	**04/04/2018**	PA

Addendum XIII: Lung Volume Reduction Surgery (LVRS) (April through June 2018)

Addendum XIII includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial were also eligible to receive coverage. The following three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS):

- National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs);
- Credentialed by the Joint Commission (formerly, the Joint Commision on Accreditation of Healthcare Organizations (JCAHO)) under their Disease Specific Certification Program for LVRS; and
- Medicare approved for lung transplants.

Only the first two types are in the list. There were no editorial updates to the listing of facilities for lung volume reduction surgery published in the 3-month period. This information is available at www.cms.gov/MedicareApprovedFacilitie/LVRS/list.asp#TopOfPage. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum XIV: Medicare-Approved Bariatric Surgery Facilities (April through June 2018)

Addendum XIV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities must meet our standards in order to receive coverage for bariatric surgery procedures. On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity and have been previously unsuccessful with medical treatment for obesity. This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

There were no additions, deletions, or editorial changes to Medicare-approved facilities that meet CMS's minimum facility standards for bariatric surgery that have been certified by ACS and/or ASMBS in the 3-month period. This information is available at www.cms.gov/MedicareApprovedFacilitie/BSF/list.asp#TopOfPage. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum XV: FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials (April through June 2018)

There were no FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials published in the 3-month period.

This information is available on our website at www.cms.gov/MedicareApprovedFacilitie/PETDT/list.asp#TopOfPage. For questions or additional information, contact Stuart Caplan, RN, MAS (410-786-8564).

[FR Doc. 2018–17316 Filed 8–10–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10545]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by September 12, 2018.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR,* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Outcome and Assessment Information Set (OASIS) OASIS–C2/ICD–10; *Use:* This request is for OMB approval to modify the Outcome and Assessment Information Set (OASIS) that home health agencies (HHAs) are required to collect in order to participate in the Medicare program. CMS is seeking OMB approval for the proposed revised OASIS item set, referred to hereafter as OASIS–D, scheduled for implementation on January 1, 2019. The OASIS D is being modified to: include changes pursuant to the Improving Medicare Post-Acute Care Transformation Act of 2014 (the IMPACT Act); accommodate data element removals to reduce burden; and improve formatting throughout the document. *Form Number:* CMS–10545 (OMB control number: 0938–1279); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 12,149; *Total Annual Responses:* 18,161,942; *Total Annual Hours:* 9,943,140. (For policy questions regarding this collection contact Joan Proctor at 410–786–0949).

Dated: August 8, 2018.

William N. Parham, III,

Director, Paperwork Reduction Staff Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2018–17302 Filed 8–10–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–2777]

Expansion Cohorts: Use in First-In-Human Clinical Trials To Expedite Development of Oncology Drugs and Biologics; 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 ''Expansion Cohorts: Use in First-In-Human Clinical Trials to Expedite Development of Oncology Drugs and Biologics.'' The purpose of this draft guidance is to provide advice to sponsors regarding the design and conduct of first-in-human (FIH) clinical trials intended to efficiently expedite the clinical development of cancer drugs, including biological products, through multiple expansion cohort study designs.

DATES: Submit either electronic or written comments on the draft guidance by October 12, 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–2777 for ''Expansion Cohorts: Use in First-In-Human Clinical Trials to Expedite Development of Oncology Drugs and Biologics.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Lee Pai-Scherf, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2314, Silver Spring, MD 20993–0002, 301–796–3400; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Expansion Cohorts: Use in First-In-Human Clinical Trials to Expedite Development of Oncology Drugs and Biologics.'' The purpose of this draft guidance is to provide advice to sponsors regarding the design and conduct of FIH clinical trials intended to efficiently expedite the clinical development of cancer drugs, including biological products, through multiple expansion cohort study designs. These are study designs that employ multiple, concurrently accruing, patient cohorts, where individual cohorts assess different aspects of the safety, pharmacokinetics, and anti-tumor activity of the drug. This guidance provides FDA's current thinking regarding: (1) Characteristics of drug products best suited for consideration for development under a multiple expansion cohort study; (2) information to include in investigational new drug application submissions to justify the design of individual expansion cohorts; (3) when to interact with FDA on planning and conduct of multiple expansion cohort studies; and (4) safeguards to protect patients enrolled in FIH expansion cohort studies.

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 Expansion Cohorts: Use in First-In-Human Clinical Trials to Expedite Development of Oncology Drugs and Biologics. 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 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 the draft guidance have been approved under 21 CFR part 312 at OMB control number 0910–0014; the guidance for industry entitled ''Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products'' under OMB control number 0910–0429 is available at *https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM590547.pdf;* the guidance for clinical trial sponsors entitled ''Establishment and Operation of Clinical Trial Data Monitoring'' under OMB control number 0910–0581 is available at *https://www.fda.gov/downloads/RegulatoryInformation/Guidances/ucm127073.pdf;* the guidance for industry entitled ''Oversight of Clinical Investigations—A Risk-Based Approach to Monitoring''

under OMB control number 0910–0733 is available at *https://www.fda.gov/ucm/groups/fdagov-public/@fdagov-drugs-gen/documents/document/ucm269919.pdf;* 21 CFR parts 50 and 56 under OMB control number 0910–0755; the guidance for industry entitled ''Expedited Programs for Serious Conditions—Drugs and Biologics'' under OMB control number 0910–0765 is available at *https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM358301.pdf;* and the ICH guidance for industry entitled ''E6(R2) Good Clinical Practice: Integrated Addendum to ICH E6(R1)'' under OMB control number 0910–0843 is available at *https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM464506.pdf.*

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm,* or *https://www.regulations.gov.*

Dated: August 8, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–17273 Filed 8–10–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–2455]

Patient-Focused Drug Development Guidance: Methods To Identify What Is Important to Patients and Select, Develop, or Modify Fit-for-Purpose Clinical Outcome Assessments; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a 2-day public workshop to convene a discussion on methodological approaches that may be used to identify what is most important to patients and caregivers with respect to burden of disease, burden of treatment, and the benefits and risks in the management of the patient's disease, and best practices for selecting, developing, or modifying fit-for-purpose clinical outcome assessments (COAs) to measure the patient experience in clinical trials. This workshop will inform development of patient-focused drug development guidance as required by the 21st Century Cures Act (Cures Act) and as part of commitments made by FDA under the sixth authorization of the Prescription Drug User Fee Act (PDUFA VI). FDA will publish discussion documents approximately 1 month before the workshop date. FDA is interested in seeking information and comments on the approaches proposed in the discussion documents. FDA is also interested in input on examples, which could be illustrated in the draft guidance, where the approaches proposed in the discussion document have been successfully applied.

DATES: The public workshop will be held on October 15 and 16, 2018, from 9 a.m. to 5 p.m. Submit either electronic or written comments on this public workshop by December 14, 2018. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.* Workshop updates, agenda, and discussion documents will be made available at: *https://www.fda.gov/Drugs/NewsEvents/ucm607276.htm* prior to the workshop.

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 December 14, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of December 14, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–N–2455 for ''Patient-Focused Drug Development Guidance: Methods to Identify What is Important to Patients and Select, Develop or Modify Fit-for-Purpose Clinical Outcome Assessments; Public Workshop; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS

CONFIDENTIAL INFORMATION.'' 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: Meghana Chalasani, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1146, Silver Spring, MD 20993–0002, 240–402–6525, Fax: 301–847–8443, *Meghana.Chalasani@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This public workshop is intended to support FDA implementation of requirements for guidance development under section 3002 of the Cures Act (Pub. L. 114–255) and to meet a performance goal included in the sixth authorization of PDUFA VI. Section 3002 of Title III Subtitle A of the Cures Act directs FDA to develop patient-focused drug development guidance to address a number of areas including methodological approaches that may be used to develop and identify what is most important to patients with respect to burden of disease, burden of treatment, and the benefits and risks in the management of the patient's disease; and approaches to identifying and developing methods to measure impacts to patients that will help facilitate collection of patient experience data in clinical trials.

In addition, FDA committed to meet certain performance goals under PDUFA VI. This reauthorization, part of the FDA Reauthorization Act of 2017 signed by the President on August 18, 2017, includes a number of performance goals and procedures that are documented in the PDUFA VI Commitment Letter, which is available at *https://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM511438.pdf.* These goal commitments were developed in consultation with patient and consumer advocates, healthcare professionals, and other public stakeholders, as part of negotiations with regulated industry. Section J.1 of the commitment letter, ''Enhancing the Incorporation of the Patient's Voice in Drug Development and Decision-Making,'' (*https://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM511438.pdf*) outlines work, including the development of a series of guidance documents and associated public workshops to facilitate the advancement and use of systematic approaches to collect and utilize robust and meaningful patient and caregiver input that can more consistently inform drug development, and, as appropriate, regulatory decision making.

Prior to the issuance of each guidance, as part of the development, FDA will conduct a public workshop to gather input from the wider community of patients, patient advocates, academic researchers, expert practitioners, drug developers, and other stakeholders.

II. Purpose and Scope of Meeting

FDA is announcing a 2-day public workshop to convene a discussion on: (1) Methodological approaches that may be used to develop and identify what is most important to patients and caregivers with respect to burden of disease, burden of treatment, and the benefits and risks in the management of the patient's disease and (2) best practices for selecting, developing, or modifying fit-for-purpose COAs to measure the patient experience in clinical trials. The purpose of this public workshop is to obtain feedback from stakeholders on: (1) Methods to identify what is important to patients; (2) best practices for eliciting information on which aspects of disease symptoms, signs, impacts, and other issues are important and meaningful to patients; (3) measuring symptoms, signs, impacts and other issues of a disease or condition in a meaningful way; and (4) selecting, developing, or modifying fit-for-purpose COAs to measure the patient experience in clinical trials. FDA is seeking information and comments from a broad range of stakeholders, including patients, patient advocates, academic and medical researchers, expert practitioners, drug developers, and other interested persons. FDA will publish discussion documents outlining the topic areas that will be addressed in the draft guidances. These documents will be published approximately 1 month before the workshop date on the website at: *https://www.fda.gov/Drugs/NewsEvents/ucm607276.htm.* FDA is interested in seeking information and comments on the approaches and considerations proposed in the discussion documents. FDA is also interested in seeking information and comments on additional examples, which could be included in guidance, where the approaches proposed in the discussion document have been successfully applied. After this public workshop, FDA will take into consideration the stakeholder input from the workshop and the public docket and publish draft guidance(s).

III. Participating in the Public Workshop

Registration: Interested parties are encouraged to register early. To register electronically, please visit: *https://pfddmethods.eventbrite.com.* Registration for in-person attendance will close on October 10, 2018. Registration for the webcast will remain open until the day of the meeting. Persons without access to the internet can call 240–402–6525 to register. If you are unable to attend the meeting in person, you can register to view a live webcast of the meeting. You will be asked to indicate in your registration if you plan to attend in person or via the webcast. Seating will be limited, so early registration is recommended. Registration is free and will be on a first-come, first-served basis. However, FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration on the day of the meeting will be based on space availability.

If you need special accommodations because of a disability, please contact Meghana Chalasani (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the meeting.

Request for Oral Presentations: There will be time allotted during the workshop for open public comment. Sign-up for this session will be on a first-come, first-served basis on the day of the workshop. Individuals and

organizations with common interests are urged to consolidate or coordinate, and request time for a joint presentation. No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

Transcripts: As soon as a transcript is available, FDA will post it at *https://www.fda.gov/Drugs/NewsEvents/ucm607276.htm.*

Dated: August 8, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–17272 Filed 8–10–18; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3009]

Authorization of Emergency Use of a Freeze Dried Plasma Treatment for Hemorrhage or Coagulopathy During an Emergency Involving Agents of Military Combat; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of an Emergency Use Authorization (EUA) (the Authorization) for a freeze dried plasma treatment for hemorrhage or coagulopathy during an emergency involving agents of military combat (*e.g.,* firearms, projectiles, and explosive devices) when plasma is not available for use or when the use of plasma is not practical. FDA issued this Authorization under the Federal Food, Drug, and Cosmetic Act (FD&C Act), as requested by the U.S. Department of Defense (DoD). The Authorization contains, among other things, conditions on the emergency use of the authorized treatment. The Authorization follows the June 7, 2018, determination by the Deputy Secretary of Defense that there is a military emergency or significant potential for a military emergency, involving a heightened risk to U.S. military forces of an attack with an agent or agents that may cause, or are otherwise associated with an imminently life-threatening and specific risk to those forces. The Deputy Secretary of Defense further stated that, more specifically, U.S. forces are now deployed in multiple locations where they serve at heightened risk of an enemy attack with agents of military combat, including firearms, projectiles, and explosive devices, that may cause major and imminently life-threatening combat casualties involving uncontrolled hemorrhage. On the basis of such determination, the Department of Health and Human Services (HHS) Secretary declared on July 9, 2018, that circumstances exist justifying the authorization of emergency use of freeze dried plasma for the treatment of hemorrhage or coagulopathy during an emergency involving agents of military combat (*e.g.,* firearms, projectiles, and explosive devices) when plasma is not available for use or when the use of plasma is not practical, subject to the terms of any authorization issued under the FD&C Act. The Authorization, which includes an explanation of the reasons for issuance, is reprinted in this document.

DATES: The Authorization is effective as of July 9, 2018.

ADDRESSES: Submit written requests for single copies of the EUA to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the Authorization may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorization.

FOR FURTHER INFORMATION CONTACT: Michael Mair, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4340, Silver Spring, MD 20993–0002, 301–796–8510 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276), the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5), 21st Century Cures Act (Pub. L. 114–255), and Public Law 115–92 (2017), allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents and other agents that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. With this EUA authority, FDA can help assure that medical countermeasures may be used in emergencies to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by biological, chemical, nuclear, or radiological agents and other agents that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces when there are no adequate, approved, and available alternatives.

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of the following grounds: (1) A determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents; (2) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to U.S. military forces, including personnel operating under the authority of title 10 or title 50, United States Code, of attack with (i) a biological, chemical, radiological, or nuclear agent or agents; or (ii) an agent or agents that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces; [1] (3) a determination by the Secretary of HHS that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents; or (4) the identification of a material threat by the Secretary of Homeland Security under section 319F–2 of the Public Health Service (PHS) Act (42 U.S.C. 247d–6b) sufficient to affect national security or the health and security of U.S. citizens living abroad.

Once the Secretary of HHS has declared that circumstances exist justifying an authorization under section 564 of the FD&C Act, FDA may authorize the emergency use of a drug, device, or biological product if the Agency concludes that the statutory criteria are satisfied. Under section

[1] In the case of a determination by the Secretary of Defense, the Secretary of HHS shall determine, within 45 calendar days of such determination, whether to make a declaration under section 564(b)(1) of the FD&C Act, and, if appropriate, shall promptly make such a declaration.

564(h)(1) of the FD&C Act, FDA is required to publish in the **Federal Register** a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Section 564 of the FD&C Act permits FDA to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use when the Secretary of HHS has declared that circumstances exist justifying the authorization of emergency use. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under sections 505, 510(k), 512, or 515 of the FD&C Act (21 U.S.C. 355, 360(k), 360b, and 360e) or section 351 of the PHS Act (42 U.S.C. 262), or conditionally approved under section 571 of the FD&C Act (21 U.S.C. 360ccc). FDA may issue an EUA only if, after consultation with the HHS Assistant Secretary for Preparedness and Response, the Director of the National Institutes of Health, and the Director of the Centers for Disease Control and Prevention (to the extent feasible and appropriate given the applicable circumstances), FDA [2] concludes: (1) That an agent referred to in a declaration of emergency or threat can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that: (A) The product may be effective in diagnosing, treating, or preventing (i) such disease or condition; or (ii) a serious or life-threatening disease or condition caused by a product authorized under section 564, approved or cleared under the FD&C Act, or licensed under section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product, taking into consideration the material threat posed by the agent or agents identified in a declaration under section 564(b)(1)(D) of the FD&C Act, if applicable; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; (4) in the case of a determination described in section 564(b)(1)(B)(ii), that the request for emergency use is made by the Secretary of Defense; and (5) that such other criteria as may be prescribed by regulation are satisfied.

No other criteria for issuance have been prescribed by regulation under section 564(c)(4) of the FD&C Act. Because the statute is self-executing, regulations or guidance are not required for FDA to implement the EUA authority.

II. EUA Request for a Freeze Dried Plasma Treatment for Hemorrhage or Coagulopathy During an Emergency Involving Agents of Military Combat When Plasma Is Not Available for Use or When the Use of Plasma Is Not Practical

On June 7, 2018, the Deputy Secretary of Defense determined that ''there is a military emergency or significant potential for a military emergency, involving a heightened risk to U.S. military forces of an attack with an agent or agents that may cause, or are otherwise associated with an imminently life-threatening and specific risk to those forces.'' The Deputy Secretary of Defense further stated that, ''[m]ore specifically, U.S. [f]orces are now deployed in multiple locations where they serve at heightened risk of an enemy attack with agents of military combat, including firearms, projectiles, and explosive devices, that may cause major and imminently life-threatening combat casualties involving uncontrolled hemorrhage.'' On July 9, 2018, under section 564(b)(1) of the FD&C Act, and on the basis of such determination, the Secretary of HHS declared that circumstances exist justifying the authorization of emergency use of freeze dried plasma for the treatment of hemorrhage or coagulopathy during an emergency involving agents of military combat (*e.g.,* firearms, projectiles, and explosive devices) when plasma is not available for use or when the use of plasma is not practical, subject to the terms of any authorization issued under section 564 of the FD&C Act. Notice of the declaration of the Secretary of HHS was published in the **Federal Register** on July 16, 2018 (83 FR 32884) and a correction was published in the **Federal Register** on July 31, 2018 (83 FR 36941). On July 9, 2018, DoD requested, and on July 9, 2018, FDA issued, an EUA for Pathogen-Reduced Leukocyte-Depleted Freeze Dried Plasma manufactured by the Centre de Transfusion Sanguine des Armées (CTSA) (for purposes of this EUA, ''French FDP''), subject to the terms of the Authorization.

III. Electronic Access

An electronic version of this document and the full text of the Authorization are available on the internet at *https://www.regulations.gov.*

IV. The Authorization

Having concluded that the criteria for issuance of the Authorization under section 564(c) of the FD&C Act are met, FDA has authorized the emergency use of a freeze dried plasma treatment for the treatment of hemorrhage or coagulopathy during an emergency involving agents of military combat (*e.g.,* firearms, projectiles, and explosive devices) when plasma is not available for use or when the use of plasma is not practical, subject to the terms of the Authorization. The Authorization in its entirety (not including the authorized versions of the fact sheets and other written materials) follows and provides an explanation of the reasons for issuance, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4164–01–P

[2] The Secretary of HHS has delegated the authority to issue an EUA under section 564 of the FD&C Act to the Commissioner of Food and Drugs.

July 9, 2018

Robert E. Miller, Ph.D.
Senior Regulatory Affairs Advisor
Office of Regulated Activities
Department of the Army
Headquarters, U.S. Army Medical Research and Materiel Command
1430 Veterans Drive
Fort Detrick, MD 21702-5009

Dear Dr. Miller:

This letter is in response to your request that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for emergency use of Pathogen-Reduced Leukocyte-Depleted Freeze Dried Plasma manufactured by the Centre de Transfusion Sanguine des Armées (CTSA) (for purposes of this EUA, "French FDP")[1] for U.S. military forces[2] for the treatment of hemorrhage or coagulopathy during an emergency involving agents of military combat (e.g., firearms, projectiles, and explosive devices) when plasma is not available for use or when the use of plasma is not practical, pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. § 360bbb-3).[3]

On June 7, 2018, pursuant to section 564(b)(1)(B) of the Act (21 U.S.C. § 360bbb-3(b)(1)(B)), the Deputy Secretary of the Department of Defense (DoD) determined that there is "a military emergency or significant potential for a military emergency, involving a heightened risk to U.S. military forces of an attack with an agent or agents that may cause, or are otherwise associated with an imminently life-threatening and specific risk to those forces."[4,5,6] Pursuant to section

[1] On the date of issuance of this EUA, the authorized French FDP product under this EUA refers specifically to French FDP product that is manufactured using French-derived, pathogen-reduced, Leukocyte-Depleted fresh frozen plasma (FFP). As discussed in Section II of this letter, at this time the authorized French FDP product under this EUA does not include French FDP that is manufactured using Department of Defense (DoD)-derived plasma or other U.S.-derived plasma.

[2] For purposes of this EUA, to meet DoD military needs "U.S. military forces" may include U.S. troops and military members of an allied force or other personnel operating with DoD. Also, for purposes of this EUA, it is anticipated that U.S. military medical personnel trained in the use of French FDP will administer the authorized French FDP to U.S. military forces. However, in the event the operational environment prevents such administration, it is possible that other trained U.S. military forces may need to administer the authorized French FDP during an emergency as set forth in this authorization.

[3] At the time of issuance of this EUA, French FDP was approved in at least one country (i.e., France) but not approved in the U.S. This EUA, including its Conditions of Authorization in Section IV, applies only to French FDP product that is manufactured and distributed by Centre de Transfusion Sanguine des Armées (CTSA) and its authorized agent(s) specifically for DoD procurement and further DoD distribution, stockpiling, and use during an emergency as set forth in this authorization.

[4] DoD. *Letter to the HHS Secretary issuing a determination of a military emergency, or significant potential for a military emergency, and requesting a declaration under section 564 of the Federal Food, Drug, and Cosmetic Act.* June 7, 2018.

564(b)(1) of the Act (21 U.S.C. § 360bbb-3(b)(1)), and on the basis of such determination, on July 9, 2018, the Secretary of the Department of Health and Human Services (HHS) then declared that circumstances exist justifying the authorization of emergency use of FDP for the treatment of hemorrhage or coagulopathy during an emergency involving agents of military combat (e.g., firearms, projectiles, and explosive devices) when plasma is not available for use or when the use of plasma is not practical, subject to the terms of any authorization issued under 21 U.S.C. § 360bbb-3(a).[7]

DoD requested this EUA so that French FDP, which is not FDA-approved, may be distributed and held by DoD for preparedness purposes in advance of an actual threat of agents of military combat (e.g., firearms, projectiles, and explosive devices) that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces, with the intent that it may be administered by U.S. military medical personnel during an event or post-event for the treatment of hemorrhage or coagulopathy caused by exposure to such agents when plasma is not available for use or when the use of plasma is not practical. An EUA is needed to facilitate DoD pre-event planning and preparedness activities related to the use of this unapproved product to enable activities to support rapid administration of treatment during an actual emergency event involving the threat of agents of military combat (e.g., firearms, projectiles, and explosive devices) that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces.

This EUA is important for supporting military emergency response because it enables rapid initiation of treatment with French FDP during an emergency involving agents of military combat (e.g., firearms, projectiles, and explosive devices) that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces, without FDA or DoD having to take further action with respect to otherwise applicable requirements under federal law.

Having concluded that the criteria for issuance of this authorization under section 564(c) of the Act (21 U.S.C. § 360bbb-3(c)) are met, I am authorizing the emergency use of French FDP (as described in the Scope of Authorization section of this letter (Section II)) in the specified population for the treatment of hemorrhage or coagulopathy during an emergency involving agents of military combat (e.g., firearms, projectiles, and explosive devices) that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces when plasma is not available for use or when the use of plasma is not practical, subject to the terms of this authorization.

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[5] As amended by H.R. 4374 (Pub. L. No. 115-92, December 12, 2017), under section 564(b)(1)(B) of the Act, the Secretary of Defense may make a determination that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to United States military forces, including personnel operating under the authority of title 10 or title 50, of attack with—**(i)** a biological, chemical, radiological, or nuclear agent or agents; or **(ii)** an agent or agents that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to United States military forces.

[6] When the DoD Secretary makes such a determination, the Secretary of Health and Human Services (HHS) shall determine, within 45 calendar days of such determination, whether to make a declaration that circumstances exist to justify EUA issuance and, if appropriate, shall promptly make such a declaration.

[7] HHS. *Declaration that Circumstances Exist Justifying an Authorization Pursuant to Section 564 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3(b)*, July 9, 2018.

This EUA applies in all circumstances when DoD reasonably believes that there is a need to store, distribute, and/or administer the authorized French FDP in an emergency because of U.S. military forces' known, suspected, or likely imminent exposure to agents of military combat (e.g., firearms, projectiles, and explosive devices) that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces.

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of French FDP for the treatment of hemorrhage or coagulopathy during an emergency involving agents of military combat (e.g., firearms, projectiles, and explosive devices) that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces when plasma is not available for use or when the use of plasma is not practical in the specified population meets the criteria for issuance of an authorization under section 564(c) of the Act, because I have concluded that:

1. An emergency involving agents of military combat (e.g., firearms, projectiles, and explosive devices) may cause, or otherwise be associated with, an imminently life-threatening and specific risk to U.S. military forces, specifically hemorrhage or coagulopathy when plasma is not available for use or when the use of plasma is not practical, a serious or life-threatening disease or condition to humans exposed to these agents;

2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that French FDP, when used in accordance with the Scope of Authorization, may be effective for the treatment of hemorrhage or coagulopathy during an emergency involving agents of military combat (e.g., firearms, projectiles, and explosive devices) when plasma is not available for use or when the use of plasma is not practical, and that the known and potential benefits of French FDP for this use outweigh the known and potential risks of such product; and

3. There is no adequate, approved, and available alternative to the emergency use of French FDP for the treatment of hemorrhage or coagulopathy during an emergency involving agents of military combat (e.g., firearms, projectiles, and explosive devices) when plasma is not available for use or when the use of plasma is not practical.[8]

II. Scope of Authorization

I have concluded, pursuant to section 564(d)(1) of the Act, that the scope of this authorization is limited to the use of the authorized French FDP for U.S. military forces for the treatment of hemorrhage or coagulopathy during an emergency involving agents of military combat (e.g., firearms, projectiles, and explosive devices) when plasma is not available for use or when the use of plasma is not practical. The emergency use of the authorized French FDP product under this EUA must be consistent with, and may not exceed, the terms of this letter, including the scope and the conditions of authorization set forth below.

[8] No other criteria of issuance have been prescribed by regulation under section 564(c)(4) of the Act.

The Authorized French FDP:

I am authorizing the use of French FDP. French FDP is a biologic product to be used for U.S. military forces for treatment of hemorrhage or coagulopathy during an emergency involving agents of military combat (e.g., firearms, projectiles, and explosive devices) that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces when plasma is not available for use or when the use of plasma is not practical.[9] DoD may request the authorization of additional sources of plasma (e.g., DoD-derived or other U.S.-derived) for French FDP, which may be authorized by FDA in consultation with, and with concurrence of, the Office of Blood Research and Review (OBRR)/Center for Biologics Evaluation and Research (CBER), the Counterterrorism Office (CT)/Office of the Center Director (OD)/CBER, and the Office of Counterterrorism and Emerging Threats (OCET)/Office of the Chief Scientist (OCS)/Office of the Commissioner (OC).[10]

The current formulation of the authorized French FDP is a lyophilized, Leukocyte-Depleted, pathogen-reduced (Intercept-treated), pooled apheresis fresh frozen plasma (FFP) product collected from volunteer donors. The authorized French FDP is a packaged unit, which includes a bottle of freeze dried plasma, 200 mL of water for injection, a transfer set, and an intravenous infusion set specially designed for administration by U.S. military medical personnel. When reconstituted, the volume of the authorized French FDP is equivalent to 210 mL of human plasma. One or more units are infused under the direct care of U.S. military medical personnel; repeat administration may be necessary until evacuation to definitive care is possible. French FDP does not require refrigeration and is supplied in a form compatible with the logistical constraints of a military operational environment.

The authorized French FDP, and any sources of plasma for the manufacture of French FDP that are authorized at a later time under this EUA, are authorized to be distributed by DoD for pre-event storage and further redistribution, if appropriate, and for post-event storage, distribution, and administration, when packaged in the authorized packaging and with the authorized labeling (e.g., carton and container labels, fact sheets, and technical notice and summary of product characteristics).

The authorized French FDP is authorized to be administered without a prescription and by U.S. military medical personnel under this EUA, despite the fact that it does not meet certain requirements otherwise required by federal law.

The authorized French FDP is authorized to be accompanied by the authorized labeling in consultation with FDA and DoD. The authorized French FDP is also authorized to be

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[9] DoD treatment and management of hemorrhage or coagulopathy subsequently may include other supportive measures and treatments, including evacuation to definitive care.

[10] On the date of issuance of this EUA, French FDP using DoD-derived or other U.S.-derived plasma was not authorized for use under this EUA. However, DoD may request authorization under this EUA of French FDP using DoD-derived or other U.S.-derived plasma at a later time. If FDA authorizes use of DoD-derived or other U.S.-derived plasma based on a review of the scientific data, communication about such authorization will be posted on FDA's EUA website at the time of amendment of this EUA (e.g., through a memorandum and updated EUA Fact Sheets). https://www.fda.gov/EmergencyPreparedness/Counterterrorism/ucm182568.htm.

accompanied by the following information pertaining to the emergency use, which is authorized to be made available to U.S. military medical personnel and U.S. military forces ("recipients") to facilitate understanding of the treatment of hemorrhage or coagulopathy during an emergency involving agents of military combat (e.g., firearms, projectiles, and explosive devices) when plasma is not available for use or when the use of plasma is not practical, the risks and benefits of French FDP, and proper administration:

- Fact Sheet for U.S. Military Medical Personnel
- Fact Sheet for Recipients

Other Fact Sheets developed by DoD in consultation with, and with concurrence of, OBRR/CBER, CT/OD/CBER, and OCET/OCS/OC may be authorized to accompany the above described French FDP and to be made available to U.S. military medical personnel and U.S. military forces, as appropriate.

As described in Section IV below, DoD is also authorized to make available additional information relating to the emergency use of the authorized French FDP that is reasonably consistent with, and does not exceed, the terms of this letter of authorization.

Authorized French FDP is authorized to have its manufacturer labeled expiry dating extended by OBRR/CBER, CT/OD/CBER, and OCET/OCS/OC based on scientific data supporting such an extension.

I have concluded, pursuant to section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of the authorized French FDP in the specified population, when used for the treatment of hemorrhage or coagulopathy during an emergency involving agents of military combat (e.g., firearms, projectiles, and explosive devices) when plasma is not available for use or when the use of plasma is not practical, when used consistently with the Scope of Authorization of this letter (Section II), outweigh the known and potential risks of such a product.

I have concluded, pursuant to section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that the authorized French FDP may be effective in the treatment of hemorrhage or coagulopathy during an emergency involving agents of military combat (e.g., firearms, projectiles, and explosive devices) when plasma is not available for use or when the use of plasma is not practical, when used consistently with the Scope of Authorization of this letter (Section II), pursuant to section 564(c)(2)(A) of the Act.

FDA has reviewed the scientific information available to FDA, including the information supporting the conclusions described in Section I above, and concludes that the authorized French FDP, when used for the treatment of hemorrhage or coagulopathy during an emergency involving agents of military combat (e.g., firearms, projectiles, and explosive devices) when plasma is not available for use or when the use of plasma is not practical in the specified population (as described in the Scope of Authorization of this letter (Section II)), meets the criteria set forth in section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of the authorized French FDP product under this EUA must be consistent with, and may not exceed, the terms of this letter, including the Scope of Authorization (Section II) and the Conditions of Authorization (Section IV). Subject to the terms of this EUA and under the circumstances set forth in the Deputy Secretary of Defense's determination described above and the Secretary of HHS's corresponding declaration under section 564(b)(1), the French FDP described above is authorized for the treatment of hemorrhage or coagulopathy during an emergency involving agents of military combat (e.g., firearms, projectiles, and explosive devices) when plasma is not available for use or when the use of plasma is not practical in the specified population.

This EUA will cease to be effective when the HHS declaration that circumstances exist to justify the EUA is terminated under section 564(b)(2) of the Act or when the EUA is revoked under section 564(g) of the Act.

III. Waiver of Certain Requirements

This letter authorizes use of French FDP previously manufactured by CTSA under U.S. Government contract as of the date of this letter, as well as authorized French FDP that may be manufactured by CTSA under U.S. Government contract after such date.

The authorized French FDP should be held in accordance with the manufacturer's labeled and appropriate product storage conditions for the product (i.e., when possible, at temperatures between 2°C (36°F) and 8°C (46°F), with excursions permitted to 25°C (77°F), protected from light). However, to ensure the delivery and availability of the authorized French FDP during an emergency involving agents of military combat (e.g., firearms, projectiles, and explosive devices) when plasma is not available for use or when the use of plasma is not practical and when there is a decision on the part of DoD to distribute and administer the product under the terms of this EUA, the authorized French FDP may require transportation and/or temporary storage for rapid administration without the capacity to maintain labeled storage conditions in the midst of the response. Significant excursions from the labeled storage conditions should be documented to the extent practicable given the circumstances of an emergency.

IV. Conditions of Authorization

Pursuant to section 564 of the Act, I am establishing the following conditions on this authorization:

DoD

A. DoD will distribute the authorized French FDP under its direction to the extent such decisions are consistent with and do not exceed the terms of this letter, including distribution with the authorized labeling.

B. Through a process of inventory control, DoD will maintain records regarding distribution under its direction of the authorized French FDP (i.e., lot numbers, quantity, receiving site, receipt date).

C. DoD will ensure that the terms of this EUA are made available to applicable DoD components through applicable DoD communication channels and procedures.[11] DoD will provide applicable DoD components a copy of this letter of authorization, and communicate to applicable DoD components any subsequent amendments that might be made to this letter of authorization and its authorized accompanying materials (e.g., Fact Sheets).

D. DoD will inform applicable DoD components that the authorized French FDP may be used only for U.S. military forces for the treatment of hemorrhage or coagulopathy during an emergency involving agents of military combat (e.g., firearms, projectiles, and explosive devices) when plasma is not available for use or when the use of plasma is not practical.

E. DoD will be responsible for authorizing components acting as part of a DoD response to administer the authorized French FDP in accordance with the terms of this EUA, including instructing such components about the terms of this EUA with regard to pre-event storage and distribution and post-event storage, distribution, and administration, and for instructing them about the means through which they are to obtain and use the authorized French FDP.

F. DoD will train applicable DoD components and/or personnel on the use of the authorized French FDP in accordance with this EUA and any applicable DoD procedures or protocols.

G. DoD will make available to applicable DoD components through applicable DoD communication channels and procedures the authorized Fact Sheet for U.S. Military Medical Personnel, the authorized Fact Sheet for Recipients, and any other Fact Sheets that FDA may authorize, as well as any authorized amendments thereto.[12] U.S. military forces administering the authorized French FDP will ensure that the authorized Fact Sheet for Recipients has been made available to U.S. military forces that receive French FDP through appropriate means, to the extent feasible given the emergency circumstances. Under exigent circumstances, other appropriate means for disseminating these Fact Sheets may be used.[13]

H. DoD may request changes to the authorized Fact Sheet for U.S. Military Medical Personnel and the authorized Fact Sheet for Recipients and may request the

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[11] For example, through pre-deployment training, hard copy, web posting, etc.

[12] For example, through pre-deployment training, hard copy, web posting, etc.

[13] FDA recognizes that the complex environment in which French FDP may be used may prevent dissemination of Fact Sheets at the time of use of the French FDP. Therefore, "other appropriate means" may include activities such as DoD components sharing the Fact Sheet for Recipients with U.S. military forces in pre-deployment or other training.

development of additional Fact Sheets. Such requests will be made by DoD in consultation with, and require concurrence of, OBRR/CBER, CT/OD/CBER, and OCET/OCS/OC.

I. DoD is authorized to issue additional recommendations and instructions related to the emergency use of the authorized French FDP as described in this letter of authorization, to the extent that additional recommendations and instructions are necessary to meet military needs during an emergency involving agents of military combat (e.g., firearms, projectiles, and explosive devices) when plasma is not available for use or when the use of plasma is not practical when they are reasonably consistent with the authorized emergency use of the product.

J. DoD may request changes to the authorized labeling (e.g., carton and container labels, label on each packaged unit, technical notice and summary of product characteristics) and authorized packaging for the authorized French FDP, or to the manufacturing, labeling, and packaging processes of CTSA or its authorized agent(s) for the authorized product. Such requests will be made by DoD in consultation with, and require concurrence of, OBRR/CBER, OD/CT/CBER, and OCET/OCS/OC.

K. DoD may request the authorization of additional sources of plasma (e.g., DoD-derived or other U.S.-derived) of the authorized French FDP under this EUA. Such requests will be made by DoD in consultation with, and require concurrence of, OBRR/CBER, OD/CT/CBER, and OCET/OCS/OC.

L. DoD will inform applicable DoD components about the need to have a process in place for performing adverse event monitoring and compliance activities designed to ensure that adverse events and all medication errors associated with the use of the authorized French FDP are reported to FDA, to the extent practicable given emergency circumstances, as follows: complete the MedWatch FDA Form 3500 online at www.fda.gov/medwatch, by using a postage-paid MedWatch Form 3500 (available at https://www.accessdata.fda.gov/scripts/medwatch/index.cfm?action=reporting.home), or by calling 1-800-FDA-1088. Submitted reports should state that French FDP was used under an EUA. DoD will conduct any follow-up requested by FDA regarding adverse events, to the extent feasible given the emergency circumstances.

M. DoD will ensure that the authorized French FDP is distributed for use under its direction within the expiry dating on the manufacturer's labeling. If FDA authorizes any expiry dating extensions of the authorized French FDP under this EUA, DoD will inform applicable DoD components holding and/or receiving the authorized French FDP of such extensions and any conditions related to such extensions under this EUA. DoD will maintain adequate records regarding the expiry dates by which authorized French FDP may be used.

N. DoD will inform CTSA about this EUA and its Conditions of Authorization, including the Conditions Related to Descriptive Printed Material outlined below.

O. DoD will ensure that any records associated with the use of this product under this EUA are maintained, to the extent feasible given the emergency circumstances, until notified by FDA. Such records will be made available to FDA for inspection upon request.

P. DoD will facilitate FDA inspections of the French FDP manufacturing facility in the future at a mutually agreeable date.

Q. DoD will post on its website the following statement: "For information about the FDA-authorized emergency use of the Freeze Dried Plasma manufactured by the Centre de Transfusion Sanguine des Armées (French FDP), please see: https://www.fda.gov/EmergencyPreparedness/Counterterrorism/ucm182568.htm."

R. DoD will promptly notify FDA of any suspected or confirmed quality, manufacturing, distribution, and/or other issues with the authorized French FDP of which it becomes aware.

S. Upon request by FDA, DoD will make available any records maintained in connection with this letter.

Conditions Related to Descriptive Printed Material

T. All descriptive printed matter relating to the use of the authorized French FDP shall be consistent with the Fact Sheets, as well as the terms set forth in this EUA and the applicable requirements set forth in the Act and FDA regulations.

U. All descriptive printed matter relating to the use of the authorized French FDP shall clearly and conspicuously state that:

- This product has not been FDA approved or cleared;
- This product has been authorized by FDA under an EUA for use by DoD;
- This product has been authorized only for the treatment of hemorrhage or coagulopathy during an emergency involving agents of military combat (e.g., firearms, projectiles, and explosive devices) when plasma is not available for use or when the use of plasma is not practical; and
- This product is only authorized for the duration of the declaration that circumstances exist justifying the authorization of the emergency use of FDP for the treatment of hemorrhage or coagulopathy during an emergency involving agents of military combat (e.g., firearms, projectiles, and explosive devices) when plasma is not available for use or when the use of plasma is not practical, under section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the authorization is terminated or revoked sooner.

No descriptive printed matter relating to the use of the authorized French FDP may represent or

Page 10 – Dr. Miller, DoD

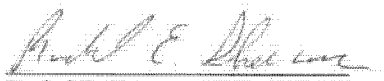
suggest that this product is safe or effective for the treatment of hemorrhage or coagulopathy during an emergency involving agents of military combat (e.g., firearms, projectiles, and explosive devices) when plasma is not available for use or when the use of plasma is not practical.

The emergency use of the authorized French FDP as described in this letter of authorization must comply with the conditions and all other terms of this authorization.

V. Duration of Authorization

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of FDP for the treatment of hemorrhage or coagulopathy during an emergency involving agents of military combat (e.g., firearms, projectiles, and explosive devices) when plasma is not available for use or when the use of plasma is not practical is terminated under section 564(b)(2) of the Act or the EUA is revoked under section 564(g) of the Act.

Sincerely,



Rachel E. Sherman, M.D., M.P.H.
Principal Deputy Commissioner of Food and Drugs

Enclosures

Dated: August 7, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–17303 Filed 8–10–18; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–2876]

Fougera Pharmaceuticals, Inc., et al.; Withdrawal of Approval of 20 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of 20 abbreviated new drug applications (ANDAs) from multiple applicants. The holders of the applications notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Approval is withdrawn as of September 12, 2018.

FOR FURTHER INFORMATION CONTACT: Trang Tran, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1671, Silver Spring, MD 20993–0002, 240–402–7945, *Trang.Tran@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process described in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

Application No.	Drug	Applicant
ANDA 060133	Chloramphenicol Ophthalmic Ointment, 1%	Fougera Pharmaceuticals, Inc., 60 Baylis Rd., P.O. Box 2006, Melville, NY 11747.
ANDA 060572	Mycolog II (nystatin and triamcinolone acetonide) Ointment USP, 100,000 units/gram (g) and 0.1%.	Mylan Pharmaceuticals, Inc., 781 Chestnut Ridge Rd., P.O. Box 4310, Morgantown, WV 26504.
ANDA 061107	Hydrocortisone Acetate and Neomycin Sulfate Ointment, 0.5%/0.5% and 1.5%/0.5%.	Fougera Pharmaceuticals, Inc..
ANDA 061988	Polycillin (ampicillin) Capsules, 250 milligrams (mg) and 500 mg.	Bristol-Myers Squibb Co., P.O. Box 4000, Princeton, NJ 08543.
ANDA 072097	Cap-Profen (ibuprofen) Tablets USP, 200 mg (White)	L. Perrigo Co., 515 Eastern Ave., Allegan, MI 49010.
ANDA 072098	Ibuprofen Tablets, 200 mg (Brown)	Do.
ANDA 074334	Vecuronium Bromide for Injection, 10 mg/vial and 20 mg/vial.	Watson Laboratories, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc., 425 Privet Rd., Horsham, PA 19044.
ANDA 074874	Pentoxifylline Extended-Release Tablets, 400 mg	Pliva, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc., 425 Privet Rd., Horsham, PA 19044.

Application No.	Drug	Applicant
ANDA 074945	Atracurium Besylate Injection, 10 mg/milliliter (mL)	Watson Laboratories, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc.
ANDA 077251	Finasteride Tablets USP, 5 mg	Gedeon Richter Plc., c/o Gedeon Richter USA, Inc., 119 Cherry Hill Rd., Suite 325, Parsippany, NJ 07054.
ANDA 077983	Gemcitabine for Injection USP, Equivalent to (EQ) 200 mg base/vial and EQ 1 g/vial.	Teva Pharmaceuticals USA, Inc., 425 Privet Rd., Horsham, PA 19044.
ANDA 080425	Texacort (hydrocortisone) Topical Solution, 1%	Mission Pharmacal Co., 10999 IH 10 West, Suite 1000, San Antonio, TX 78230.
ANDA 083242	Amen (medroxyprogesterone acetate) Tablets, 10 mg	Valeant Pharmaceuticals North America, LLC, 400 Somerset Corporate Blvd., Bridgewater, NJ 08807.
ANDA 085455	Dexamethasone Tablets USP, 0.25 mg	Watson Laboratories, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc..
ANDA 086308	Homapin-10 (homatropine methylbromide) Tablets USP, 10 mg.	Mission Pharmacal Co.
ANDA 086309	Homapin-5 (homatropine methylbromide) Tablets USP, 5 mg.	Do.
ANDA 086310	Equipin (homatropine methylbromide) Chewable Tablets, 3 mg.	Do.
ANDA 086711	Beta-2 (isoetharine hydrochloride (HCl)) Inhalation Solution, 1%.	Nephron Pharmaceuticals, Corp., 4500 12th St. Extension, West Columbia, SC 20172.
ANDA 087438	Folicet (folic acid) Tablets USP, 1 mg	Mission Pharmacal Co.
ANDA 087939	Trimethobenzamide HCl Injection, 100 mg/mL	Watson Laboratories, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc.

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of September 12, 2018. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in the table that are in inventory on September 12, 2018 may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: August 7, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–17226 Filed 8–10–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Advisory Committee to the Director, National Institutes of Health.

The meeting will be held as a teleconference call only and is open to the public to dial-in for participation. Individuals who plan to dial-in to the meeting and need special assistance or other reasonable accommodations in order to do so, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, National Institutes of Health.

Date: August 24, 2018.

Time: 9:15 a.m. to 9:45 a.m.

Agenda: Updates on ACD Working Groups.

Place: National Institutes of Health, Building 1, One Center Drive, Bethesda, MD 20892 (Telephone Conference Call), 800–369–1915, Access Code: 6496247.

Contact Person: Gretchen Wood, Staff Assistant, National Institutes of Health, Office of the Director, One Center Drive, Building 1, Room 126, Bethesda, MD 20892, 301–496–4272, *Woodgs@od.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to scheduling difficulties.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://acd.od.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: August 8, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–17345 Filed 8–10–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; National Cancer Institute (NCI) Future Fellows Resume Databank

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institutes of Health, National Cancer Institute (NCI) will publish periodic summaries of propose projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Angela Jones, Program

Coordinator, Center for Cancer Training, National Cancer Institute, 9609 Medical Center Drive, Room 2W–236, Bethesda, Maryland, 20892 or call non-toll-free number (240) 276–5659 or Email your request, including your address to: *jonesangel@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimizes the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: National Cancer Institute Future Fellows Resume Databank, 0925–XXXX, Exp., Date XX/XXXX, EXISTING COLLECTION IN USE WITHOUT OMB NUMBER, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The National Cancer Institute, Center for Cancer Training mission is to catalyze the development of the 21st century workforce capable of advancing cancer research through a scientifically integrated approach. This is accomplished by, (1) coordinating and providing research training and career development activities for fellows and trainees in NCI's laboratories, clinics, and other research groups, (2) developing, coordinating, and implementing opportunities in support of cancer research training, career development, and education at institutions nationwide, and (3) identifying workforce needs in cancer research and adapting NCI's training and career development programs and funding opportunities to address these needs. The proposed information collection involves a website to collect and maintain resumes of interested candidates to be considered for postdoctoral fellowships and internships in science. After posting their resume in the database, NCI Scientists can view and select candidates for current fellowship and internship opportunities offered at NCI.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden are 200 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Resume Databank Application	Postdoctoral Fellows	200	2	30/60	200
Total		200	400		200

Dated: July 24, 2018.

Patricia M. Busche,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2018–17339 Filed 8–10–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Center for Inherited Disease Research Access Committee.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: September 7, 2018.

Time: 8:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Center for Inherited Disease Research (CIDR), McHenry Conference Room, 1812 Ashland Avenue, Baltimore, MD 21205.

Contact Person: Barbara J. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Ste. 4076, MSC 9306, Bethesda, MD 20892–9306, 301–402–0838, *barbara.thomas@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 7, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–17340 Filed 8–10–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable 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: Environmental Health Sciences Review Committee; Environmental Health Sciences Core Centers P30 Clinical Trial Optional.

Date: August 21–22, 2018.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Imperial Hotel Raleigh-Durham, 4700 Emperor Boulevard, Durham, NC 27709.

Contact Person: Linda K. Bass, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences Research, Triangle Park, NC 27709, 919–541–1307, *bass@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 7, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–17343 Filed 8–10–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Collection of Customer Service, Demographic, and Smoking/Tobacco Use Information From the National Cancer Institute's Contact Center (CC) Clients (NCI); Correction

AGENCY: National Institutes of Health, HHS.

ACTION: Notice; correction.

SUMMARY: The Department of Health and Human Services, National Institutes of Health published a Notice in the **Federal Register** on July 27, 2018. That Notice inadvertently contained an error in the Estimated Annualized Burden Hours Table.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Mary Anne Bright, Supervisory Public Health Advisor, CCPIB/OCPL, 9609 Medical Center Drive, Rockville, MD 20850, or call non-toll-free number 240–276–6647 or Email your request, including your address to: *brightma@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: On July 27, 2018, the Department of Health and Human Services, National Institutes of Health published a Notice in the **Federal Register** on page 35669 (83 FR 35668) that inadvertently contained an error Table A. 12–1—Estimate of Annual Burden Hours. The purpose of this notice is to correct Table A. 12–1—Total Estimate of Annual Burden Hours from 1875 to 1865.

Dated: August 7, 2018.

Karla C. Bailey,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2018–17344 Filed 8–10–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel NIH; Support for Conferences and Scientific Meetings (R13).

Date: August 22–24, 2018.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Tracy A. Shahan, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room #3F31, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892–9834, (240) 669–5030, *tshahan@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel NIAID; Investigator-Initiated Clinical Trial Planning Grant (R34).

Date: August 27, 2018.

Time: 9:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Priti Mehrotra, Ph.D., Chief, Immunology Review Branch, Scientific Review Program, Division of Extramural Activities, Room #3G40, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–7616, 240–669–5066, *pmehrotra@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 7, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–17342 Filed 8–10–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: September 5, 2018.

Open: 8:00 a.m. to 1:30 p.m.

Agenda: To discuss program policies and issues.

Place: National Institutes of Health, Building 35A, Porter Building, Room 640, 35A Convent Drive, Bethesda, MD 20892.

Open: 2:30 p.m. to 3:00 p.m.

Agenda: To discuss program policies and issues.

Place: National Institutes of Health, Building 35A, Porter Building, Room 640, 35A Convent Drive, Bethesda, MD 20892.

Contact Person: Laura K. Moen, Ph.D., Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7100, Bethesda, MD 20892, 301–435–0260, *moenl@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles,

including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/nhlbac/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 8, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–17341 Filed 8–10–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that SGS North America, Inc., has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes for the next three years as of March 2, 2018.

DATES: The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on March 2, 2018. The next triennial inspection date will be scheduled for March 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that SGS North America, Inc., 7315 S. 76th Ave., Bridgeview, IL 60455, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. SGS North America, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API chapters	Title
1	Vocabulary.
3	Tank gauging.
7	Temperature Determination.
8	Sampling.
9	Density Determinations.
12	Calculations.
17	Maritime Measurements.

SGS North America, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–08	ASTM D–86	Standard Test Method for Distillation of Petroleum Products.
27–11	ASTM D–445	Standard test method for kinematic viscosity of transparent and opaque liquids (and calculations of dynamic viscosity).
27–13	ASTM D–4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27–48	ASTM D–4052	Standard test method for density and relative density of liquids by digital density meter.
27–50	ASTM D–93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27–53	ASTM D–2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.
27–58	ASTM D–5191	Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method).
N/A	ASTM D–1319	Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption.
N/A	ASTM D–3606	Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography.
N/A	ASTM D–4815	Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C1 to C4 Alcohols in Gasoline by Gas Chromatography.
N/A	ASTM D–5453	Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: August 2, 2018.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2018–17236 Filed 8–10–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that SGS North America, Inc., has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes for the next three years as of February 2, 2018.

DATES: The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on February 2, 2018. The next triennial inspection date will be scheduled for February 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that SGS North America, Inc., 900 Milik St., Carteret, NJ 07008, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. SGS North America, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API Chapters	Title
1	Vocabulary.
3	Tank gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Maritime Measurements.

SGS North America, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–04	ASTM D–95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–08	ASTM D–86	Standard Test Method for Distillation of Petroleum Products.
27–11	ASTM D–445	Standard test method for kinematic viscosity of transparent and opaque liquids (and calculations of dynamic viscosity).
27–13	ASTM D–4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27–14	ASTM D–2622	Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27–48	ASTM D–4052	Standard test method for density and relative density of liquids by digital density meter.
27–50	ASTM D–93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27–57	ASTM D–7039	Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27–58	ASTM D–5191	Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method).
N/A	ASTM D–1160	Standard Test Method for Distillation of Petroleum Products and Reduced Pressure.
N/A	ASTM D–1319	Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: August 2, 2018.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2018–17242 Filed 8–10–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of SGS North America, Inc., as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of SGS North America, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that SGS North America, Inc., has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of March 23, 2018.

DATES: The approval of SGS North America, Inc., as commercial gauger became effective on March 23, 2018. The next triennial inspection date will be scheduled for March 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that SGS North America, Inc., 2800 Loop 197 South, Texas City, TX 77591, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. SGS North America, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API Chapters	Title
3	Tank gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Maritime Measurements.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: August 2, 2018.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2018–17241 Filed 8–10–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–B–1845]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

David I. Maurstad,

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

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Alabama:						
Colbert	City of Muscle Shoals (17–04–1041P).	The Honorable David H. Bradford, Mayor, City of Muscle Shoals, P.O. Box 2624, Muscle Shoals, AL 35662.	Engineering Department, 2010 East Avalon Avenue, Muscle Shoals, AL 35662.	*https://msc.fema.gov/portal/advanceSearch.*	Sept. 24, 2018	010047

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Colbert	City of Sheffield (17–04–1041P).	The Honorable Ian T. Sanford, Mayor, City of Sheffield, P.O. Box 380, Sheffield, AL 35660.	Planning and Zoning Department, 600 North Montgomery Avenue, Sheffield, AL 35660.	*https://msc.fema.gov/portal/advanceSearch.*	Sept. 24, 2018	010048
Colbert	Unincorporated areas of Colbert County (17–04–1041P).	The Honorable Daroll Bendall, Chairman, Colbert County Board of Commissioners, 201 North Main Street, Tuscumbia, AL 35674.	Colbert County Courthouse, 201 North Main Street, Tuscumbia, AL 35674.	*https://msc.fema.gov/portal/advanceSearch.*	Sept. 24, 2018	010318
Shelby	City of Montevallo (18–04–1231P).	The Honorable Hollie Cost, Mayor, City of Montevallo, 541 Main Street, Montevallo, AL 35115.	City Hall, 541 Main Street, Montevallo, AL 35115.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 25, 2018	010349
Shelby	Unincorporated areas of Shelby County (18–04–1231P).	The Honorable Jon Parker, Chairman, Shelby County Board of Commissioners, 200 West College Street, Columbiana, AL 35051.	Shelby County Engineering Department, 506 Highway 70, Columbiana, AL 35051.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 25, 2018	010191
Colorado:						
Boulder	City of Boulder (18–08–0256P).	The Honorable Suzanne Jones, Mayor, City of Boulder, 1777 Broadway Street, Boulder, CO 80302.	City Hall, 1777 Broadway Street, Boulder, CO 80302.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 2, 2018	080024
Jefferson	Unincorporated areas of Jefferson County (18–08–0676X).	The Honorable Libby Szabo, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, CO 80419.	Jefferson County Department of Planning and Zoning, 100 Jefferson County Parkway, Golden, CO 80419.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 5, 2018	080087
Florida:						
Brevard	City of Cape Canaveral (18–04–3826P).	The Honorable Bob Hoog, Mayor, City of Cape Canaveral, 100 Polk Avenue, Cape Canaveral, FL 32920.	Community Development Department, 100 Polk Avenue, Cape Canaveral, FL 32920.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 16, 2018	125094
Charlotte	Unincorporated areas of Charlotte County (18–04–2509P).	The Honorable Ken Doherty, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18500 Murdock Circle, Port Charlotte, FL 33948.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 16, 2018	120061
Charlotte	Unincorporated areas of Charlotte County (18–04–3229P).	The Honorable Ken Doherty, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18500 Murdock Circle, Port Charlotte, FL 33948.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 10, 2018	120061
Charlotte	Unincorporated areas of Charlotte County (18–04–3470P).	The Honorable Ken Doherty, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18500 Murdock Circle, Port Charlotte, FL 33948.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 11, 2018	120061
Duval	City of Atlantic Beach (17–04–4155P).	The Honorable Ellen E. Glasser, Mayor, City of Atlantic Beach, 800 Seminole Road, Atlantic Beach, FL 32233.	City Hall, 800 Seminole Road, Atlantic Beach, FL 32233.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 5, 2018	120075
Duval	City of Jacksonville (17–04–4155P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	City Hall, 214 North Hogan Street, Suite 2100, Jacksonville, FL 32202.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 5, 2018	120077
Lee	City of Sanibel (18–04–3742P).	The Honorable Kevin Ruane, Mayor, City of Sanibel, 800 Dunlop Road, Sanibel, FL 33957.	Planning Department, 800 Dunlop Road, Sanibel, FL 33957.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 25, 2018	120402
Lee	City of Sanibel (18–04–3819P).	The Honorable Kevin Ruane, Mayor, City of Sanibel, 800 Dunlop Road, Sanibel, FL 33957.	Planning Department, 800 Dunlop Road, Sanibel, FL 33957.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 26, 2018	120402

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Lee	Town of Fort Myers Beach (18–04–2108P).	The Honorable Tracey Gore, Mayor, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Community Development Department, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 15, 2018	120673
Monroe	Unincorporated areas of Monroe County (18–04–3505P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 1100 Simonton Street, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 19, 2018	125129
Monroe	Unincorporated areas of Monroe County (18–04–3566P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 1100 Simonton Street, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 10, 2018	125129
Monroe	Unincorporated areas of Monroe County (18–04–3568P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 1100 Simonton Street, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 22, 2018	125129
Monroe	Village of Islamorada (18–04–3795P).	The Honorable Chris Sante, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Planning and Development Department, 86800 Overseas Highway, Islamorada, FL 33036.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 26, 2018	120424
Nassau	Unincorporated areas of Nassau County (18–04–3296P).	The Honorable Pat Edwards, Chairman, Nassau County Board of Commissioners, 96135 Nassau Place, Suite 1, Yulee, FL 32097.	Nassau County Building Department, 96161 Nassau Place, Yulee, FL 32097.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 11, 2018	120170
Maine:						
Washington	Town of Charlotte (18–01–1031P).	The Honorable Ernest James, Chairman, Town of Charlotte Board of Selectmen, P.O. Box 55, Pembroke, ME 04666.	Town Hall, 1098 Ayers Junction Road, Charlotte, ME 04666.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 11, 2018	230437
Washington	Town of Pembroke (18–01–1031P).	The Honorable Milan Jamieson, Chairman, Town of Pembroke, Board of Selectmen, P.O. Box 247, Pembroke, ME 04666.	Town Hall, 48 Old County Road, Pembroke, ME 04666.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 11, 2018	230143
Washington	Town of Robbinston (18–01–1031P).	The Honorable Tom Moholland, Chairman, Town of Robbinston Board of Selectmen, 986 Ridge Road, Robbinston, ME 04671.	Town Hall, 904 U.S. Route 1, Robbinston, ME 04671.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 11, 2018	230321
Maryland: Prince George's.	Unincorporated areas of Prince George's County (18–03–0330P).	The Honorable Rushern L. Baker, III, Prince George's County Executive, 14741 Governor Oden Bowie Drive, Upper Marlboro, MD 20772.	Prince George's County Department of Environment, 1801 McCormick Drive, Suite 500, Largo, MD 20774.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 2, 2018	245208
Massachusetts:						
Bristol	Town of Westport (18–01–0550P).	The Honorable Shana M. Shufelt, Chair, Town of Westport Board of Selectmen, 816 Main Road, Westport, MA 02790.	Building Department, 856 Main Road, Westport, MA 02790.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 12, 2018	255224
New Hampshire:						
Rockingham	Town of Exeter (18–01–0144P).	The Honorable Julie Gilman, Chair, Town of Exeter Select Board, 10 Front Street, Exeter, NH 03833.	Building Department, 10 Front Street, Exeter, NH 03833.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 5, 2018	330130
New Mexico:						
Bernalillo	Unincorporated areas of Bernalillo County (18–06–0450P).	Ms. Julie Morgas Baca, Bernalillo County Manager, 1 Civic Plaza Northwest, Albuquerque, NM 87102.	Bernalillo County Public Works Division, 2400 Broadway Boulevard Southeast, Albuquerque, NM 87102.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 5, 2018	350001
North Carolina:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Iredell	Unincorporated areas of Iredell County (18–04–1249P).	The Honorable James Mallory, III, Chairman, Iredell County Board of Commissioners, P.O. Box 788, Statesville, NC 28687.	Iredell County Planning Department, 349 North Center Street, Statesville, NC 28687.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 17, 2018	370313
Watauga	Town of Boone (18–04–0473P).	The Honorable Rennie Brantz, Mayor, Town of Boone, 567 West King Street, Boone, NC 28607.	Planning and Inspections Department, 680 West King Street, Boone, NC 28607.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 4, 2018	370253
Watauga	Unincorporated Areas of Watauga County (18–04–0473P).	The Honorable John Welch, Chairman, Watauga County Board of Commissioners, 814 West King Street, Suite 205, Boone, NC 28607.	Watauga County Planning and Inspections Department, 331 Queen Street, Suite A, Boone, NC 28607.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 4, 2018	370251
South Carolina:						
Lexington	Town of Irmo (18–04–3966P).	The Honorable Hardy K. King, Mayor, Town of Irmo, 501 Doncaster Drive, Irmo, SC 29063.	Town Hall, 7300 Woodrow Street, Irmo, SC 29063.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 12, 2018	450133
South Dakota: Codington.	City of Watertown (17–08–0664P).	The Honorable Sarah Caron, Mayor, City of Watertown, 23 2nd Street Northeast, Watertown, SD 572018.	Planning and Zoning Department, 23 2nd Street Northeast, Watertown, SD 572018.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 5, 2018	460016
Texas:						
Collin	City of Plano (18–06–0609P).	The Honorable Harry LaRosiliere, Mayor, City of Plano, 1520 K Avenue, Plano, TX 75074.	Engineering Department, 1520 K Avenue, Suite 250, Plano, TX 75074.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 12, 2018	480140
Collin	Unincorporated areas of Collin County (18–06–0382P).	The Honorable Keith Self, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County Emergency Management Department, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 15, 2018	480130
Dallas	City of Dallas (18–06–0377P).	The Honorable Michael S. Rawlings, Mayor, City of Dallas, 1500 Marilla Street, Suite 5EN, Dallas, TX 752018.	Floodplain Management Department, 320 East Jefferson Boulevard, Room 307, Dallas, TX 75203.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 15, 2018	480171
El Paso	City of El Paso (16–06–3207P).	Mr. Tommy Gonzalez, Manager, City of El Paso, 300 North Campbell Street, El Paso, TX 79901.	City Hall, 801 Texas Avenue, El Paso, TX 79901.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 15, 2018	480214
Montgomery	City of Magnolia (18–06–1973P).	The Honorable Todd Kana, Mayor, City of Magnolia, 18111 Buddy Riley Boulevard, Magnolia, TX 77354.	City Hall, 18111 Buddy Riley Boulevard, Magnolia, TX 77354.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 12, 2018	481261
Montgomery	Unincorporated areas of Montgomery County (18–06–1973P).	The Honorable Craig Doyal, Montgomery County Judge, 501 North Thompson Street, Suite 401, Conroe, TX 77301.	Montgomery County Permit Office, 501 North Thompson Street, Suite 100, Conroe, TX 77301.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 12, 2018	480483
Parker	City of Fort Worth (18–06–1767P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 22, 2018	480596
Rockwall	City of Rockwall (18–06–0382P).	The Honorable Jim Pruitt, Mayor, City of Rockwall, 385 South Goliad Street, Rockwall, TX 75087.	Engineering Department, 385 South Goliad Street, Rockwall, TX 75087.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 15, 2018	480547
Tarrant	City of Fort Worth (18–06–0617P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 9, 2018	480596
Tarrant	City of Kennedale (18–06–0322P).	The Honorable Brian Johnson, Mayor, City of Kennedale, 405 Municipal Drive, Kennedale, TX 76060.	Planning and Development Department, 405 Municipal Drive, Kennedale, TX 76060.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 15, 2018	480603

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Tarrant	City of Mansfield (18–06–0226P).	The Honorable David L. Cook, Mayor, City of Mansfield, 1200 East Broad Street, Mansfield, TX 76063.	City Hall, 1200 East Broad Street, Mansfield, TX 76063.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 11, 2018	480606
Tarrant	City of Saginaw (18–06–0328P).	The Honorable Todd Flippo, Mayor, City of Saginaw, 333 West McLeroy Boulevard, Saginaw, TX 76179.	Public Works Department, 205 Brenda Lane, Saginaw, TX 76179.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 4, 2018	480610
Tom Green	City of San Angelo (18–06–0816P).	The Honorable Brenda Gunter, Mayor, City of San Angelo, 72 West College Avenue, San Angelo, TX 76903.	City Hall, 301 West Beauregard Avenue, San Angelo, TX 76903.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 16, 2018	480623
Virginia:						
Fairfax	Unincorporated areas of Fairfax County (18–03–0171P).	The Honorable Sharon Bulova, Chair, Fairfax County Board of Supervisors, 12000 Government Center Parkway, Fairfax, VA 22035.	Fairfax County Stormwater Planning Division, 12000 Government Center Parkway, Suite 449, Fairfax, VA 22035.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 12, 2018	515525
Prince William.	Unincorporated areas of Prince William County (18–03–0171P).	Mr. Christopher E. Martino, Prince William County Executive, 1 County Complex Court, Prince William, VA 22192.	Prince William County Department of Public Works, 5 County Complex Court, Prince William, VA 22192.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 12, 2018	510119
West Virginia:						
Preston	Unincorporated areas of Preston William County (18–03–0988P).	The Honorable T. Craig Jennings, President, Preston County Commission, 106 West Main Street, Suite 202, Kingwood, WV 26537.	Preston County Office of Emergency Management, 300 Rich Wolfe Drive, Kingwood, WV 26537.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 9, 2018	540160

[FR Doc. 2018–17243 Filed 8–10–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2018–N092; FXES11120400000–134–FF04EF2000]

Endangered and Threatened Wildlife and Plants; Availability of Proposed Low-Effect Habitat Conservation Plan for Florida Scrub-Jay; Sarasota County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment/information.

SUMMARY: We, the Fish and Wildlife Service (Service), have received an application for an incidental take permit (ITP) under the Endangered Species Act. Residential Development Corporation (applicant) is requesting a 2-year ITP for take of the Florida scrub-jay. We request public comment on the permit application, which includes a proposed habitat conservation plan (HCP), and our preliminary determination that the HCP qualifies as low effect under the National Environmental Policy Act (NEPA). To make this determination, we used our environmental action statement and low-effect screening form, which are also available for review.

DATES: We must receive written comments on or before September 12, 2018.

ADDRESSES: *Obtaining Documents for Review:*

- *U.S. mail:* You may obtain a copy of the ITP application and HCP by writing to the South Florida Ecological Services Office, Attn: Permit number TE84046C–0, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559.
- *In-Person Review:* The ITP application and HCP are available for public inspection by appointment during normal business hours at the above address. Call the contact in **FOR FURTHER INFORMATION CONTACT** to make an appointment. See Public Comments under **SUPPLEMENTARY INFORMATION** for information on how to submit your comments.

FOR FURTHER INFORMATION CONTACT: Mr. Adam Knutson, Fish and Wildlife Biologist, South Florida Ecological Services Office (see **ADDRESSES**); telephone: 772–469–4252.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), have received an application for an ITP under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). Residential Development Corporation (applicant) is requesting a 2-year ITP for take of the federally listed Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay). We request public comment on the permit application, which includes a proposed HCP, and our preliminary determination that the HCP qualifies as low effect under the NEPA. To make this determination, we used our environmental action statement and low-effect screening form, which are also available for review.

Public Comments

Submitting Comments

If you wish to comment on the ITP application and HCP, you may submit comments by any one of the following methods:

- *Email: Adam_Knutson@fws.gov.* Use Attn: Permit number ''TE84046C–0'' as your message subject line.
- *Fax:* Adam Knutson, 772–562–4288, Attn.: Permit number ''TE84046C–0''.
- *U.S. mail:* Adam Knutson, South Florida Ecological Services Field Office, Attn: Permit number ''TE84046C–0,'' U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559.
- *In-person drop-off:* You may drop off comments or request information during regular business hours at the above office address.

Public Availability of Comments

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

Applicant's Proposed Project

We received an application for an ITP, along with a proposed HCP. The applicant requests a 2-year permit under section 10(a)(1)(B) of the ESA (16 U.S.C. 1531 *et seq.*). If we issue the permit, the applicant anticipates taking 1.41 acres of scrub-jay breeding, feeding, and sheltering habitat for construction of six single-family residences and associated infrastructure in North Port, Sarasota County, Florida.

The applicant proposes to mitigate for the loss of 1.41 acres of occupied scrub-jay habitat through the purchase of 2.82 credits from a Service-approved conservation bank within 30 days of permit issuance.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, issuance of the ITP is a ''low-effect'' action and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by 43 CFR 46.205 and 46.210. A low-effect HCP is one involving; (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts when, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result over time in cumulative effects to environmental values or resources that would be considered significant.

Next Steps

We will evaluate the HCP and comments we receive to determine whether the ITP application meets the requirements of section 10(a)(1)(B) of the ESA. We will also conduct an intra-Service consultation to evaluate take of the scrub-jay in accordance with section 7 of the ESA. We will use the results of the consultation, in combination with the above findings, in our analysis of whether or not to issue the ITP. If the requirements are met we will issue ITP number TE84046C–0 to the applicant.

Authority

We provide this notice under Section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Roxanna Hinzman,

Field Supervisor, South Florida Ecological Services Office.

[FR Doc. 2018–17325 Filed 8–10–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX18DK00GUF0200]

Notice of Renewal of the Advisory Committee on Water Information

AGENCY: United States Geological Survey.

ACTION: Notice of renewal of the Advisory Committee on Water Information Charter.

Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is renewing the Advisory Committee on Water Information (ACWI).

The ACWI has been established under the authority of the Office of Management and Budget and Budget Memorandum No. M–92–01 and the Federal Advisory Committee Act. The purpose of this Presidential Committee is to represent the interests of water-information users and professionals in advising the Federal Government on Federal water-information programs and their effectiveness in meeting the Nation's water-information needs. Member organizations help to foster communications between the Federal and non-Federal sectors on sharing water information.

Membership represents a wide range of water resources interests and functions. Representation on the ACWI includes all levels of government, academia, private industry, and professional and technical societies. Member organizations designate their representatives and alternates. Membership is limited to a maximum of 35 organizations.

The Committee will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. The Charter will be filed under the Act, 15 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Adrienne Bartlewitz, Acting ACWI Executive Secretary, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 436, Reston, VA 20192. Telephone: 703–648–4304; Fax: 703–648–5002.

Dated: June 29, 2018.

Ryan Zinke,

Secretary of the Interior.

[FR Doc. 2018–17331 Filed 8–10–18; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Docket No. ONRR–2012–0003, DS63600000 DR2000000.PMN000 189D0102R2]

Royalty Policy Committee; Public Meeting

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice.

SUMMARY: This notice announces the fourth meeting of the Royalty Policy Committee (Committee). This meeting is open to the public.

DATES: The Committee meeting will be held on Thursday, September 13, 2018, in Lakewood, CO, from 9:00 a.m. to 5:00 p.m. Mountain Time.

ADDRESSES: The Committee meeting will be held at the Denver Federal Center Building 85, located at Sixth Avenue and Kipling Street, Denver, CO 80225. Members of the public may attend in person (Photo ID required at visitors' gate) or view documents and presentations under discussion via WebEx at *https://onrr.webex.com/onrr/j.php?MTID=m8b07b197593ce80917ef1715ae9f262a* and listen to the proceedings at telephone number 1–888–469–0854 or International Toll number 517–319–9462 (passcode: 9724702).

FOR FURTHER INFORMATION CONTACT: Mr. Chris Mentasti, Office of Natural Resources Revenue at (202) 513–0614 or email to *rpc@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of the Interior established the Committee on April 21, 2017, under the authority of the Secretary of the Interior and regulated by the Federal Advisory Committee Act. The purpose of the Committee is to ensure that the public receives the full value of resources produced from Federal lands. The duties of the Committee are solely advisory in nature. More information about the Committee, including its charter, is available at *www.doi.gov/rpc.*

Meeting Agenda: At the September meeting, the Committee will receive

reports and recommendations from the three subcommittees, and may vote to make recommendations to the Secretary of the Interior. The final agenda and meeting materials will be posted on the Committee website at *www.doi.gov/rpc.* All Committee meetings are open to the public.

Whenever possible, we encourage those participating by telephone to gather in conference rooms in order to share teleconference lines. Please plan to dial into the meeting and/or log into WebEx at least 10–15 minutes prior to the scheduled start time in order to avoid possible technical difficulties. We will accommodate individuals with special needs whenever possible. If you require special assistance (such as an interpreter for the hearing impaired), please notify Interior staff in advance of the meeting at 202–513–0614 or *rpc@ios.doi.gov.*

We will post the minutes from these proceedings on the Committee website at *www.doi.gov/rpc,* and they will also be available for public inspection and copying at our office at the Stewart Lee Udall Department of the Interior Building in Washington, DC, by contacting Interior staff via email to *rpc@ios.doi.gov* or via telephone at 202–513–0614.

Public Comments: Members of the public may choose to make a public comment during the designated time for public comments. Members of the public may also choose to submit written comments by mailing them to the Office of Natural Resources Revenue, Attention: RPC, 1849 C Street NW, MS 5134, Washington, DC 20240. You also can email your written comments to *rpc@ios.doi.gov.* You must submit written comments by close of business Friday, September 7, 2018, to have them distributed to the Committee for review prior to the meeting.

Public Disclosure of Comments: Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 2.

Vincent DeVito,

Counselor to the Secretary for Energy Policy.

[FR Doc. 2018–17346 Filed 8–10–18; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKRO–DENA–LACL–CAKR–KOVA–ANIA–WRST–GAAR–26083; PPAKAKROR4; PPMPRLE1Y.LS0000]

National Park Service Alaska Region Subsistence Resource Commission Program Notice of Public Meetings

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: The National Park Service (NPS) is hereby giving notice that the Denali National Park Subsistence Resource Commission (SRC), the Lake Clark National Park SRC, the Cape Krusenstern National Monument SRC, the Kobuk Valley National Park SRC, the Aniakchak National Monument SRC, the Wrangell-St. Elias National Park SRC, and the Gates of the Arctic National Park SRC will meet as indicated below.

DATES: See **SUPPLEMENTARY INFORMATION** for dates information for each commission's meetings.

ADDRESSES: The Denali National Park SRC will meet at the Nenana Tribal Council Office, 802 J Street, Nenana, AK 99706. The Lake Clark National Park SRC will meet at the Nondalton Community Hall, Main Street, Nondalton, AK 99653. The Cape Krusenstern National Monument SRC and the Kobuk Valley National Park SRC will meet in the conference room at the Northwest Arctic Heritage Center, 171 3rd Avenue, Kotzebue, AK 99752. The Wrangell-St. Elias National Park SRC will meet at the NPS office in the Copper Center Visitor Center Complex, Wrangell-St. Elias National Park and Preserve, Mile 106.8 Richardson Highway, Copper Center, AK 99573. The Aniakchak National Monument SRC will meet at Ray's Place Restaurant, 2200 James Street, Port Heiden, AK 99549. The Gates of the Arctic National Park SRC will meet in the Board Room at the Sophie Station Hotel Board Room, 1717 University Avenue South, Fairbanks, AK 99709.

SUPPLEMENTARY INFORMATION: The NPS is holding the meetings pursuant to the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16). The NPS SRC program is authorized under section 808 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3118), title VIII.

SRC meetings are open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. SRC meetings will be recorded and meeting minutes will be available upon request from the Superintendent for public inspection approximately six weeks after the meeting.

The Denali National Park SRC will meet from 10:00 a.m. to 4:30 p.m. or until business is completed on Tuesday, August 28, 2018, and on Wednesday, August 29, 2018. Teleconference participants must call the NPS office at (907) 644–3604, prior to the meeting to receive teleconference passcode information. For more detailed information regarding these meetings, or if you are interested in applying for SRC membership, contact Designated Federal Official Don Striker, Superintendent, at (907) 683–9581, or via email at *don_striker@nps.gov* or Amy Craver, Subsistence Coordinator, at (907) 644–3604 or via email at *amy_craver@nps.gov* or Clarence Summers, Federal Advisory Committee Group Federal Officer, at (907) 644–3603, or via email at *clarence_summers@nps.gov.*

The Lake Clark National Park SRC will meet via teleconference from 1:00 p.m. to 3:00 p.m. or until business is completed on Wednesday, September 5, 2018. Teleconference participants must call the NPS office at (907) 644–3648 on or before Friday, August 31, 2018, to receive teleconference passcode information. The Lake Clark National Park SRC will also meet from 1:00 p.m. to 5:00 p.m. or until business is completed on Wednesday, October 3, 2018. For more detailed information regarding this meeting or if you are interested in applying for SRC membership, contact Designated Federal Official Susanne Green, Superintendent, at (907) 644–3627, or via email at *susanne_green@nps.gov* or Liza Rupp, Subsistence Manager, at (907) 644–3648, or via email at *elizabeth_rupp@nps.gov* or Clarence Summers, Federal Advisory Committee Group Federal Officer, at (907) 644–3603, or via email at *clarence_summers@nps.gov.*

The Cape Krusenstern National Monument SRC will meet from 1:00 p.m. to 5:00 p.m. or until business is completed on Tuesday, October 9, 2018, and from 9:00 a.m. to 12:00 p.m. on Wednesday, October 10, 2018. For more detailed information regarding this meeting or if you are interested in applying for SRC membership, contact Designated Federal Official Maija Lukin, Superintendent, at (907) 442–8301, or via email at *maija_lukin@nps.gov* or Hannah Atkinson, Cultural Resource Specialist, at (907) 442–8342, or via email at *hannah_atkinson@nps.gov* or Clarence Summers, Federal Advisory Committee Group Federal Officer, at (907) 644–3603, or via email at *clarence_summers@nps.gov.*

The Kobuk Valley National Park SRC will meet from 1:00 p.m. to 5:00 p.m. or until business is completed on Thursday, October 11, 2018, and from 9:00 a.m. to 12:00 p.m. on Friday, October 12, 2018. For more detailed information regarding this meeting or if you are interested in applying for SRC membership, contact Designated Federal Official Maija Lukin, Superintendent, at (907) 442–8301, or via email at *maija_lukin@nps.gov* or Hannah Atkinson, Cultural Resource Specialist, at (907) 442–8342, or via email at *hannah_atkinson@nps.gov* or Clarence Summers, Federal Advisory Committee Group Federal Officer, at (907) 644–3603, or via email at *clarence_summers@nps.gov.*

The Wrangell-St. Elias National Park SRC will meet from 9:00 a.m. to 5:00 p.m. or until business is completed on Thursday, October 25, 2018, and Friday October 26, 2018. Teleconference participants must call the NPS office at (907) 822–7236, prior to the meeting to receive teleconference passcode information. For more detailed information regarding these meetings, or if you are interested in applying for SRC membership, contact Designated Federal Official Ben Bobowski, Superintendent, at (907) 822–7202, or via email at *ben_bobowski@nps.gov* or Barbara Cellarius, Subsistence Coordinator, at (907) 822–7236 or via email at *barbara_cellarius@nps.gov* or Clarence Summers, Federal Advisory Committee Group Federal Officer, at (907) 644–3603, or via email at *clarence_summers@nps.gov.*

The Aniakchak National Monument SRC will meet from 1:00 p.m. to 5:00 p.m. or until business is completed on Wednesday, October 31, 2018. Teleconference participants must call the NPS office at (907) 246–2154, by Friday, October 26, 2018, to receive teleconference passcode information. For more detailed information regarding this meeting or if you are interested in applying for SRC membership, contact Designated Federal Official Mark Sturm, Superintendent, at (907) 246–2120, or via email at *mark_sturm@nps.gov* or Linda Chisholm, Subsistence Coordinator, at (907) 246–2154, or via email at *linda_chisholm@nps.gov* or Clarence Summers, Federal Advisory Committee Group Federal Officer, at (907) 644–3603, or via email at *clarence_summers@nps.gov.*

The Gates of the Arctic National Park SRC will meet from 9:00 a.m. to 5:00 p.m. or until business is completed on Tuesday, November 6, 2018, and Wednesday, November 7, 2018. For more detailed information regarding this meeting or if you are interested in applying for SRC membership, contact Designated Federal Official Greg Dudgeon, Superintendent, at (907) 457–5752, or via email at *greg_dudgeon@nps.gov* or Marcy Okada, Subsistence Coordinator, at (907) 455–0639 or via email at *marcy_okada@nps.gov* or Clarence Summers, Federal Advisory Committee Group Federal Officer, at (907) 644–3603, or via email at *clarence_summers@nps.gov.*

Purpose of the Meeting: The agenda may change to accommodate SRC business. The proposed meeting agenda for each meeting includes the following:

1. Call to Order—Confirm Quorum
2. Welcome and Introduction
3. Review and Adoption of Agenda
4. Approval of Minutes
5. Superintendent's Welcome and Review of the SRC Purpose
6. SRC Membership Status
7. SRC Chair and Members' Reports
8. Superintendent's Report
9. Old Business
10. New Business
11. Federal Subsistence Board Update
12. Alaska Boards of Fish and Game Update
13. National Park Service Staff Reports
    a. Superintendent/Ranger Reports
    b. Resource Manager's Report
    c. Subsistence Manager's Report
14. Public and Other Agency Comments
15. Work Session
16. Set Tentative Date and Location for Next SRC Meeting
17. Adjourn Meeting

SRC meeting location and date may change based on inclement weather or exceptional circumstances. If the meeting date and location are changed, the Superintendent will issue a press release and use local newspapers and radio stations to announce the rescheduled meeting.

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

Authority: 5 U.S.C. Appendix 2.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2018–17304 Filed 8–10–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–26132; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before July 21, 2018, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by August 28, 2018.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before July 21, 2018. Pursuant to Section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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

Nominations submitted by State Historic Preservation Officers:

ILLINOIS

Bureau County

Hampshire Colony Congregational Church, 604 S Church St., Princeton, SG100002821

Cook County

West Pullman Elementary School, 11941 Parnell Ave., Chicago, SG100002822

Marion County

Methodist Episcopal Church, 116 E Schwartz St., Salem, SG100002823

Ogle County

Burns, Dr. William, House, 201 N Franklin Ave., Polo, SG100002824

Peoria County

Downtown Peoria Historic District, Roughly between N William Kumpf Blvd., Perry Ave., Fulton, Fayette & Water Sts., Peoria, SG100002825

Winnebago County

St. Thomas Catholic High School for Boys, 921 W State, Rockford, SG100002826

MASSACHUSETTS

Berkshire County

Fellows, General John and Mary, Farmstead, 1601 Barnum St., Sheffield, SG100002828

Hampshire County

Goshen Town Hall, 42 Main St., Goshen, SG100002829

NEW YORK

Erie County

Colored Musicians Club, 145 Broadway, Buffalo, SG100002833

Jefferson County

Taylor Flats, 550 Coffeen St., Watertown, SG100002834

Monroe County

First Congregational Church of Fairport, 26 E Church St., Fairport, SG100002835

Onondaga County

Camillus Cutlery Company Headquarters, 54 W Genessee St., Camillus, SG100002836

PENNSYLVANIA

Northampton County

Martin, C.F. & Company., 10 W North & 201 N Main Sts., Nazareth, SG100002837

TEXAS

Franklin County

Edwards, M.L. & Co. Building, 103 N Kaufman St., Mt. Vernon, SG100002840

Galveston County

Falstaff Brewery, 3302 Church St. (Ave. F), Galveston, SG100002841

Harris County

Todd, Lucie Wray and Anderson, House, 9 Shadowlawn Cir., Houston, SG100002842

Johnson County

Cleburne Downtown Historic District, Roughly bounded by Brown, Border, Harrell & Buffalo Sts., Cleburne, SG100002844

Kleberg County

Kingsville Downtown Historic District, Roughly bound by E Yoakum & E King Aves., N 12th St. & UPRR, Kingsville, SG100002845

Limestone County

Liberty Village Apartments, 215 Elwood Enge Dr. & 612 S Ellis St., Groesbeck, SG100002846

Liberty Square Apartments, Roughly bounded by N Leon, W Sabine, N Preston, W Jacinto & N Fannin Sts., Groesbeck, SG100002847

San Patricio County

Taft Public Housing Development (North), 407 through 426 Industrial St., Taft, SG100002848

Taft Public Housing Development (South), Roughly bounded by Ave. C, Walnut, 2nd & Ash Sts., Taft, SG100002849

Tarrant County

Hamilton Apartments, 2837 Hemphill St., Fort Worth, SG100002850

WEST VIRGINIA

Greenbrier County

New Deal Resources in Greenbrier State Forest Historic District, (New Deal Resources in West Virginia State Parks and Forests MPS), 1541 Cnty. Rd.6/2 (Harts Run Rd.), Caldwell vicinity, MP100002851

Marshall County

Palace of Gold, 3759 McCreary's Ridge Rd., Moundsville, SG100002852

Morgan County

New Deal Resources in Cacapon State Park Historic District, (New Deal Resources in West Virginia State Parks and Forests MPS), 818 Cacapon Lodge Drive, Berkeley Springs vicinity, MP100002853

Pocahontas County

New Deal Resources in Seneca State Forest Historic District, (New Deal Resources in West Virginia State Parks and Forests MPS), 10135 Browns Creek Rd., Dunmore vicinity, MP100002854

Randolph County

New Deal Resources in Kumbrabow State Forest Historic District, (New Deal Resources in West Virginia State Parks and Forests MPS), 219/16, Kumbrabow Rd., Huttonsville, MP100002855

WISCONSIN

Dunn County

Menomonie Omaha Depot, 700 4th St. W, Menomonie, SG100002856

Milwaukee County

Muirdale Tuberculosis Sanatorium, 10437 & 10457 Innovation Dr., Wauwatosa, SG100002857

Additional documentation has been received for the following resource:

RHODE ISLAND

Providence County

Georgiaville Historic District, 64 & 66 Farnum Pike, Smithfield vicinity, AD85002734

Nomination submitted by Federal Preservation Officer:

The State Historic Preservation Officer reviewed the following nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and supports listing the property in the National Register of Historic Places.

NEW JERSEY

Essex County

East Orange VA Hospital, (United States Third Generation Veterans Hospitals, 1946–1958 MPS), 385 Tremont Ave., East Orange, MP100002831

Authority: Section 60.13 of 36 CFR part 60.

Dated: July 26, 2018.

Julie H. Ernstein,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program and Deputy Keeper of the National Register of Historic Places.

[FR Doc. 2018–17275 Filed 8–10–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on July 23, 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''), IMS Global Learning Consortium, Inc. (''IMS Global'') 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, AccelerED, Bethesda, MD; Alief Independent School District, Houston, TX; Cobb County School District, Smyrna, GA; Essay Assay, Inc. dba ecree, Durham, NC; Idaho Digital Learning, Boise, ID; Italian Quality Company IQC Srl, Bologna, ITALY; Kyoto College of Graduate Studies for Informatics, Kyoto City, JAPAN; LearnPlatform, Raleigh, NC; Santillana Global, S.L., Madrid, SPAIN; University of Notre Dame, Notre Dame, IN; and Wichita State University Office for Workforce, Professional and Community Education, Wichita, KS, have been added as parties to this venture.

Also, ProExam, New York, NY; Macmillan Learning, New York, NY; Hancom Communication, Inc., Gyeonggi-do, KOREA; Fundação Getúlio Vargas, Rio de Janeiro, BRAZIL; and Cerego, San Francisco, CA, 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 IMS Global intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global 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 September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on March 30, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 24, 2018 (83 FR 17850).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018–17280 Filed 8–10–18; 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—Node.Js Foundation

Notice is hereby given that, on July 25, 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''), Node.js Foundation (''Node.js Foundation'') 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, SAP SE, Waldorf, GERMANY, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Node.js Foundation intends to file additional written notifications disclosing all changes in membership.

On August 17, 2015, Node.js 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 September 28, 2015 (80 FR 58297).

The last notification was filed with the Department on April 6, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 4, 2018 (83 FR 19836).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018–17277 Filed 8–10–18; 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—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on July 30, 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''), Network Centric Operations Industry Consortium, Inc. (''NCOIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Secutor US, LLC, Clifton, VA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCOIC intends to file additional written notifications disclosing all changes in membership.

On November 19, 2004, NCOIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on December 5, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 29, 2017 (82 FR 61795).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018–17278 Filed 8–10–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0243]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Revision of a Currently Approved Collection: Office of Justice Programs' Community Partnership Grants Management System (GMS)

AGENCY: Office of Audit, Assessment, and Management, Office of Justice Programs, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs (OJP), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 30 days until September 12, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Maria Swineford, (202) 616–0109, Office of Audit, Assessment, and Management, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW, Washington, DC 20531 or *maria.swineford@usdoj.gov.* Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: This process is conducted in accordance with 5 CFR 1320.10. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhance; 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.

Overview of this information:

(1) *Type of Information Collection:* Renewal of a currently approved collection (1121–0243).

(2) *The Title of the Form/Collection:* Community Partnership Grants Management System (GMS).

(3) *The Agency Form Number, if any, and the Applicable Component of the Department Sponsoring the Collection:*

Form Number: None.

Component: Office of Justice Programs, Department of Justice.

(4) *Affected Public Who Will be Asked or Required to Respond, as well as a Brief Abstract:*

Primary: State, Local or Tribal Governments, Organizations, and Institutes of Higher Education, and other applicants, applying for grants.

Other: None.

Abstract: GMS is the OJP web-based grants applications and award management system. GMS provides automated support throughout the award lifecycle. GMS facilitates reporting to Congress and other interested agencies. The system provides essential information required to comply with the Federal Funding Accountability and Transparency Act of 2006 (FFATA). GMS has also been designated the OJP official system of record for grants activities by the National Archives and Records Administration (NARA).

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* An estimated 6,402 organizations will respond to GMS and on average it will take each of them up to 10 hours to complete various award lifecycle processes within the system varying from application submission, award management and reporting, and award closeout.

(6) *An Estimate of the Total Public Burden (in hours) Associated with the collection:* The estimated public burden associated with this application is 64,118 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: August 8, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–17269 Filed 8–10–18; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Vacancy Posting for a Member of the Employees' Compensation Appeals Board

Summary of Duties: A member of the Employees' Compensation Appeals Board serves in all matters of the board as assigned, including policy decisions and technology proposals. The incumbent participates in rendering decisions of the Board. Each decision is set forth in a written opinion which sets forth the basis of the decision. The Member of the Board analyzes and evaluates the legal and factual aspects of each case and conducts necessary research. Research includes examination of the law, regulation and procedures, prior Board decisions and Workers' Compensation cases decided under other jurisdiction or general statutory or common law.

Appointment Type: Excepted—Indefinite.

Qualifications: The applicant should be well versed in the Federal Workers' Compensation programs to include the processes, adjudication of claims and the appeals process as well as having the ability to interpret regulations and come to a consensus to determine an overall appeals determination with members of board.

To Be Considered: Applicants must provide a detailed resume containing a demonstrated ability to perform as a Member of the Board.

Closing Date: Resumes must be submitted (postmarked, if sending by mail; submitted electronically; or received, if hand-delivered) by 11:59 p.m. EDT on September 15, 2018. Resumes must be submitted to: *sylvia.john@dol.gov* or mail to: U.S. Department of Labor, 200 Constitution Avenue NW, ATTN: Office of Executive Resources, Room N2495, Washington, DC 20210, phone: 74–365–6851. This is not a toll-free number.

Dated: August 6, 2018.

Bryan Slater,

Assistant Secretary for Administration & Management.

[FR Doc. 2018–17374 Filed 8–10–18; 8:45 am]

BILLING CODE 4510–31–P

DEPARTMENT OF LABOR

Vacancy Posting for a Member of the Administrative Review Board

Summary of Duties: A Member of the Administrative Review Board (the Board) serves in all matters of the Board as assigned, including policy decisions and technology proposals. The incumbent participates in rendering decisions of the Board. Each decision is set forth in a written opinion which sets forth the basis of the decision. The Member of the Board analyzes and evaluates the legal and factual aspects of each case and conducts necessary research. Research includes examination of laws, regulations, procedures as well as prior Board decisions on whistleblower, immigration, child labor, employment discrimination, federal construction, and service contract cases made under other jurisdiction or general statutory or common law.

Appointment Type: Excepted—The term of appointment is for two years or less and may be extended.

Qualifications: The applicant should be well versed in law and the appeals process, as well as have the ability to interpret regulations and to come to a consensus to determine an overall appeals determination with Members of board.

To Be Considered: Applicants must provide a detailed resume containing a demonstrated ability to perform as a Member of the Board.

Closing Date: Resumes must be submitted (postmarked, if sending by mail; submitted electronically; or received, if hand-delivered) by 11:59 p.m. EDT on September 15, 2018. Resumes must be submitted to: *sylvia.john@dol.gov* or mail to: U.S. Department of Labor, 200 Constitution Avenue NW, ATTN: Office of Executive Resources, Room N2495, Washington, DC 20210, phone: 774–365–6851. This is not a toll-free number.

Dated: August 6, 2018.

Bryan Slater,

Assistant Secretary for Administration & Management.

[FR Doc. 2018–17376 Filed 8–10–18; 8:45 am]

BILLING CODE 4510–HW–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request, Homeless Veterans Reintegration Program (HVRP) Impact Evaluation, New Collection

AGENCY: Office of the Assistant Secretary for Policy, Chief Evaluation Office, Department of Labor.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that 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 on respondents is properly assessed.

Currently, DOL is soliciting comments concerning the collection of survey data about the HVRP Impact Evaluation. A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before October 12, 2018.

ADDRESSES: You may submit comments by either one of the following methods: *Email: ChiefEvaluationOffice@dol.gov; Mail or Courier:* Christina Yancey, Chief Evaluation Office, OASP, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Christina Yancey by email at *ChiefEvaluationOffice@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. *Background:* As the only federal program wholly focused on employment services for veterans experiencing homelessness, HVRP sits at the nexus of these three critical policy arenas: veterans, employment, and housing. Since 1987, HVRP has assisted veterans experiencing homelessness through competitive grants to state, local, and tribal governments; local Workforce Development Boards; private for-project and non-profit organizations; and community organizations. In the most recent Program Year (PY) 2018, DOL announced awards to 163 grantees to support an estimated 18,000 veterans. These are one-year grants; a new set of grantees will receive PY 2019 awards.

The HVRP Impact Evaluation is examining the effectiveness of the HVRP program, building evidence of HVRP's effects on participants' employment and earning-related outcomes. In addition, the evaluation will provide a better understanding of program models and variations, partnerships, and populations served. Goals of the specific data collection plan included in this Notice is to help DOL make informed decisions about effective ways to improve the service systems seeking to support veterans experiencing homelessness. The research questions to be answered by the planned data collection pertain to how HVRPs are implemented; what are the different approaches to service provision; how systems and partnerships are developed and maintained; and what the service landscape is in the absence of HVRP.

This **Federal Register** Notice provides the opportunity to comment on four proposed data collection instruments that will be used in the evaluation's implementation study:

* *Grantee survey.* The grantee survey will be administered to all HVRP grantees to collect the following information: (1) Key referral sources for participants; (2) key recruitment sources and challenges; (3) number and type of services; (4) list of services offered on-site and through referrals; (5) key partners and referral sources; (6) type and mode of communication; and (7) types of coordination and collaboration. The survey will be administered via web. It is expected to take participants an average of 60 minutes to complete the survey and yield a 100% response rate.

* *Key informant interview guide.* The study team will visit eight grantees for two to three days to interview (1) program directors and managers; (2) job developers; (3) employment specialists; (4) case managers; and (5) outreach workers with interviews averaging 60 minutes. In addition to the grantee staff, the team will interview managers of partner entities from employment, homelessness/housing, and veteran's agencies and service providers. To ensure consistent data collection, the team will use a field discussion guide designed to gather information relevant to all of the implement research questions. The guide will focus on understanding (1) target populations and enrollment process; (2) key components of the HVRP program model; (3) HVRP partners; and (4) implementation challenges and facilitators. The guide will also be used for telephone interviews with similar partner types in eight comparison areas that are selected for the impact study.

* *Partner assessment tool.* A brief assessment will be administered to collect data on the strength of the HVRP partnership network. The assessment tool will be administered on paper, taking less than ten minutes to completed, and will ask key informants to assess and rate the strength of their community partners in providing employment services, assistance locating housing, critical health support services, and the use of employer relations for job placement. An open-ended question will allow respondents the opportunity to provide more information to contextualize their rating of each partner.

* *In-depth interview guide.* The study team will conduct in-depth interviews with current and former HVRP participants. HVRP program directors will be asked to identify veterans who are currently enrolled in HVRP or those who recently exited the program. The instrument will collect data detailing information on (1) the participant's pathways to homelessness; (2) barriers they face to looking for and staying in work; (3) experiences in HVRP and other employment and supportive services; and (4) their post-program outcomes. In addition, participants will be asked which parts of the HVPR program was most important to their success.

II. *Desired Focus of Comments:* Currently, DOL is soliciting comments concerning the above data collection for the HVRP Evaluation. DOL is particularly interested in comments that do the following:

- 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.

• 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—for example, permitting electronic submission of responses.

III. *Current Actions:* DOL is requesting clearance for the grantee survey, key informant interview guide, partner assessment tool, and in-depth participant interview guide.

Type of Review: New information collection request.

OMC Control Number: 1290–0NEW.

Affected Public: Veterans experiencing homelessness.

Estimated Burden Hours:

IMPLEMENTATION STUDY

Type of instrument	Total number respondents	Annual number of respondents	Annual number of responses per respondent	Average burden hour per response (hours)	Annual estimated burden hours
Grantee Survey	163	54	1	1	54
Key Informant Interview Guide	168	56	1	1	56
Partner Assessment Tool	80	27	1	.2	5
In-Depth Interview Guide	[a] 32	11	1	1.5	16
Total	443	148	.....	.....	131

[a] In-depth HVRP participant interviews will be conducted approximately 8 participants at four sites.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 3, 2018.

Molly Irwin,

Chief Evaluation Officer, U.S. Department of Labor.

[FR Doc. 2018–17244 Filed 8–10–18; 8:45 am]

BILLING CODE 4510–HX–P

DEPARTMENT OF LABOR

Vacancy Posting: Chair of the Administrative Review Board

Summary of Duties: The Administrative Review Board (ARB) Chair directs other ARB Members and administrative and professional staff in the performance of the ARB's mission. The Chair directs the management of the ARB's administrative, clerical, and professional staff and makes final decisions for the ARB on management matters, such as budget, personnel, space, and other services. The Chair exercises completely independent judgment in discharging his/her duties and responsibilities as required by law and any applicable regulations. In addition, the Chair and the ARB Members establish general policies for the ARB's operations and promulgation of Rules of Practice and Procedure for all persons appearing before the ARB in the performance of its appellate review authority.

Appointment Type: Excepted—The term of appointment is for two years or less and may be extended.

Qualifications: The applicant should be well versed in whistleblower, immigration, child labor, employment discrimination, and federal construction/services contracts. This includes the processes, adjudication of claims, and the appeals process, as well as having the ability to interpret regulations and come to a consensus to determine an overall appeals determination with Members of the Board. Prior experience directing a team of professional, administrative, and clerical staff in management matters is required.

To Be Considered: Applicants must provide a detailed resume containing a demonstrated ability to perform as Chair of the Board.

Closing Date: Resumes must be submitted (postmarked, if sending by mail; submitted electronically; or received, if hand-delivered) by 11:59 p.m. EDT on September 15, 2018. Resumes must be submitted to: *sylvia.john@dol.gov* or mail to: U.S. Department of Labor, 200 Constitution Avenue NW, ATTN: Office of Executive Resources, Room N2495, Washington, DC 20210, phone: 774–365–6851. This is not a toll-free number.

Dated. August 6, 2018.

Bryan Slater,

Assistant Secretary for Administration & Management.

[FR Doc. 2018–17375 Filed 8–10–18; 8:45 am]

BILLING CODE 4510–HW–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2018–054]

Freedom of Information Act (FOIA) Advisory Committee; Meeting

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: NARA announces an upcoming Freedom of Information Act (FOIA) Advisory Committee meeting.

DATES: The meeting will be on September 6, 2018, from 10:00 a.m. to 1:00 p.m. EDT. You must register for the meeting by 5:00 p.m. EDT on September 4, 2018.

ADDRESSES: National Archives and Records Administration (NARA); 700 Pennsylvania Avenue NW; William G. McGowan Theater; Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Kirsten Mitchell, Designated Federal Officer for this committee, by mail at National Archives and Records Administration; Office of Government Information Services; 8601 Adelphi Road—OGIS; College Park, MD 20740–6001, by telephone at 202–741–5770, or by email at *foia-advisory-committee@nara.gov.*

SUPPLEMENTARY INFORMATION: *Agenda and meeting materials:* You may find all meeting materials at *https://ogis.archives.gov/foia-advisory-committee/2018-2020-term/Meetings.htm.* This will be the first meeting of the new committee term. The

purpose of this meeting will be to introduce all of the members, review upcoming meeting dates for 2018 and 2019, brainstorm topics for subcommittees, and have Government members receive ethics training.

Procedures: The meeting is open to the public. Due to access procedures, you must register in advance if you wish to attend the meeting. You will also go through security screening when you enter the building. Registration for the meeting will go live via Eventbrite on August 6, 2018, at 10:00 a.m. EDT. To register for the meeting, please do so at this Eventbrite link: *https://www.eventbrite.com/e/freedom-of-information-act-foia-advisory-committee-meeting-september-6-2018-registration-48597106253.*

This program will be live-streamed on the U.S. National Archives' YouTube channel, *https://www.youtube.com/user/usnationalarchives.* The webcast will include a captioning option. To request additional accommodations (*e.g.,* a transcript), email *foia-advisory-committee@nara.gov* or call 202–741–5770. Members of the media who wish to register, those who are unable to register online, and those who require special accommodations, should contact Kirsten Mitchell at the phone number, mailing address, or email address listed above.

Miranda J. Andreacchio,

Committee Management Officer.

[FR Doc. 2018–17235 Filed 8–10–18; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 4 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern Time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Sherry Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *hales@arts.gov,* or call 202/682–5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of July 5, 2016, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meetings are:

Citizen's Institute on Rural Design (CIRD) (review of applications):

This meeting will be closed.

Date and time: September 6, 2018; 2:00 p.m. to 4:00 p.m.

Documentary Sustainability Project (review of applications):

This meeting will be closed.

Date and time: September 6, 2018; 11:30 a.m. to 1:30 p.m.

Literature Fellowships: Poetry Creative Writing (review of applications):

This meeting will be closed.

Date and time: September 12, 2018; 2:00 p.m. to 4:00 p.m.

NEA Jazz Masters Tribute Concert and Ancillary Events (review of applications):

This meeting will be closed.

Date and time: September 14, 2018; 2:00 p.m. to 4:00 p.m.

Dated: August 8, 2018.

Sherry Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2018–17279 Filed 8–10–18; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Computing and Communication Foundations; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Computing and Communication Foundations (#1192)—Expeditions in Computing Division—Year 2 DeepSpec Site Visit

Date and Time: September 5, 2018; 7:00 p.m.–9:00 p.m.

September 6, 2018; 8:00 a.m.–9:00 p.m.

September 7, 2018; 8:30 a.m.–3:30 p.m.

Place: BU George Sherman Union, Metcalf Hall, 775 Commonwealth Ave. Boston, MA 02215.

Type of Meeting: Part-Open.

Contact Person: Mitra Basu, Expeditions in Computing Program, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; Telephone 703/292–8910.

Purpose of Meeting: Site visit to assess the progress of the EIC Award: CCF–1522074, ''Collaborative Research: Evolvable Living Computing—Understanding and Quantifying Synthetic Biological Systems' Applicability, Performance, and Limits,'' and to provide advice and recommendations concerning further NSF support for the project.

Agenda

Wednesday, September 5, 2018

7:00 p.m.–9:00 p.m.: Closed—Evening briefing to discuss the Expeditions award and forthcoming site visit.

Thursday, September 6, 2018

8:00 a.m.–12:30 p.m.: Open—Presentations by Awardee Institution, faculty staff and students, to Site Team and NSF Staff. Discussions and question and answer sessions.

1:30 p.m.–2:00 p.m.: Closed—NSF Staff and Panelists deliberation.

2:00 p.m.– 5:00 p.m.: Open—Continued presentations by Awardee Institution. Response and feedback to presentations by Site Team and NSF Staff. Discussions and question and answer sessions. Draft report on education and research activities. Complete written site visit report with preliminary recommendations.

6:00 p.m.–9:00 p.m.: Closed—NSF Staff and Panelists working dinner.

Friday, September 7, 2018

8:30 a.m.–10:00 a.m.: Open—Expeditions PIs responses to issues raised by panelists.

10:30 a.m.–2:30 p.m.: Closed—Panelists prepare site visit report.

2:30 p.m.–3:30 p.m.: Open—Presentation of site visit report to Expeditions leadership team.

Reason for Closing: Topics to be discussed and evaluated during closed portions of the site review will include information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 7, 2018.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2018–17230 Filed 8–10–18; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of August 13, 20, 27, September 3, 10, 17, 2018.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 13, 2018

There are no meetings scheduled for the week of August 13, 2018.

Week of August 20, 2018—Tentative

There are no meetings scheduled for the week of August 20, 2018.

Week of August 27, 2018—Tentative

There are no meetings scheduled for the week of August 27, 2018.

Week of September 3, 2018—Tentative

There are no meetings scheduled for the week of September 3, 2018.

Week of September 10, 2018—Tentative

Monday, September 10, 2018

10:00 a.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9)

Week of September 17, 2018—Tentative

There are no meetings scheduled for the week of September 17, 2018.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or you may email *Patricia.Jimenez@nrc.gov* or *Wendy.Moore@nrc.gov.*

Dated: August 9, 2018.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2018–17414 Filed 8–9–18; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0111]

Physical Security—Combined License and Operating Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan-final section revision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final revision to Section 13.6.1, ''Physical Security—Combined License and Operating Reactors,'' of NUREG–0800, ''Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.''

DATES: The effective date of this SRP update is August 13, 2018.

ADDRESSES: Please refer to Docket ID NRC–2017–0111 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–2017–0111. 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.

FOR FURTHER INFORMATION CONTACT: Mark D. Notich, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3053, email: *Mark.Notich@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 5, 2017 (82 FR 21269), the NRC published for public comment a proposed revision of Section 13.6.1, ''Physical Security—Combined License and Operating Reactors,'' of NUREG–0800, ''Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.'' The public comment period closed on July 5, 2017. A summary of comments received and the staff's disposition of the comments are available in a separate document, ''Response to Public Comments on Draft Standard Review Plan, Section 13.6.1, ''Physical Security—Combined License and Operating Reactors,'' (ADAMS Accession No. ML17291B250). A redline/strikeout version showing incorporation of public comments is available in a separate document (ADAMS Accession No. ML17311A121).

II. Backfitting and Issue Finality

Chapter 13 of the SRP provides guidance to the staff for conduct of operations under part 52 of title 10 of the *Code of Federal Regulations* (10 CFR). Section 13.6.1 of the SRP provides guidance for the review of combined license (COL) and operating license (OL) applications and amendments for physical security.

Issuance of this SRP section revision does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) nor is it inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations.

1. The SRP positions would not constitute backfitting, inasmuch as the SRP is internal guidance to NRC staff.

The SRP provides internal guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR part 52.

2. The NRC staff has no intention to impose the SRP positions on existing licensees either now or in the future.

The NRC staff does not intend to impose or apply the positions described in the SRP to existing licenses and regulatory approvals. Hence, the issuance of this SRP—even if considered guidance within the purview of the issue finality provisions in 10 CFR part 52—does not need to be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP on holders of already issued licenses in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule or address the

criteria for avoiding issue finality as described in the applicable issue finality provision.

3. Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. Neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions—were intended to apply to every NRC action that substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (*e.g.,* an early site permit) or NRC regulatory approval (*e.g.,* a design certification rule) with specified issue finality provisions. The NRC staff does not, at this time, intend to impose the positions represented in the SRP in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the SRP section in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

III. Congressional Review Act

This action is not a rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

Dated at Rockville, Maryland, this 8th day of August, 2018.

For the Nuclear Regulatory Commission.

Jennivine K. Rankin,

Acting Chief, Division of Licensing, Siting, and Environmental Analysis, Licensing Branch 3, Office of New Reactors.

[FR Doc. 2018–17328 Filed 8–10–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Meeting of the Advisory Committee on Reactor Safeguards (ACRS) Subcommittee on NuScale

The ACRS Subcommittee on NuScale will hold a meeting on August 23, 2018, at 11545 Rockville Pike, Room T–2B1, Rockville, Maryland 20852.

The meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Thursday, August 23, 2018—8:30 a.m. Until 5:00 p.m.

The Subcommittee will review the NuScale Design Control Document and the NRC staff Safety Evaluation with Open Items, Chapter 7, ''Digital Instrumentation and Control.'' The Subcommittee will hear presentations by and hold discussions with the NRC staff, NuScale, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christina Antonescu (Telephone 301–415–6792 or Email: *Christina.Antonescu@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. The public bridgeline number for the meeting is 866–822–3032, passcode 8272423. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 4, 2017 (82 FR 46312).

Detailed meeting agendas and meeting transcripts are available on the NRC website at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland 20852. After registering with Security, please contact Mr. Theron Brown (Telephone 301–415–6702) to be escorted to the meeting room.

Dated: August 8, 2018.

Mark L. Banks

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2018–17329 Filed 8–10–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Meeting of the Advisory Committee on Reactor Safeguards (ACRS) Subcommittee on Future Plant Designs

The ACRS Subcommittee on Future Plant Designs will hold a meeting on August 22, 2018 at 11545 Rockville Pike, Room T–2B1, Rockville, Maryland 20852.

The entire meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Wednesday, August 22, 2018—8:30 a.m. Until 12:00 p.m.

The Subcommittee will review the draft Proposed Rule: Emergency Preparedness for Small Modular Reactors and Other New Technologies. This will be a joint subcommittee meeting with the Regulatory Policies and Practices Subcommittee. The Subcommittee will hear presentations by and hold discussions with NRC staff, industry representatives, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Derek Widmayer (Telephone 301–221–1448 or Email *Derek.Widmayer@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting

that are open to the public. The public bridgeline number for the meeting is 866–822–3032, passcode 8272423. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 4, 2017 (82 FR 46312).

Detailed meeting agendas and meeting transcripts are available on the NRC website at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland 20852. After registering with Security, please contact Mr. Theron Brown (Telephone 301–415–6702) to be escorted to the meeting room.

Dated: August 7, 2018.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2018–17233 Filed 8–10–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Meeting of the Advisory Committee on Reactor Safeguards (ACRS) Subcommittee; on NuScale

The ACRS Subcommittee on NuScale will hold a meeting on August 24, 2018, at 11545 Rockville Pike, Room T–2B1, Rockville, Maryland 20852.

The meeting will be open to public attendance with the exception of portions that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4). The agenda for the subject meeting shall be as follows:

Friday, August 24, 2018—8:30 a.m. until 12:00 p.m.

The Subcommittee will review NuScale Topical Report TR–0915–17564–P, ''Subchannel Analysis Methodology.'' The Subcommittee will hear presentations by and hold discussions with the NRC staff, NuScale and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Michael Snodderly (Telephone 301–415–2241 or Email: *Michael.Snodderly@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. The public bridgeline number for the meeting is 866–822–3032, passcode 8272423. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 4, 2017 (82 FR 46312).

Detailed meeting agendas and meeting transcripts are available on the NRC website at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland. After registering with Security, please contact Mr. Theron Brown (Telephone 301–415–6702 or 301–415–8066) to be escorted to the meeting room.

Dated: 8/7/2018.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2018–17232 Filed 8–10–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219; NRC–2018–0167]

Exelon Generation Company, LLC; Oyster Creek Nuclear Generating Station

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 exemptions in response to a request from Exelon Generation Company, LLC (Exelon or the licensee) that would permit the licensee to reduce its emergency planning (EP) activities at the Oyster Creek Nuclear Generating Station (Oyster Creek). The licensee is seeking exemptions that would eliminate the requirements for the licensee to maintain offsite radiological emergency plans and reduce some of the onsite EP activities based on the reduced risks at Oyster Creek, which will be permanently shut down and defueled. However, requirements for certain onsite capabilities to communicate and coordinate with offsite response authorities would be retained. In addition, offsite EP provisions would still exist through State and local government use of a comprehensive emergency management plan process, in accordance with the Federal Emergency Management Agency's (FEMA's) Comprehensive Preparedness Guide (CPG) 101, ''Developing and Maintaining Emergency Operations Plans.'' The NRC staff is issuing a final Environmental Assessment (EA) and final Finding of No Significant Impact (FONSI) associated with the proposed exemptions.

DATES: The EA and FONSI referenced in this document are available on August 13, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0167 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–2018–0167. 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 ''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: John G. Lamb, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3100; email: *John.Lamb@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated January 7, 2011 (ADAMS Accession No. ML110070507), Exelon notified the NRC that Oyster Creek will be permanently shut down no later than December 31, 2019, and subsequently the nuclear power plant will be in the process of decommissioning. By letter dated February 14, 2018 (ADAMS Accession No. ML18045A084), Exelon updated its notification and informed the NRC that Oyster Creek will be permanently shut down no later than October 31, 2018.

Oyster Creek is located in Ocean County, New Jersey, approximately 2 miles south of Forked River, New Jersey. Exelon is the holder of the Renewed Facility Operating License No. DPR–16 for Oyster Creek. Once Exelon submits a certification of permanent removal of fuel from the reactor vessel, pursuant to 10 CFR 50.82(a)(2) of title 10 of the *Code of Federal Regulations* (10 CFR), Oyster Creek will no longer be authorized to operate or to have fuel placed into its reactor vessel, but the licensee is still authorized to possess and store irradiated nuclear fuel. Irradiated nuclear fuel is currently stored onsite at Oyster Creek in a spent fuel pool (SFP) and in an independent spent fuel storage installation (ISFSI).

The licensee has requested exemptions for Oyster Creek from certain EP requirements in 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' once Exelon submits its certification of permanent removal of fuel from the reactor vessel. The NRC regulations concerning EP do not recognize the reduced risks after a reactor is permanently shut down and defueled. As such, a permanently shut down and defueled reactor, must continue to maintain the same EP requirements as an operating power reactor under the existing regulatory requirements. To establish a level of EP commensurate with the reduced risks of a permanently shut down and defueled reactor, Exelon requires exemptions from certain EP regulatory requirements before it can change its emergency plans.

The NRC is considering issuing to Exelon exemptions from portions of 10 CFR 50.47, ''Emergency plans,'' and appendix E to 10 CFR part 50, ''Emergency Planning and Preparedness for Production and Utilization Facilities,'' which would eliminate the requirements for Exelon to maintain offsite radiological emergency plans in accordance with part 350, ''Review and Approval of State and Local Radiological Emergency Plans and Preparedness,'' of 44 CFR, ''Emergency Management and Assistance,'' and reduce some of the onsite EP activities based on the reduced risks at Oyster Creek, once the reactor has been permanently shut down and defueled for a period of 12 months.

Consistent with 10 CFR 51.21, the NRC has determined that an EA is the appropriate form of environmental review for the requested action. Based on the results of the EA, which is provided in Section II of this document, the NRC has determined not to prepare an environmental impact statement for the proposed action, and is issuing a FONSI.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would exempt Exelon from (1) certain standards as set forth in 10 CFR 50.47(b) regarding onsite and offsite emergency response plans for nuclear power reactors; (2) requirements in 10 CFR 50.47(c)(2) to establish plume exposure and ingestion pathway emergency planning zones (EPZs) for nuclear power reactors; and (3) certain requirements in 10 CFR part 50, appendix E, section IV, which establishes the elements that make up the content of emergency plans. The proposed action of granting these exemptions would eliminate the requirements for Exelon to maintain offsite radiological emergency plans in accordance with 44 CFR 350 and reduce some of the onsite EP activities at Oyster Creek, based on the reduced risks once the reactor has been permanently shut down and defueled for a period of 12 months. However, requirements for certain onsite capabilities to communicate and coordinate with offsite response authorities would be retained to an extent consistent with the approved exemptions. Additionally, if necessary, offsite protective actions could still be implemented using a comprehensive emergency management plan (CEMP) process. A CEMP in this context, also referred to as an emergency operations plan (EOP), is addressed in FEMA's CPG 101, ''Developing and Maintaining Emergency Operations Plans.'' The CPG 101 is the foundation for State, territorial, tribal, and local EP in the United States under the National Preparedness System. It promotes a common understanding of the fundamentals of risk-informed planning and decision making, and helps planners at all levels of government in their efforts to develop and maintain viable, all-hazards, all-threats emergency plans. An EOP is flexible enough for use in all emergencies. It describes how people and property will be protected; details who is responsible for carrying out specific actions; identifies the personnel, equipment, facilities, supplies, and other resources available; and outlines how all actions will be coordinated. A CEMP is often referred to as a synonym for ''all-hazards'' planning. The proposed action is in accordance with the licensee's application dated August 22, 2017 (ADAMS Accession No. ML17234A082), as supplemented December 6, 2017 (ADAMS Accession No. ML17340A708) and March 8 and 19, 2018 (ADAMS Accession Nos. ML18067A087 and ML18078A146, respectively).

Need for the Proposed Action

The proposed action is needed for Exelon to revise the Oyster Creek Emergency Plan once the reactor has been permanently shutdown and defueled for a period of 12 months. The EP requirements currently applicable to Exelon are for an operating power reactor. Once Oyster Creek reaches permanently shutdown and defueled status, as specified in 10 CFR 50.82(a)(2), Oyster Creek will no longer be authorized operation of the reactor or emplacement or retention of fuel into the reactor vessel therefore, the occurrence of postulated accidents associated with reactor operation is no

longer credible. However, there are no explicit regulatory provisions distinguishing EP requirements for a power reactor that has been permanently shut down and defueled from those for an operating power reactor.

In its exemption request, the licensee identified four possible radiological accidents at Oyster Creek in its permanently shutdown and defueled condition. These are: (1) A fuel-handling accident; (2) a radioactive waste-handling accident; (3) a loss of SFP normal cooling (*i.e.,* boil off); and (4) an adiabatic heat up of the hottest fuel assembly. The NRC staff evaluated these possible radiological accidents in the Commission Paper (SECY) 18–0062, ''Request by the Exelon Generation Company, LLC for Exemptions from Certain Emergency Planning Requirements for the Oyster Creek Nuclear Generating Station,'' dated May 31, 2018 (ADAMS Package Accession No. ML18030B340). In SECY–18–0062, the NRC staff verified that Exelon's analyses and calculations provided reasonable assurance that if the requested exemptions were granted, then: (1) For a design-basis accident (DBA), an offsite radiological release will not exceed the early phase protective action guides (PAGs) at the site boundary, as detailed in Table 1–1 to the U.S. Environmental Protection Agency's (EPA's), ''PAG Manual: Protective Action Guides and Planning Guidance for Radiological Incidents,'' EPA–400/R–17/001, dated January 2017, and (2) in the unlikely event of a beyond DBA resulting in a loss of all SFP cooling, there is sufficient time to initiate appropriate mitigating actions, and in the event a radiological release has or is projected to occur, there would be sufficient time for offsite agencies to take protective actions using a CEMP to protect the health and safety of the public if offsite governmental officials determine that such action is warranted. The Commission approved the NRC staff's recommendation to grant the exemptions based on this evaluation in its Staff Requirements Memorandum (SRM) to SECY–18–0062, dated July 17, 2018 (ADAMS Accession No. ML18198A449).

Based on these analyses, Exelon states that complete application of the EP rule to Oyster Creek, when it is permanently shutdown and defueled would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. Exelon also states that it would incur undue costs in the application of operating plant EP requirements for the maintenance of an emergency response organization in excess of that actually needed to respond to the diminished scope of credible accidents for a permanently shutdown and defueled reactor.

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 elimination of requirements for the licensee to maintain offsite radiological emergency plans in accordance with 44 CFR 350 and reduce some of the onsite EP activities at Oyster Creek, based on the reduced risks once the reactor has been permanently shutdown and defueled for a period of 12 months. However, requirements for certain onsite capabilities to communicate and coordinate with offsite response authorities will be retained and offsite EP provisions to protect public health and safety will still exist through State and local government use of a CEMP.

With regard to potential nonradiological environmental impacts, the proposed action would have no direct impacts on land use or water resources, including terrestrial and aquatic biota, as it involves 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. In addition, there would be no noticeable effect on socioeconomic conditions in the region, no environment justice impacts, no air quality impacts, and no impacts to historic and cultural resources from the proposed action. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

With regard to potential radiological environmental impacts, as stated above, the proposed action would not increase the probability or consequences of radiological accidents. Additionally, the NRC staff has concluded that the proposed action 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 action. Moreover, no changes would be made to plant buildings or the site property from the proposed action. 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 the denial of the proposed action (*i.e.,* the ''no-action'' alternative). The denial of the application would result in no change in current environmental impacts. Therefore, the environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

Agencies or Persons Consulted

No additional agencies or persons were consulted regarding the environmental impact of the proposed action. On July 27, 2018, the New Jersey state representative was notified of this EA and FONSI.

III. Finding of No Significant Impact

The licensee has proposed exemptions from: (1) Certain standards in 10 CFR 50.47(b) regarding onsite and offsite emergency response plans for nuclear power reactors; (2) requirement in 10 CFR 50.47(c)(2) to establish plume exposure and ingestion pathway EPZs for nuclear power reactors; and (3) certain requirements in 10 CFR part 50, appendix E, section IV, which establishes the elements that make up the content of emergency plans. The proposed action of granting these exemptions would eliminate the requirements for the licensee to maintain offsite radiological emergency plans in accordance with 44 CFR 350 and reduce some of the onsite EP activities at Oyster Creek, based on the reduced risks once the reactor has been permanently shutdown and defueled for a period of 12 months. However, requirements for certain onsite capabilities to communicate and coordinate with offsite response authorities will be retained and offsite EP provisions to protect public health and safety will still exist through State and local government use of a CEMP.

The NRC is considering issuing the exemptions. 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. This FONSI incorporates by reference the EA in Section II of this document. 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.

The related environmental document is the ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Oyster Creek Nuclear Generating Station, Final Report,'' NUREG–1437, Supplement 28, Volumes 1 and 2, which provides the latest environmental review of current operations and description of environmental conditions at Oyster Creek.

The finding and other related environmental documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Publicly-available records are accessible electronically from ADAMS Public Electronic Reading Room on the internet at the NRC's website: *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./web link
Developing and Maintaining Emergency Operations Plans, Comprehensive Preparedness Guide (CPG) 101, Version 2.0, November 2010.	*http://www.fema.gov.*
Docket No. 50–219, Request for Exemptions from Portions of 10 CFR 50.47 and 10 CFR part 50, Appendix E, Oyster Creek Nuclear Generating Station, August 22, 2017.	ML17234A082.
Docket No. 50–219, Response to Request for Additional Information (RAI) Regarding Request for Exemption from Portions of 10 CFR 50.47 and 10 CFR part 50, Appendix E, Oyster Creek Nuclear Generating Station, December 6, 2017.	ML17340A708.
Docket No. 50–219, Supplement to Request for Exemption from Portions of 10 CFR 50.47 and 10 CFR part 50, Appendix E, Oyster Creek Nuclear Generating Station, March 8, 2018.	ML18067A087.
Docket No. 50–219, Response to Request for Additional Information (RAI) Related to Exemption Request from Portions of 10 CFR 50.47 and 10 CFR part 50, Appendix E, Oyster Creek Nuclear Generating Station, March 19, 2018.	ML18078A146.
Docket No. 50–219, Certification of Permanent Cessation of Operations at Oyster Creek Nuclear Generating Station, January 7, 2011.	ML110070507.
Docket No. 50–219, Certification of Permanent Cessation of Power Operations for Oyster Creek Nuclear Generating Station, February 14, 2018..	ML18045A084.
PAG Manual: Protective Action Guides and Planning Guidance for Radiological Incidents, U.S. Environmental Protection Agency, January 2017.	*http://www.epa.gov.*
SECY–18–0062, ''Request by the Exelon Generation Company, LLC for Exemptions from Certain Emergency Planning Requirements for the Oyster Creek Nuclear Generating Station,'' May 31, 2018.	ML18030B340.
Staff Requirements Memorandum to SECY–18–0062, ''Request by the Exelon Generation Company, LLC for Exemptions from Certain Emergency Planning Requirements for the Oyster Creek Nuclear Generating Station,'' July 17, 2018.	ML18198A449.
Docket No. 50–219, ''Final Environmental Statement—related to operation of Oyster Creek Nuclear Generating Station,'' December 1974.	ML072200150.
NUREG–1437, Supplement 28, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Oyster Creek Nuclear Generating Station,'' January 2007.	ML070100234.

Dated at Rockville, Maryland, this 8th day of August, 2018.

For the Nuclear Regulatory Commission.

Kathryn M. Brock,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–17327 Filed 8–10–18; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Notice—September 5, 2018 Public Hearing

TIME AND DATE: 1:00 p.m., Wednesday, September 5, 2018.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW, Washington, DC.

STATUS: Hearing OPEN to the Public at 1:00 p.m.

MATTERS TO BE CONSIDERED: This will be a Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Tuesday, August 28, 2018. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m. Tuesday, August 28, 2018. Such statement must be typewritten, double spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda, which will be available at the hearing, that identifies speakers, the subject on which each participant will speak, and the time allotted for each presentation.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction. Written summaries of the projects to be presented at the September 13, 2018, Board meeting will be posted on OPIC's website.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Catherine F.I. Andrade at (202) 336–8768, via facsimile at (202) 408–0297, or via email at *Catherine.Andrade@opic.gov.*

Dated: August 9, 2018.

Catherine F.I. Andrade,

OPIC Corporate Secretary.

[FR Doc. 2018–17422 Filed 8–9–18; 4:15 pm]

BILLING CODE 3210–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2017–219; CP2018–217]

New Postal Products

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:* August 15, 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).:* CP2017–219; *Filing Title:* USPS Notice of Amendment to Parcel Select Contract 22, Filed Under Seal; *Filing Acceptance Date:* August 3, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Lyudmila Y. Bzhilyanskaya; *Comments Due:* August 15, 2018.

2. *Docket No(s).:* CP2018–217; *Filing Title:* USPS Notice of Amendment to Priority Mail Express & Priority Mail Contract 65, Filed Under Seal; *Filing Acceptance Date:* August 7, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 15, 2018.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–17332 Filed 8–10–18; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83790; File No. SR–ISE–2018–69]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Regular Order Take Fee and the QCC and Solicitation Order Rebate

August 7, 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 July 25, 2018, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 ISE Schedule of Fees to: (i) Increase the Regular Order Take Fee in SPY, QQQ, IWM, and VXX for Priority Customers; [3] and; (2) not pay the ''Customer to Customer'' Orders rebate for QCC and solicited orders between two Priority Customers.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the ISE Schedule of Fees at Section I, entitled ''Regular Order Fees and Rebates'' as well as the Section IV, entitled ''Other Options Fees

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''Priority Customer'' is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Rule 100(a)(37A). Unless otherwise noted, when used in the Schedule of Fees the term ''Priority Customer'' includes ''Retail'' as defined in the Schedule of Fees. *See* Preface to ISE Schedule of Fees.

and Rebates'' within Section A, ''QCC and Solicitation Rebate.'' Each proposed change is described in more detail below. The Exchange believes that each of the proposed rule changes will permit the Exchange to remain competitive in options trading.

Taker Fees

Currently, the Exchange charges a Regular Order Taker Fee for Select Symbols, other than Priority Customer orders in SPY, QQQ, IWM, and VXX, of: $0.45 per contract for Market Maker orders,[4] $0.44 per contract for Priority Customer orders and $0.46 per contract for Non-Nasdaq ISE Market Makers [5] (FarMM), Firm Proprietary [6]/Broker Dealer,[7] and Professional Customers [8] orders. The Regular Order Taker Fee for Priority Customer orders in SPY, QQQ, IWM, and VXX is $0.37 per contract. The Exchange proposes to increase this Regular Order Taker Fee in SPY, QQQ, IWM, and VXX to $0.40 per contract for Priority Customer orders. While the Exchange is increasing this fee, the Exchange believes that the fee remains competitive. Also, this fee continues to be lower than other Regular Order Taker Fees for SPY, QQQ, IWM, and VXX assessed to non-Priority Customers.

QCC and Solicitation Rebate

Currently, ISE Members using Qualified Contingent Cross (''QCC'') orders [9] and/or other solicited crossing orders, including solicited orders executed in the Solicitation,[10] Facilitation [11] or Price Improvement Mechanism (''PIM'') [12], receive rebates for each originating contract side in all symbols traded on the Exchange. Once a Member reaches a certain volume threshold in QCC orders and/or solicited crossing orders during a month, the Exchange provides rebates to that Member for all of its QCC and solicited crossing order traded contracts for that month.[13] The applicable rebates are applied on QCC and solicited crossing order traded contracts once the volume threshold is met. Today, Members receive the Non-''Customer to Customer'' rebate for all QCC and/or other solicited crossing orders except for QCC and solicited orders between two Priority Customers. QCC and solicited orders between two Priority Customers receive the ''Customer to Customer'' Orders [14] rebate. Non-''Customer to Customer'' and ''Customer to Customer'' volume is aggregated in determining the applicable volume tier. The current volume threshold and corresponding rebates are as follows:

Originating contract sides	Non-''Customer to customer'' rebate	''Customer to customer'' rebate
0 to 99,999	$0.00	$0.00
100,000 to 199,999	(0.05)	(0.01)
200,000 to 499,999	(0.07)	(0.01)
500,000 to 749,999	(0.09)	(0.03)
750,000 to 999,999	(0.10)	(0.03)
1,000,000+	(0.11)	(0.03)

At this time, the Exchange proposes to not pay the ''Customer to Customer'' Orders rebate for QCC and solicited orders between two Priority Customers. The Exchange proposes to amend its Schedule of Fees to make clear that such a rebate will not be paid. ''Customer-to-Customer'' Rebates are being removed from the table within the Schedule of Fees. The Exchange notes that this rebate did not attract volume as anticipated when the rebate was implemented. The Exchange is also amending the sentence that provides, ''Non-''Customer to Customer'' and ''Customer to Customer'' volume will be aggregated in determining the applicable volume tier'' with language which removes the term ''Customer to Customer'' and instead descriptively defines that volume. The proposed sentence states, ''Volume resulting from all QCC and solicited orders will be aggregated in determining the applicable volume tier.'' In addition the Exchange is removing references to ''Non-''Customer to Customer'' rebate'' and simply noting the term ''rebate.'' The Exchange believes that the term Non-''Customer to Customer'' is no longer necessary. The language makes clear that Members will receive the rebate for all QCC and/or other solicited crossing orders except for QCC and solicited orders between two Priority Customers. No other changes are being made to the manner in which rebates are calculated or paid.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[16] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair

[4] ''Market makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(28).

[5] A ''Non-Nasdaq ISE Market Maker'' is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. *See* Preface to ISE Schedule of Fees.

[6] A ''Firm Proprietary'' order is an order submitted by a Member for its own proprietary account. *See* Preface to ISE Schedule of Fees.

[7] ''Broker-Dealer'' order is an order submitted by a Member for a broker-dealer account that is not its own proprietary account. *See* Preface to ISE Schedule of Fees.

[8] A ''Professional Customer'' is a person or entity that is not a broker/dealer and is not a Priority Customer. *See* Preface to ISE Schedule of Fees.

[9] A QCC Order is comprised of an originating order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Supplementary Material .01 below, coupled with a contra-side order or orders totaling an equal number of contracts. *See* ISE Rule 715(j).

[10] The Solicited Order Mechanism is a process by which an EAM can attempt to execute orders of 500 or more contracts it represents as agent against contra orders that it solicited. Each order entered into the Solicited Order Mechanism shall be designated as all-or-none. *See* ISE Rule 716(e).

[11] The Facilitation Mechanism is a process by which an EAM can execute a transaction wherein the EAM seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the EAM solicited interest to execute against a block-size order it represents as agent. *See* Rule 716(d).

[12] PIM is a process by which an Electronic Access Member can provide price improvement opportunities for a transaction wherein the Electronic Access Member seeks to facilitate an order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against an order it represents as agent (a ''Crossing Transaction'').

[13] All eligible volume from affiliated members will be aggregated in determining QCC and Solicitation volume totals, provided there is at least 75% common ownership between the members as reflected on each member's Form BD, Schedule A.

[14] A ''Customer to Customer'' order is a QCC or other solicited order between two Priority Customers.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4) and (5).

discrimination between customers, issuers, brokers, or dealers.

Taker Fees

The Exchange believes that the proposed change to increase Regular Order Priority Customer Taker Fees in SPY, QQQ, IWM, and VXX from $0.37 to $0.40 per contract is reasonable because the increased Taker Fee remains competitive and will continue to be attractive to market participants. Priority Customers will continue to receive reduced Regular Order Taker Fees in SPY, QQQ, IWM, and VXX, which represent some of the most heavily traded symbols on ISE. In particular, the proposed Taker Fees are lower than Taker Fees assessed to Priority Customer orders in other Select Symbols [17] as well as Taker Fees assessed to other market participants.[18] As such, the Exchange believes that the proposed Regular Order Taker Fees will continue to attract order flow to the benefit of all market participants that trade on the Exchange.

The Exchange believes that the proposed change to increase Regular Order Priority Customer Taker Fees in SPY, QQQ, IWM, and VXX from $0.37 to $0.40 per contract is equitable and not unfairly discriminatory because despite the increase to the fee, Priority Customer interest will continue to be assessed the lowest Regular Order Taker Fees in these symbols. Priority Customer interest brings valuable liquidity to the market, which liquidity benefits other market participants. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

QCC and Solicitation Rebate

The Exchange believes that the proposed change to not pay the ''Customer to Customer'' Rebate for QCC and solicited orders between two Priority Customers is reasonable. Despite the removal of the rebate, the Exchange believes that the proposal will continue to encourage Members to transact QCC and/or other solicited crossing orders on ISE. The Exchange notes that Customer-to-Customer Orders will continue to be aggregated with all other volume to determine the applicable volume tier for rebates.

The Exchange believes that the proposed change to not pay the ''Customer to Customer'' Orders rebate for QCC and solicited orders between two Priority Customers is equitable and not unfairly discriminatory because the Exchange would uniformly not pay any Member a rebate for Customer-to-Customer Orders. The Customer-to-Customer Orders will continue to be counted toward the rebates for all market participants that qualify for such rebates.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. With respect to the increase to the Regular Order Taker Fees for Priority Customers in SPY, QQQ, IWM, and VXX, the Exchange does not believe this proposal imposes an undue burden on competition because despite the increase to the fee, Priority Customer interest will continue to be assessed the lowest Regular Order Taker Fees in these symbols. Priority Customer interest brings valuable liquidity to the market, which liquidity benefits other market participants. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

With respect to the proposed change to not pay the ''Customer to Customer'' Orders rebate for QCC and solicited orders between two Priority Customers, the Exchange does not believe this proposal imposes an undue burden on competition because the Exchange would uniformly not pay any Member a rebate for Customer-to-Customer Orders. The Customer-to-Customer Orders will continue to be counted toward the rebates for all market participants that qualify for such rebates.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[19] and Rule 19b–4(f)(2) [20] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2018–69 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–ISE–2018–69. 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

[17] Currently, ISE charges a Regular Order Taker Fee for Select Symbols, other than SPY, QQQ, IWM, and VXX, of $0.44 per contract for Priority Customer orders.

[18] Currently, the Exchange charges a Regular Order Taker Fee for Select Symbols of $0.45 per contract for Market Maker orders and $0.46 per contract for FarMM, Firm Proprietary/Broker Dealer, and Professional Customers orders.

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

[20] 17 CFR 240.19b–4(f)(2).

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–ISE–2018–69 and should be submitted on or before September 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–17255 Filed 8–10–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 83 FR 25496, June 1, 2018.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Tuesday, June 5, 2018 at 10:00 a.m.

CHANGES IN THE MEETING: The Open Meeting scheduled for Tuesday, June 5, 2018 at 10:00 a.m. has been changed to Tuesday, June 5, 2018 at 11:30 a.m. The following items will not be considered during the Commission's Open Meeting:

- Whether to adopt a new rule as well as amendments to rules and forms to provide certain registered investment companies (''funds'') with an optional method to transmit shareholder reports.
- whether to issue a release requesting comment about processing fees for delivering shareholder reports and other materials to fund investors.
- whether to issue a release requesting comment from individual investors and other interested parties on how to enhance the delivery, design, and content of fund disclosures, including shareholder reports and prospectuses.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

[21] 17 CFR 200.30–3(a)(12).

Dated: June 4, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–17390 Filed 8–9–18; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83794; File No. SR–NASDAQ–2018–062]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Nasdaq Options Regulatory Fee

August 7, 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 July 27, 2018, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise The Nasdaq Options Market LLC's Rules (''NOM'') at Chapter XV, Section 5 to amend the Nasdaq Options Regulatory Fee or ''ORF.''

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on August 1, 2018.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Nasdaq assesses an ORF of $0.0027 per contract side. The Exchange proposes to decrease this ORF to $0.0008 per contract side. In light of recent market volumes on NOM, the Exchange is proposing to change the amount of ORF that will be collected by the Exchange. The Exchange's proposed change to the ORF should balance the Exchange's regulatory revenue against the anticipated costs.

Collection of ORF

Currently, NOM assesses its ORF for each customer option transaction that is either: (1) executed by a Participant on NOM; or (2) cleared by a NOM Participant at The Options Clearing Corporation (''OCC'') in the customer range,[3] even if the transaction was executed by a non-member of NOM, regardless of the exchange on which the transaction occurs.[4] If the OCC clearing member is a NOM Participant, ORF is assessed and collected on all cleared customer contracts (after adjustment for CMTA[5]); and (2) if the OCC clearing member is not a NOM Participant, ORF is collected only on the cleared customer contracts executed at NOM, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.

By way of example, if Broker A, a NOM Participant, routes a customer order to CBOE and the transaction executes on CBOE and clears in Broker A's OCC Clearing account, ORF will be collected by NOM from Broker A's clearing account at OCC via direct debit. While this transaction was executed on a market other than NOM, it was cleared by a NOM Participant in the member's OCC clearing account in the customer range, therefore there is a regulatory nexus between NOM and the transaction. If Broker A was not a NOM Participant, then no ORF should be assessed and collected because there is no nexus; the transaction did not

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Participants must record the appropriate account origin code on all orders at the time of entry in order. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

[4] The Exchange uses reports from OCC when assessing and collecting the ORF.

[5] CMTA or Clearing Member Trade Assignment is a form of ''give-up'' whereby the position will be assigned to a specific clearing firm at OCC.

execute on NOM nor was it cleared by a NOM Participant.

In the case where a Participant both executes a transaction and clears the transaction, the ORF is assessed to and collected from that Participant. In the case where a Participant executes a transaction and a different member clears the transaction, the ORF is assessed to and collected from the Participant who clears the transaction and not the Participant who executes the transaction. In the case where a non-member executes a transaction at an away market and a Participant clears the transaction, the ORF is assessed to and collected from the Participant who clears the transaction. In the case where a Participant executes a transaction on NOM and a non-member clears the transaction, the ORF is assessed to the Participant that executed the transaction on NOM and collected from the non-member who cleared the transaction. In the case where a Participant executes a transaction at an away market and a non-member clears the transaction, the ORF is not assessed to the Participant who executed the transaction or collected from the non-member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the Participant executing the trade at an away market.

ORF Revenue and Monitoring of ORF

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. In determining whether an expense is considered a regulatory cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset ORF.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission.

Proposal

The Exchange is proposing to decrease the ORF from $0.0027 to $0.0008 as of August 1, 2018. In light of recent market volumes on NOM, the Exchange is proposing to decrease the amount of ORF that will be collected by the Exchange. The Exchange regularly reviews its ORF to ensure that the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange believes this adjustment will permit the Exchange to cover a material portion of its regulatory costs, while not exceeding regulatory costs.

The Exchange notified Participants via an Options Trader Alert of the proposed change to the ORF thirty (30) calendar days prior to the proposed operative date, August 1, 2018.[6] The Exchange believes that the prior notification market participants will ensure market participants are prepared to configure their systems to properly account for the ORF.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facility and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that decreasing the ORF from $0.0027 to $0.0008 as of August 1, 2018 is reasonable because the Exchange's collection of ORF needs to be balanced against the amount of regulatory costs incurred by the Exchange. The Exchange believes that the proposed adjustments noted herein will serve to balance the Exchange's regulatory revenue against the anticipated regulatory costs.

The Exchange believes that amending the ORF from $0.0027 to $0.0008 as of August 1, 2018 is equitable and not unfairly discriminatory because assessing the ORF to each Participant for options transactions cleared by OCC in the customer range where the execution occurs on another exchange and is cleared by a NOM Participant is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The ORF is collected by OCC on behalf of NOM from Exchange clearing members for all customer transactions they clear or from non-members for all customer transactions they clear that were executed on NOM. The Exchange believes the ORF ensures fairness by assessing fees to Participants based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* Participant proprietary transactions) of its regulatory program.

The ORF is designed to recover a material portion of the costs of supervising and regulating Participants' customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange will monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, will be less than or equal to the Exchange's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. This proposal does

[6] *See* Options Trader Alert #2018–27.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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 No. SR–NASDAQ–2018–062 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 No. SR–NASDAQ–2018–062. 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 No. SR–NASDAQ–2018–062, and should be submitted on or before September 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–17258 Filed 8–10–18; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83785; File No. SR–PEARL–2018–16]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule

August 7, 2018.

Pursuant to the provisions of 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 July 31, 2018, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the ''Fee Schedule'') to modify certain of the Exchange's system connectivity fees.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 the Fee Schedule regarding connectivity to the Exchange. Specifically, the Exchange proposes to amend Sections 5(a) and (b) of the Fee Schedule to increase the network connectivity fees for the 1 Gigabit (''Gb'') fiber connection, the 10Gb fiber connection, and the 10Gb ultra-low latency (''ULL'') fiber connection, which are charged to both Members [3] and non-Members of the Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange also proposes to increase the network connectivity fees for the 1Gb and 10Gb fiber connections for connectivity to the Exchange's disaster recovery facility.

[3] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange's Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

The Exchange currently offers various bandwidth alternatives for connectivity to the Exchange, consisting of a 1Gb fiber connection, a 10Gb fiber connection, and a 10Gb ULL fiber connection. The 10Gb ULL offering uses an ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange currently assesses the following monthly network connectivity fees to both Members and non-Members for connectivity to the Exchange's primary/secondary facility: (a) $1,100 for the 1Gb connection; (b) $5,500 for the 10Gb connection; and (c) $8,500.00 for the 10Gb ULL connection. The Exchange also assesses to both Members and non-Members a monthly per connection network connectivity fee of $500 for each 1Gb connection to the disaster recovery facility and a monthly per connection network connectivity fee of $2,500 for each 10Gb connection to the disaster recovery facility.

The Exchange's MIAX Express Network Interconnect (''MENI'') can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of both the Exchange and its affiliate, Miami International Securities Exchange (''MIAX Options''), via a single, shared connection. Members and non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems and disaster recovery facilities of the Exchange and MIAX Options via a single, shared connection are assessed only one monthly network connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

The Exchange proposes to increase the monthly network connectivity fees for such connections for both Members and non-Members. The network connectivity fees for connectivity to the Exchange's primary/secondary facility will be increased as follows: (a) From $1,100 to $1,400 for the 1Gb connection; (b) From $5,500 to $6,100 for the 10Gb connection; and (c) from $8,500 to $9,300 for the 10Gb ULL connection. The network connectivity fees for connectivity to the Exchange's disaster recovery facility will be increased as follows: (a) From $500 to $550 for the 1Gb connection; and (b) from $2,500 to $2,750 for the 10Gb connection.

The Exchange believes that the increase in the pricing of the Exchange's connectivity is reflective of the continued value that it provides and the increasing costs to the Exchange for providing and maintaining the necessary hardware and other infrastructure to support this technology. The Exchange notes that other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity. For example, Nasdaq PHLX LLC (''Phlx''), NYSE Arca, Inc. (''Arca''), NYSE American LLC (''NYSE American'') and Nasdaq ISE, LLC (''ISE'') all offer a 1Gb, 10Gb and 10Gb low latency ethernet connectivity alternatives to each of their participants.[4] The Exchange further notes that Phlx, ISE, Arca and NYSE American each charge higher rates for such similar connectivity to primary and secondary facilities.[5] Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.[6] The Exchange believes that it is appropriate to increase its fees charged for use of its connectivity to offset increasing costs associated with providing and maintaining the necessary hardware and other infrastructure to support this technology and also to more closely align its fees with the rates charged by competing options exchanges.

The Exchange proposes to implement the proposed changes to the Fee Schedule effective as of August 1, 2018.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4) of the Act[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the fees assessed for connectivity allow the Exchange to cover the costs associated with providing and maintaining the necessary hardware and other infrastructure to support this technology. The Exchange believes that the proposal to increase the fees for connectivity alternatives is fair, equitable and not unreasonably discriminatory because the increased fees are assessed equally among all users of the applicable connections.

As discussed above, Phlx and ISE each offer different connections with respect to latency, and Arca and NYSE American both offer similar connectivity alternatives.[10] Despite this, Phlx, ISE, Arca and NYSE American charge a higher fee than the Exchange currently charges for similar connections to primary and secondary facilities.[11] Furthermore, the connectivity fees for the disaster recovery facilities of other exchanges are within the range of the proposed fees of the Exchange.[12] For these reasons, the Exchange believes the proposed increase in the fees for the fiber connectivity to the Exchange is reasonable and not unfairly discriminatory.

The Exchange also believes that its proposal is consistent with Section 6(b)(5) of the Act[13] because all MIAX PEARL participants have the opportunity to subscribe to the Exchange's connections. There is also no differentiation among MIAX PEARL participants with regard to the fees charged for these services.

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX PEARL does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. On the

[4] *See* Phlx and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection, which the equivalent of the Exchange's 10Gb ULL connection. S*ee also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit, which the equivalent of the Exchange's 10Gb ULL connection.

[5] *Id.*

[6] *See* Nasdaq ISE Schedule of Fees, IX(D) (charging $3,000 for disaster recovery testing & relocation services); *see also* Cboe Exchange, Inc. (''CBOE'') Fees Schedule, p. 14, Cboe Command Connectivity Charges (charging a monthly fee of $2,000 for a 1Gb disaster recovery network access port and a monthly fee of $6,000 for a 10Gb disaster recovery network access port).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

[10] *See supra* note 4.

[11] *Id.*

[12] *See supra* note 6.

[13] 15 U.S.C. 78f(b)(5).

contrary, the Exchange believes that the proposed changes should increase both intermarket and intramarket competition. Specifically, the Exchange believes that the changes will promote competition by increasing the connectivity fees to become more within the range of comparable fees assessed by other competing exchanges.[14]

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[15] and Rule 19b–4(f)(2)[16] thereunder. 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 should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2018–16 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–PEARL–2018–16. 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–PEARL–2018–16 and should be submitted on or before September 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–17251 Filed 8–10–18; 8:45 am]

BILLING CODE 8011–01–P

[14] *See supra* note 4.

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83793; File No. SR–ISE–2018–70]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Options Regulatory Fee

August 7, 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 July 27, 2018, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise ISE's Schedule of Fees to amend its Options Regulatory Fee or ''ORF''.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on August 1, 2018.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19B–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, ISE assesses an ORF of $0.0016 per contract side. The Exchange proposes to increase this ORF to $0.0020 per contract side. In 2017, ISE reduced its ORF from $0.0039 per contract side to $0.0016 per contract side to account for synergies which resulted from Nasdaq's acquisition [3] of the Exchange. At this time, the Exchange proposes an increase to its ORF that reflects its current expense profile. The Exchange's proposed change to the ORF should balance the Exchange's regulatory revenue against the anticipated costs.

Collection of ORF

Currently, ISE assesses its ORF for each customer option transaction that is either: (1) Executed by a Member on ISE; or (2) cleared by an ISE Member at The Options Clearing Corporation (''OCC'') in the customer range,[4] even if the transaction was executed by a non-member of ISE, regardless of the exchange on which the transaction occurs.[5] If the OCC clearing member is an ISE Member, ORF is assessed and collected on all cleared customer contracts (after adjustment for CMTA [6]); and (2) if the OCC clearing member is not an ISE Member, ORF is collected only on the cleared customer contracts executed at ISE, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.

By way of example, if Broker A, an ISE Member, routes a customer order to CBOE and the transaction executes on CBOE and clears in Broker A's OCC Clearing account, ORF will be collected by ISE from Broker A's clearing account at OCC via direct debit. While this transaction was executed on a market other than ISE, it was cleared by an ISE Member in the member's OCC clearing account in the customer range, therefore there is a regulatory nexus between ISE and the transaction. If Broker A was not an ISE Member, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on ISE nor was it cleared by an ISE Member.

In the case where a Member both executes a transaction and clears the transaction, the ORF is assessed to and collected from that Member. In the case where a Member executes a transaction and a different member clears the transaction, the ORF is assessed to and collected from the Member who clears the transaction and not the Member who executes the transaction. In the case where a non-member executes a transaction at an away market and a Member clears the transaction, the ORF is assessed to and collected from the Member who clears the transaction. In the case where a Member executes a transaction on ISE and a non-member clears the transaction, the ORF is assessed to the Member that executed the transaction on ISE and collected from the non-member who cleared the transaction. In the case where a Member executes a transaction at an away market and a non-member clears the transaction, the ORF is not assessed to the Member who executed the transaction or collected from the non-member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the Member executing the trade at an away market.

ORF Revenue and Monitoring of ORF

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. In determining whether an expense is considered a regulatory cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset ORF.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission.

Proposal

The Exchange is proposing to increase the ORF from $0.0016 to $0.0020 as of August 1, 2018 to reflect its current expense expenses while also ensuring that the ORF will not exceed costs. The Exchange regularly reviews its ORF to ensure that the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange believes this adjustment will permit the Exchange to cover a material portion of its regulatory costs, while not exceeding regulatory costs.

The Exchange notified Members via an Options Trader Alert of the proposed change to the ORF thirty (30) calendar days prior to the proposed operative date, August 1, 2018.[7] The Exchange believes that the prior notification market participants will ensure market participants are prepared to configure their systems to properly account for the ORF.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act [9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facility and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that increasing the ORF from $0.0016 to $0.0020 as of August 1, 2018 is reasonable because the Exchange's collection of ORF needs to be balanced against the amount of regulatory costs incurred by the Exchange. The Exchange believes that the proposed adjustments noted herein will serve to balance the Exchange's regulatory revenue against the

[3] On June 30, 2016, Nasdaq completed its acquisition of the International Securities Exchange. With the acquisition, ISE regulatory program has been examined and conformed to certain best practices which exist today on NASDAQ PHLX LLC, The NASDAQ Options Market LLC and NASDAQ BX, Inc. (collectively ''Nasdaq Markets'') and Nasdaq GEMX, LLC. These synergies in combination with conforming the expense and revenue review of ISE to that of the Nasdaq Markets resulted in decreased regulatory expenses for ISE. *See* Securities Exchange Act Release No. 81345 (August 8, 2017), 82 FR 155 (August 14, 2017) (SR–ISE–2017–71).

[4] Members must record the appropriate account origin code on all orders at the time of entry in order. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

[5] The Exchange uses reports from OCC when assessing and collecting the ORF.

[6] CMTA or Clearing Member Trade Assignment is a form of ''give-up'' whereby the position will be assigned to a specific clearing firm at OCC.

[7] *See* Options Trader Alert #2018–27.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

anticipated regulatory costs. While these adjustments result in an increase, the increase is modest.

The Exchange believes that amending the ORF from $0.0016 to $0.0020 as of August 1, 2018 is equitable and not unfairly discriminatory because assessing the ORF to each Member for options transactions cleared by OCC in the customer range where the execution occurs on another exchange and is cleared by an ISE Member is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The ORF is collected by OCC on behalf of ISE from Exchange clearing members for all customer transactions they clear or from non-members for all customer transactions they clear that were executed on ISE. The Exchange believes the ORF ensures fairness by assessing fees to Members based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* Member proprietary transactions) of its regulatory program.

The ORF is designed to recover a material portion of the costs of supervising and regulating Members' customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange will monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, will be less than or equal to the Exchange's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. This proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–ISE–2018–70 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 No. SR–ISE–2018–70. 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 No. SR–ISE–2018–70, and should be submitted on or before September 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–17257 Filed 8–10–18; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83784; File No. SR–CboeBZX–2017–006]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of Twelve Monthly Series of the Cboe Vest S&P 500 Enhanced Growth Strategy ETF Under the ETF Series Solutions Trust Under Rule 14.11(c)(3), Index Fund Shares

August 7, 2018.

On November 21, 2017, Cboe BZX Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade, under BZX Rule 14.11(c)(3), shares of twelve monthly series of the Cboe Vest S&P 500® Enhanced Growth Strategy ETF under the ETF Series Solutions Trust. The proposed rule change was published for comment in the **Federal Register** on December 11, 2017.[3] On January 22, 2018, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to March 11, 2018.[4] On March 9, 2018, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [5] to determine whether to approve or disapprove the proposed rule change.[6] On April 13, 2018, the Exchange filed Amendment No. 1 to the proposed rule change.[7] On June 6, 2018, the Commission designated a longer period for Commission action on the proposed rule change.[8] The Commission received no comments on the proposed rule change. On July 31, 2018, the Exchange withdrew the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–17250 Filed 8–10–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83786; File No. SR–MIAX–2018–19]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

August 7, 2018.

Pursuant to the provisions of 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 July 31, 2018, Miami International Securities Exchange LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to modify certain of the Exchange's system connectivity fees.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 the Fee Schedule regarding connectivity to the Exchange. Specifically, the Exchange proposes to amend Sections 5a) and b) of the Fee Schedule to increase the network connectivity fees for the 1 Gigabit (''Gb'') fiber connection, the 10Gb fiber connection, and the 10Gb ultra-low latency (''ULL'') fiber connection, which are charged to both Members [3] and non-Members of the Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange also proposes to increase the network connectivity fees for the 1Gb and 10Gb fiber connections for connectivity to the Exchange's disaster recovery facility.

The Exchange currently offers various bandwidth alternatives for connectivity to the Exchange, consisting of a 1Gb fiber connection, a 10Gb fiber connection, and a 10Gb ULL fiber connection. The 10Gb ULL offering uses an ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange currently assesses the following monthly network connectivity fees to both Members and non-Members for connectivity to the Exchange's primary/secondary facility: (a) $1,100 for the 1Gb connection; (b) $5,500 for the 10Gb connection; and (c) $8,500.00 for the 10Gb ULL connection. The Exchange also assesses to both Members and non-Members a monthly per connection network connectivity fee of $500 for each 1Gb connection to the disaster recovery facility and a monthly per connection network connectivity fee of $2,500 for each 10Gb connection to the disaster recovery facility.

The Exchange's MIAX Express Network Interconnect (''MENI'') can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of both the Exchange and its affiliate, MIAX PEARL, LLC (''MIAX PEARL''), via a single, shared connection. Members and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82216 (December 5, 2017), 82 FR 58235.

[4] *See* Securities Exchange Act Release No. 82552, 83 FR 3819 (January 26, 2018).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 82843, 83 FR 11264 (March 14, 2018).

[7] Amendment No. 1, which amended and replaced the proposed rule change in its entirety, is available at: *https://www.sec.gov/comments/sr-cboebzx-2017-006/cboebzx2017006-3458512-162202.pdf.*

[8] *See* Securities Exchange Act Release No. 83388, 83 FR 27356 (June 12, 2018).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems and disaster recovery facilities of the Exchange and MIAX PEARL via a single, shared connection are assessed only one monthly network connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

The Exchange proposes to increase the monthly network connectivity fees for such connections for both Members and non-Members. The network connectivity fees for connectivity to the Exchange's primary/secondary facility will be increased as follows: (a) from $1,100 to $1,400 for the 1Gb connection; (b) from $5,500 to $6,100 for the 10Gb connection; and (c) from $8,500 to $9,300 for the 10Gb ULL connection. The network connectivity fees for connectivity to the Exchange's disaster recovery facility will be increased as follows: (a) from $500 to $550 for the 1Gb connection; and (b) from $2,500 to $2,750 for the 10Gb connection.

The Exchange believes that the increase in the pricing of the Exchange's connectivity is reflective of the continued value that it provides and the increasing costs to the Exchange for providing and maintaining the necessary hardware and other infrastructure to support this technology. The Exchange notes that other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity. For example, Nasdaq PHLX LLC (''Phlx''), NYSE Arca, Inc. (''Arca''), NYSE American LLC (''NYSE American'') and Nasdaq ISE, LLC (''ISE'') all offer a 1Gb, 10Gb and 10Gb low latency ethernet connectivity alternatives to each of their participants.[4] The Exchange further notes that Phlx, ISE, Arca and NYSE American each charge higher rates for such similar connectivity to primary and secondary facilities.[5] Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.[6] The Exchange believes that it is appropriate to increase its fees charged for use of its connectivity to offset increasing costs associated with providing and maintaining the necessary hardware and other infrastructure to support this technology and also to more closely align its fees with the rates charged by competing options exchanges.

The Exchange proposes to implement the proposed changes to the Fee Schedule effective as of August 1, 2018.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4) of the Act[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the fees assessed for connectivity allow the Exchange to cover the costs associated with providing and maintaining the necessary hardware and other infrastructure to support this technology. The Exchange believes that the proposal to increase the fees for connectivity alternatives is fair, equitable and not unreasonably discriminatory because the increased fees are assessed equally among all users of the applicable connections.

As discussed above, Phlx and ISE each offer different connections with respect to latency, and Arca and NYSE American both offer similar connectivity alternatives.[10] Despite this, Phlx, ISE, Arca and NYSE American charge a higher fee than the Exchange currently charges for similar connections to primary and secondary facilities.[11] Furthermore, the connectivity fees for the disaster recovery facilities of other exchanges are within the range of the proposed fees of the Exchange.[12] For these reasons, the Exchange believes the proposed increase in the fees for the fiber connectivity to the Exchange is reasonable and not unfairly discriminatory.

The Exchange also believes that its proposal is consistent with Section 6(b)(5) of the Act[13] because all MIAX Options participants have the opportunity to subscribe to the Exchange's connections. There is also no differentiation among MIAX Options participants with regard to the fees charged for these services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes that the proposed changes should increase both intermarket and intramarket competition. Specifically, the Exchange believes that the changes will promote competition by increasing the connectivity fees to become more within the range of comparable fees assessed by other competing exchanges.[14]

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[4] *See* Phlx and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection, which the equivalent of the Exchange's 10Gb ULL connection. S*ee also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit, which the equivalent of the Exchange's 10Gb ULL connection.

[5] *Id.*

[6] *See* Nasdaq ISE Schedule of Fees, IX(D) (charging $3,000 for disaster recovery testing & relocation services); *see also* Cboe Exchange, Inc. (''Cboe'') Fees Schedule, p. 14, Cboe Command Connectivity Charges (charging a monthly fee of $2,000 for a 1Gb disaster recovery network access port and a monthly fee of $6,000 for a 10Gb disaster recovery network access port).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

[10] *See supra* note 4.

[11] *Id.*

[12] *See supra* note 6.

[13] 15 U.S.C. 78f(b)(5).

[14] *See supra* note 4.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[15] and Rule 19b–4(f)(2)[16] thereunder. 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 should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2018–19 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–MIAX–2018–19. 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–MIAX–2018–19 and should be submitted on or before September 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–17252 Filed 8–10–18; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, August 2, 2018.

PLACE: Closed Commission Hearing Room 10800.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Peirce, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: July 26, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–17391 Filed 8–9–18; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83789; File No. SR–GEMX–2018–27]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Options Regulatory Fee

August 7, 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 July 27, 2018, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise GEMX's Schedule of Fees to amend its Options Regulatory Fee or ''ORF''.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on August 1, 2018.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqgemx.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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, GEMX assesses an ORF of $0.0010 per contract side. The Exchange proposes to increase this ORF to $0.0020 per contract side. GEMX proposes to increase its ORF to recoup regulatory expenses while also ensuring that the ORF will not exceed costs. The Exchange's proposed change to the ORF should balance the Exchange's regulatory revenue against the anticipated costs.

Collection of ORF

Currently, GEMX assesses its ORF for each customer option transaction that is either: (1) Executed by a Member on GEMX; or (2) cleared by a GEMX Member at The Options Clearing Corporation (''OCC'') in the customer range,[3] even if the transaction was executed by a non-member of GEMX, regardless of the exchange on which the transaction occurs.[4] If the OCC clearing member is a GEMX Member, ORF is assessed and collected on all cleared customer contracts (after adjustment for CMTA [5]); and (2) if the OCC clearing member is not a GEMX Member, ORF is collected only on the cleared customer contracts executed at GEMX, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.

By way of example, if Broker A, a GEMX Member, routes a customer order to CBOE and the transaction executes on CBOE and clears in Broker A's OCC Clearing account, ORF will be collected by GEMX from Broker A's clearing account at OCC via direct debit. While this transaction was executed on a market other than GEMX, it was cleared by a GEMX Member in the member's OCC clearing account in the customer range, therefore there is a regulatory nexus between GEMX and the transaction. If Broker A was not a GEMX Member, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on GEMX nor was it cleared by a GEMX Member.

In the case where a Member both executes a transaction and clears the transaction, the ORF is assessed to and collected from that Member. In the case where a Member executes a transaction and a different member clears the transaction, the ORF is assessed to and collected from the Member who clears the transaction and not the Member who executes the transaction. In the case where a non-member executes a transaction at an away market and a Member clears the transaction, the ORF is assessed to and collected from the Member who clears the transaction. In the case where a Member executes a transaction on GEMX and a non-member clears the transaction, the ORF is assessed to the Member that executed the transaction on GEMX and collected from the non-member who cleared the transaction. In the case where a Member executes a transaction at an away market and a non-member clears the transaction, the ORF is not assessed to the Member who executed the transaction or collected from the non-member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the Member executing the trade at an away market.

ORF Revenue and Monitoring of ORF

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. In determining whether an expense is considered a regulatory cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset ORF.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission.

Proposal

The Exchange is proposing to increase the ORF from $0.0010 to $0.0020 as of August 1, 2018 to recoup regulatory expenses while also ensuring that the ORF will not exceed costs. The Exchange regularly reviews its ORF to ensure that the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange believes this adjustment will permit the Exchange to cover a material portion of its regulatory costs, while not exceeding regulatory costs.

The Exchange notified Members via an Options Trader Alert of the proposed change to the ORF thirty (30) calendar days prior to the proposed operative date, August 1, 2018.[6] The Exchange believes that the prior notification market participants will ensure market participants are prepared to configure their systems to properly account for the ORF.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act [8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facility and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that increasing the ORF from $0.0010 to $0.0020 as of August 1, 2018 is reasonable because the Exchange's collection of ORF needs to be balanced against the amount of regulatory costs incurred by the Exchange. The Exchange believes that the proposed adjustments noted herein will serve to balance the Exchange's regulatory revenue against the anticipated regulatory costs. While these adjustments result in an increase, the increase is modest.

[3] Members must record the appropriate account origin code on all orders at the time of entry in order. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

[4] The Exchange uses reports from OCC when assessing and collecting the ORF.

[5] CMTA or Clearing Member Trade Assignment is a form of ''give-up'' whereby the position will be assigned to a specific clearing firm at OCC.

[6] *See* Options Trader Alert #2018–27.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that amending the ORF from $0.0010 to $0.0020 as of August 1, 2018 is equitable and not unfairly discriminatory because assessing the ORF to each Member for options transactions cleared by OCC in the customer range where the execution occurs on another exchange and is cleared by a GEMX Member is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The ORF is collected by OCC on behalf of GEMX from Exchange clearing members for all customer transactions they clear or from non-members for all customer transactions they clear that were executed on GEMX. The Exchange believes the ORF ensures fairness by assessing fees to Members based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* Member proprietary transactions) of its regulatory program.

The ORF is designed to recover a material portion of the costs of supervising and regulating Members' customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange will monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, will be less than or equal to the Exchange's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. This proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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 No. SR–GEMX–2018–27 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 No. SR–GEMX–2018–27. 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 No. SR–GEMX–2018–27, and should be submitted on or before September 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–17254 Filed 8–10–18; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83788; File No. SR–MIAX–2018–18]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

August 7, 2018.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4

[1] 15 U.S.C. 78s(b)(1).

thereunder,[2] notice is hereby given that on July 31, 2018, Miami International Securities Exchange LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 the Fee Schedule to adopt a stock handling fee for stock-option orders (including stock-option eQuotes) executed against other stock-option orders in the complex order book, which the Exchange must route to an outside venue.

The Exchange recently amended Exchange Rule 518, Complex Orders, to update its rule text regarding stock-option orders, in connection with the upcoming launch of such orders on the Exchange.[3] Complex orders began trading on the Exchange on October 24, 2016.[4] In its rule filing to establish the trading of complex orders, the Exchange adopted rules for handling stock-option orders.[5] The Exchange also indicated that it would determine when stock-option orders would be made available for trading in the System[6] and would communicate such determination to Members[7] via Regulatory Circular.[8] The Exchange made certain changes to its rule text, in connection with the upcoming launch of such orders on the Exchange, which is scheduled for Q3 2018.

The Exchange proposes to adopt a stock handling fee applicable to stock-option orders (including stock-option eQuotes) executed against other stock-option orders in the complex order book, which the Exchange must route to an outside venue. Specifically, the Exchange proposes to adopt a stock handling fee of $0.0010 per share for the stock leg of stock-option orders executed against other stock-option orders in the complex order book, which are routed to an outside venue. This stock handling fee to be assessed by the Exchange will cover all fees charged by the outside venue that prints the trade, and it is also intended to compensate the Exchange for matching these stock-option orders against other stock-option orders on the complex order book. A maximum of $50 per order, per day, will be assessed under this fee. The cap is intended to give market participants assurance that they will not pay more than the capped amount for the execution of the stock leg of their stock-option orders. The Exchange believes that by limiting this fee to a maximum of $50 per order, per day, the Exchange addresses the possibility that a GTC order could be executed over multiple days. For example, if such an order was partially-executed on a Monday, and then the remainder was fully-executed on a Tuesday, the total maximum fee charged to the market participant would be $100 ($50 per day). In addition to the Exchange's fee, the Exchange will also pass through to the Member any fees assessed by the routing broker-dealer utilized by the Exchange with respect to the execution of the stock leg of any such order (with such fees to be passed through at cost). For example, the Exchange anticipates that the routing broker-dealer will bill the Exchange for Section 31 fees and FINRA Trading Activity Fees with respect to the execution of the stock leg of any such order. The Exchange will pass such fees through to the Member, at cost (that is, without any additional mark-up).

Separately, the Exchange also notes that it currently charges fees to Members who subscribe to an Exchange-provided data feed that contains real-time clearing trade updates, which includes trades in its complex order book. Specifically, through the Exchange's Clearing Trade Drop (''CTD'') port, it provides updates, including the Member's clearing trade messages, on a low latency, real-time basis.[9] With respect to stock-option orders, the Exchange notes that while such CTD port will now include information relating to the execution of both the option leg(s) and the stock leg(s) of a stock-option order, the Exchange will not charge an additional CTD fee for the stock leg(s) of a stock-option order.

The proposed rule change is scheduled to become operative on August 1, 2018.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(4) of the Act[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using its facilities The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[12] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Exchange believes that the proposed stock handling fee for stock-option orders (including stock-option eQuotes) is consistent with Section 6(b)(4) of the Act in that it is reasonable, equitable and not unfairly discriminatory. The Exchange believes the proposed stock handling fee for

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83726 (July 27, 2018) (SR–MIAX–2018–16) Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 518, Complex Orders.

[4] *See* MIAX Regulatory Circular 2016–43, October 20, 2016.

[5] *See* Securities Exchange Act Release No. 79072 (October 7, 2014), 81 FR 71131 (October 14, 2016) (SR–MIAX–2016–26).

[6] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[7] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[8] *See supra* note 3.

[9] *See* Fee Schedule 5)d)iii).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(5).

stock-option orders is reasonable and equitable as the proposed fee will cover the costs of developing and maintaining the systems that allow for the matching and processing of the stock legs of stock-option orders executed in the complex order book, as well as all fees charged by the outside venue that prints the trade. The Exchange also believes it is reasonable and equitable to pass through to the Member any fees assessed by the routing broker-dealer utilized by the Exchange with respect to the execution of the stock leg of any such order (with such fees to be passed through at cost). The Exchange notes that another exchange has a comparable fee for the handling of the stock leg of stock-option orders. Specifically, Nasdaq ISE (''ISE'') charges a stock handling fee of $0.0010 per share which is capped at $50 per order.[13] The Exchange also believes that its proposal is consistent with Section 6(b)(5) of the Act [14] because it will be uniformly applied to all Members that execute stock-option orders in the complex order book on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee is similar to and within the range of fees charged by the Exchange's competitor.[15] The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. For the reasons stated above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[13] *See* ISE Schedule of Fees, Section II; *see also* Securities Exchange Act Release No. 74117 (January 22, 2015), 80 FR 4600 (January 28, 2015) (SR–ISE–2015–03).

[14] 15 U.S.C. 78f(b)(5).

[15] *See supra* note 13.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[16] and Rule 19b–4(f)(2)[17] thereunder. 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 should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2018–18 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–MIAX–2018–18. 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–MIAX–2018–18 and should be submitted on or before September 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–17253 Filed 8–10–18; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b–4(f)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83792; File No. SR–CboeBZX–2018–040]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of SolidX Bitcoin Shares Issued by the VanEck SolidX Bitcoin Trust

August 7, 2018.

On June 20, 2018, Cboe BZX Exchange, Inc. (''BZX'') 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 list and trade shares of SolidX Bitcoin Shares issued by the VanEck SolidX Bitcoin Trust, under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on July 2, 2018.[3] As of August 6, 2018, the Commission has received more than 1,300 comments on the proposed rule change.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83520 (June 26, 2018), 83 FR 31014 (July 2, 2018).

[4] All comments on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboebzx-2018-040/cboebzx2018040.htm.*

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates September 30, 2018, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CboeBZX–2018–040).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–17256 Filed 8–10–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, August 16, 2018.

PLACE: Closed Commission Hearing Room 10800.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Jackson, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: August 9, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–17473 Filed 8–9–18; 4:15 pm]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15620 and #15621; MICHIGAN Disaster Number MI–00066]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of MICHIGAN

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Michigan (FEMA–4381–DR), dated 08/02/2018.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 06/16/2018 through 06/18/2018.

DATES: Issued on 08/02/2018.

Physical Loan Application Deadline Date: 10/01/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 05/02/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/02/2018, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Gogebic, Houghton, Menominee.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	2.500
Non-Profit Organizations Without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 15620B and for economic injury is 156210.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2018–17270 Filed 8–10–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15622 and #15623; California Disaster Number CA–00288]

Presidential Declaration of a Major Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of California (FEMA–4382–DR), dated 08/04/2018.

Incident: Wildfires and High Winds.

Incident Period: 07/23/2018 and continuing.

DATES: Issued on 08/04/2018.

Physical Loan Application Deadline Date: 10/03/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 05/06/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/04/2018, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Shasta.

Contiguous Counties (Economic Injury Loans Only):

California: Lassen, Modoc, Plumas, Siskiyou, Tehama, Trinity.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.875
Homeowners without Credit Available Elsewhere	1.938
Businesses with Credit Available Elsewhere	7.220
Businesses without Credit Available Elsewhere	3.610
Non-Profit Organizations with Credit Available Elsewhere	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.610
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 156225 and for economic injury is 156230.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–17266 Filed 8–10–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15624 and #15625; California Disaster Number CA–00292]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of California (FEMA–4382–DR), dated 08/04/2018.

Incident: Wildfires and High Winds.

Incident Period: 07/23/2018 and continuing.

DATES: Issued on 08/04/2018.

Physical Loan Application Deadline Date: 10/03/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 05/06/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/04/2018, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Shasta.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 156245 and for economic injury is 156250.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–17265 Filed 8–10–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Forum: SBA Guaranteed Business Loans to Poultry Farmers

AGENCY: U.S. Small Business Administration.

ACTION: Notice of meeting.

SUMMARY: The Small Business Administration (SBA) Office of Capital Access will hold two public forums with members of the general public. The purpose of these meetings is to better understand the use of SBA guaranteed loans by small farmers in the poultry industry. The first public forum will be held in Gainesville, Georgia and the second public forum will be held in Little Rock, Arkansas.

DATES: The Gainesville, Georgia public forum will take place on August 16, 2018, from 10:00 a.m. to 11:30 a.m. Eastern Daylight Time. The Little Rock, Arkansas public forum will take place on August 22, 2018, from 9:30 a.m. to 11:00 a.m. Central Daylight Time. There will be no telephone call-in for either meeting.

ADDRESSES: The Gainesville, Georgia public forum meeting will be held at the Nopone Road Recreation Center, 4175 Nopone Rd, Gainesville, GA 30506.

The Little Rock, Arkansas public forum meeting will be held at University of Arkansas System Division of Agriculture Cooperative Extension Office, 2301 S University Ave., Little Rock, AR 72204.

Please note the registration instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For Gainesville, Georgia, contact Terri Denison, SBA District Director, Georgia District Office (404) 331–0100 or *Terri.Denison@sba.gov.*

For Little Rock, Arkansas, contact Edward Haddock, SBA District Director, Arkansas District Office (501) 324–7379 or *edward.haddock@sba.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Small Business Administration (SBA) is reviewing its policies and procedures regarding SBA-guaranteed loans made to small business farmers in the poultry industry. SBA is seeking to better understand the credit needs of small business poultry farmers, their business operations, and their relationship to integrators in the poultry industry.

This is an opportunity for members of the public to provide input in person regarding financing of small poultry farms. Please note that the purpose of the forum is to hear from members of the public. No policy recommendations or views will be offered by SBA at this forum.

All interested parties must register in advance to attend. Attendance at each public forum is limited to the first 50 individuals who register per location.

Participants interested in the Gainesville, Georgia public forum may register at: *https://www.eventbrite.com/e/us-small-business-administration-public-forum-tickets-48696832537.*

Participants interested in the Little Rock, Arkansas public forum may register at: *https://www.eventbrite.com/e/us-small-business-administration-public-forum-tickets-48617799146.*

Dated: August 8, 2018.

Stephen W. Kucharski,

Acting Associate Administrator, Office of Capital Access.

[FR Doc. 2018–17347 Filed 8–10–18; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 10499]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''Nordic Impressions: Art From Åland, Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway, and Sweden, 1821–2017'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Nordic Impressions: Art from Åland, Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway, and Sweden, 1821–2017,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Phillips Collection, Washington, District of Columbia, from on or about October 13, 2018, until on or about January 13, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 236–11 of July 27, 2018.

Jennifer Z. Galt,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2018–17330 Filed 8–10–18; 8:45 am]

BILLING CODE 4710–05–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: June 1–30, 2018.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, 717–238–0423, ext. 1312, *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and § 806.22 (f) for the time period specified above:

Approvals by Rule Issued Under 18 CFR 806.22(f)

1. BKV Operating, LLC, Pad ID: Plushanski Well Pad, ABR–201806001, Lemon Township, Wyoming County, Pa.; Consumptive Use of Up to 2.1000 mgd; Approval Date: June 7, 2018.

2. Cabot Oil & Gas Corporation, Pad ID: BishopB P1, ABR–201305013.R1, Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: June 7, 2018.

3. Cabot Oil & Gas Corporation, Pad ID: HustonJ P1, ABR–201305014.R1, Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: June 7, 2018.

4. Cabot Oil & Gas Corporation, Pad ID: HouselR P1, ABR–201305015.R1, Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: June 7, 2018.

5. Cabot Oil & Gas Corporation, Pad ID: GillinghamR P1, ABR–201305017.R1, Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: June 7, 2018.

6. Repsol Oil & Gas USA, LLC, Pad ID: THORNE (07 080) G, ABR–201306005.R1, Apolacon Township, Susquehanna County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: June 7, 2018.

7. Repsol Oil & Gas USA, LLC, Pad ID: TRAVER (07 081) E, ABR–201306006.R1, Choconut Township, Susquehanna County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: June 7, 2018.

8. Repsol Oil & Gas USA, LLC, Pad ID: STICKNEY (07 087) A, ABR–201312004.R1, Choconut Township, Susquehanna County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: June 7, 2018.

9. SWN Production Company, LLC, Pad ID: Heckman Camp (Pad F), ABR–201307001.R1, Herrick Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: June 7, 2018.

10. SWN Production Company, LLC, Pad ID: Whipple (Pad 14), ABR–201307003.R1, Herrick Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: June 7, 2018.

11. SWN Production Company, LLC, Pad ID: King N (Pad NW1), ABR–201307004.R1, Franklin Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: June 7, 2018.

12. Range Resources—Appalachia, LLC, Pad ID: Laurel Hill B Unit, ABR–201306004.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 1.0000 mgd; Approval Date: June 11, 2018.

13. Cabot Oil & Gas Corporation, Pad ID: ReynoldsR P1, ABR–201306008.R1, Jessup Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: June 21, 2018.

14. Cabot Oil & Gas Corporation, Pad ID: StarzecE P1, ABR–201306009.R1, Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: June 21, 2018.

15. SWN Production Company, LLC, Pad ID: TNT LTD PART WEST, ABR–201307002.R1, New Milford Township,

Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: June 21, 2018.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: August 7, 2018.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2018–17239 Filed 8–10–18; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Rescinded for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the approved by rule projects rescinded by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: June 1–30, 2018.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net*. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, being rescinded for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and § 806.22(f) for the time period specified above:

Rescinded ABR Issued

1. Samson Exploration, LLC, Pad ID: Pardee & Curtin Lumber Co. C–04, ABR–20090901.R1, Shippen Township, Cameron County, Pa.; Rescind Date: June 26, 2018.

2. Samson Exploration, LLC, Pad ID: Pardee & Curtin Lumber Co. C–05, ABR–20100116.R1, Shippen Township, Cameron County, Pa.; Rescind Date: June 26, 2018.

3. Samson Exploration, LLC, Pad ID: Pardee & Curtin Lumber Co. C–07H, ABR–20100117.R1, Lumber Township, Cameron County, Pa.; Rescind Date: June 26, 2018.

4. Samson Exploration, LLC, Pad ID: Pardee & Curtin Lumber Co. C–09H, ABR–20091103.R1, Shippen Township, Cameron County, Pa.; Rescind Date: June 26, 2018.

5. Samson Exploration, LLC, Pad ID: Pardee & Curtin Lumber Co. C–12H, ABR–201011062.R1, Shippen Township, Cameron County, Pa.; Rescind Date: June 26, 2018.

6. Samson Exploration, LLC, Pad ID: Pardee & Curtin Lumber Co. C–17H, ABR–201108016.R1, Shippen Township, Cameron County, Pa.; Rescind Date: June 26, 2018.

7. SWEPI, LP, Pad ID: Benson 130D, ABR–20091012.R1, Richmond Township, Tioga County, Pa.; Rescind Date: June 27, 2018.

8. SWEPI, LP, Pad ID: Brumwell 657 revised, ABR–201401003, Richmond Township, Tioga County, Pa.; Rescind Date: June 27, 2018.

9. SWEPI, LP, Pad ID: Owlett 843R, ABR–201204007.R1, Middlebury Township, Tioga County, Pa.; Rescind Date: June 27, 2018.

10. SWN Production Company, LLC, Pad ID: Belcher, ABR–201011015.R1, Clifford Township, Susquehanna County, Pa.; Rescind Date: June 28, 2018.

11. SWN Production Company, LLC, Pad ID: CSB, ABR–201108013.R1, Cherry Township, Sullivan County, Pa.; Rescind Date: June 28, 2018.

12. SWN Production Company, LLC, Pad ID: McNamara Well Pad, ABR–201203011.R1, Silver Lake Township, Susquehanna County, Pa.; Rescind Date: June 28, 2018.

13. SWN Production Company, LLC, Pad ID: Shively Pad, ABR–201108011.R1, Lenox Township, Susquehanna County, Pa.; Rescind Date: June 28, 2018.

14. SWN Production Company, LLC, Pad ID: Stang Well No. 1, ABR–20090941.R1, Rush Township, Susquehanna County, Pa.; Rescind Date: June 28, 2018.

15. SWN Production Company, LLC, Pad ID: Tall Maples, ABR–201010056.R1, Elkland Township, Sullivan County, Pa.; Rescind Date: June 28, 2018.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: August 7, 2018.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2018–17240 Filed 8–10–18; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Minor Modifications

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the minor modifications approved for a previously approved project by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: June 1–30, 2018.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists previously approved projects, receiving approval of minor modifications, described below, pursuant to 18 CFR 806.18 for the time period specified above:

Minor Modifications Issued Under 18 CFR 806.18

1. Furman Foods, Inc., dba Furmano's, Docket No. 20130608–2, Point Township, Northumberland County, Pa.; approval to add Wells H1, H2, and H4 as additional sources of water for consumptive use; Approval Date: June 20, 2018.

2. Furman Foods, Inc., dba Furmano's, Docket No. 20120621–1, Point Township, Northumberland County, Pa.; approval to changes in the authorized water uses; Approval Date: June 20, 2018.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: August 7, 2018.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2018–17237 Filed 8–10–18; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2018–0041]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the

Federal Register by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by October 12, 2018.

ADDRESSES: You may submit comments identified by DOT Docket ID 2018–0041 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Melissa Corder, 202–366–5853, *melissa.corder@dot.gov;* Office of Real Estate Services, Federal Highway Administration, Department of Transportation, New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 6:15 a.m. to 3:45 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Fixed Residential Moving Cost Schedule.

Background: Relocation assistance payments to owners and tenants who move personal property for a Federal or federally-assisted program or project are governed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act). 49 Code of Federal Regulations (CFR), part 24, is the implementing regulation for the Uniform Act. 49 CFR 24.301 addresses payments for actual and reasonable moving and related expenses. The fixed residential moving cost schedule is an administrative alternative to reimbursement of actual moving costs. This option provides flexibility for the agency and affected property owners and tenants. The FHWA requests the State Departments of Transportation (State DOTs) to analyze moving cost data periodically to assure that the fixed residential moving cost schedules accurately reflect reasonable moving and related expenses. The regulation allows State DOTs flexibility in determining how to collect the cost data in order to reduce the burden of government regulation. Updated State fixed residential moving costs are submitted to the FHWA electronically.

Respondents: State Departments of Transportation (52, including the District of Columbia and Puerto Rico).

Frequency: Once every 3 years.

Estimated Average Burden per Response: 24 hours per respondent.

Estimated Total Annual Burden Hours: 24 hours for each of the 52 State Departments of Transportation. The total is 1,248 burden hours, once every 3 years, or 416 hours annually.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: August 7, 2018.

Michael Howell,

Information Collection Officer.

[FR Doc. 2018–17314 Filed 8–10–18; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2018–0075]

Request for Comments of a Previously Approved Information Collection(s)

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comment. A **Federal Register** Notice with a 60-day comment period soliciting comments on the information collection was published on June 4, 2018. One comment was received that does not warrant any adjustments to the forms.

DATES: Comments must be submitted on or before September 12, 2018.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mr. Marc Pentino, Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–6968, or at *marc.pentino@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Disadvantaged Business Enterprise Program Collections.

OMB Control Number: 2105–0510.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: The following information collections are associated with the U.S. Department of Transportation's (DOT) Disadvantaged Business Enterprise (DBE) program: Uniform Report of DBE Awards or Commitments and Payments, Uniform Certification Application Form, Annual Affidavit of No Change, DOT Personal Net Worth Form, and Reporting Requirements for Percentages of DBEs in Various Categories. All five collections were previously approved under one OMB Control Number (2105–0510) to allow DOT to more efficiently administer the DBE program. The DBE program is mandated by statute, including Section 1101(b) of the Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114–94) and 49 U.S.C. 47113. DOT's final regulations implementing these statutes are 49 CFR parts 23 and 26. The information to be collected is necessary because it helps to ensure that State and local recipients that let federally-funded contracts carry out their mandated responsibility to provide a level playing field for small businesses owned and controlled by socially and economically disadvantaged individuals.

Uniform Report of DBE Awards/Commitments and Payments

Affected Public: DOT financially-assisted State and local transportation agencies.

Number of Respondents: 1,250.
Frequency: Once/twice per year.
Number of Responses: One/two.
Total Annual Burden: 9,000 hours.

Uniform Certification Application Form

Affected Public: Firms applying to be certified as DBEs.
Number of Respondents: 9,500.
Frequency: Once during initial certification.
Number of Responses: One.
Total Annual Burden: 76,000 hours.

Annual Affidavit of No Change

Affected Public: Certified DBEs.
Number of Respondents: Approximately 38,465 certified DBE firms.
Frequency: Once per year.
Number of Responses: One.
Total Annual Burden: 57,698 hours.

Personal Net Worth Form

Affected Public: Firms applying to be DBEs.
Number of Respondents: 9,500.
Frequency: Once.
Number of Responses: One.
Total Annual Burden: 19,000 hours.

Percentage of DBEs in Various Categories

Affected Public: States (through their Unified Certification Programs).
Number of Respondents: 53 (50 states, plus the District of Columbia, Puerto Rico, and the Virgin Islands).
Frequency: Once per year.
Number of Responses: One.
Total Annual Burden: 161.6 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC.

Charles E. James, Sr.,

Director, Departmental Office of Civil Rights, U.S. Department of Transportation.

BILLING CODE 4910–9X–P

U.S. Department of Transportation

Personal Net Worth Statement
For DBE/ACDBE Program Eligibility

As of _____

OMB APPROVAL NO: 2105-0510
EXPIRATION DATE: 8/31/2018

This form is used by all participants in the U.S. Department of Transportation's Disadvantaged Business Enterprise (DBE) and Airport Concession DBE (ACDBE) Programs. Each individual owner of a firm applying to participate as a DBE or ACDBE, whose ownership and control are relied upon for DBE certification must complete this form. Each person signing this form authorizes the certifying agency to make inquiries as necessary to verify the accuracy of the statements made. The agency you apply to will use the information provided to determine whether an owner is economically disadvantaged as defined in the DBE program regulations 49 C.F.R. Parts 23 and 26. **Return form to appropriate certifying agency, not U.S. DOT.**

Applicant Name:		
Residence: (As reported to the IRS) Address, City, State and Zip Code		Residence Phone
Business Name of Applicant Firm		Business Phone
Marital Status: ☐ Single, ☐ Married, ☐ Divorced, ☐ Union	Spouse's Full Name:	

ASSETS	(Omit Cents)	**LIABILITIES**	(Omit Cents)
Cash and Cash Equivalents	$	Loan on Life Insurance (Complete Section 5)	$
Retirement Accounts (IRAs, 401Ks, 403Bs, Pensions, etc.) (Report full value minus Federal taxes and penalties if applicable if assets were distributed today) (Complete Section 3)	$	Mortgages on Real Estate Excluding Primary Residence Debt (Complete Section 4)	$
Brokerage, Investment Accounts	$	Notes, Obligations on Personal Property (Complete Section 6)	$
Assets Held in Trust	$	Notes & Accounts Payable to Banks and Others (Complete Section 2)	$
Loans from You to the Firm, Other Entities, Individuals, & Other Receivables (Complete Section 6)	$	Other Liabilities (Complete Section 8)	$
Real Estate Excluding Primary Residence (Complete Section 4)	$	Unpaid Taxes (Complete Section 8)	$
Life Insurance (Cash Surrender Value Only) (Complete Section 5)	$		
Other Personal Property and Assets (Complete Section 6)	$		
Business Interests Other Than the Applicant Firm (Complete Section 7)	$		
Total Assets	$	Total Liabilities	$
		NET WORTH	

Section 2. Notes Payable to Banks and Others

Name of Noteholder(s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly, etc.)	How Secured or Endorsed Type of Collateral

Section 3. Brokerage and custodial accounts, stocks, bonds, retirement accounts. (Full Value) (Use attachments if necessary).

Name of Security / Brokerage Account / Retirement Account	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

Section 4. Real Estate Owned (Including Primary Residence, Investment Properties, Personal Property Leased or Rented for Business Purposes, Farm Properties, or any Other Income Producing property). (List each parcel separately. Add additional sheets if necessary).

	Primary Residence	Property B	Property C
Type of Property			
Address			
Date Acquired and Method of Acquisition (purchase, inherit, divorce, gift, etc.)			
Names on Deed			
Purchase Price			
Present Market Value			
Source of Market Valuation			
Name of all Mortgage Holders			
Mortgage Acc. # and balance (as of date of form)			
Equity line of credit balance			
Amount of Payment Per Month/Year (Specify)			

Section 5. Life Insurance Held (Give face amount and cash surrender value of policies, name of insurance company and beneficiaries).

Insurance Company	Face Value	Cash Surrender Amount	Beneficiaries	Loan on Policy Information

Section 6. Other Personal Property and Assets (Use attachments as necessary)

Type of Property or Asset	Total Present Value	Amount of Liability (Balance)	Is this asset insured?	Lien or Note amount and Terms of Payment
Automobiles and Vehicles (including recreation vehicles, motorcycles, boats, etc.) Include personally owned vehicles that are leased or rented to businesses or other individuals.				
Household Goods / Jewelry				
Loans from Owner to Firm, Other Entities, Individuals				
Other (List)				
Accounts and Notes Receivables				

Section 7. Value of Other Business Investments, Other Businesses Owned (excluding applicant firm)
Sole Proprietorships, General Partners, Joint Ventures, Limited Liability Companies, Closely-held and Public Traded Corporations

Section 8. Other Liabilities and Unpaid Taxes (Describe)

Section 9. Transfer of Assets: Have you within 2 years of this personal net worth statement, transferred assets to a spouse, domestic partner, relative, or entity in which you have an ownership or beneficial interest including a trust? Yes ☐ No ☐ If yes, describe.

I declare under penalty of perjury that the information provided in this personal net worth statement and supporting documents is complete, true and correct. I certify that no assets have been transferred to any beneficiary for less than fair market value in the last two years. I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application and this personal net worth statement, and I authorize such agency to contact any entity named in the application or this personal financial statement, including the names banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility. I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

NOTARY CERTIFICATE:
(Insert applicable state acknowledgment, affirmation, or oath)

Signature (DBE/ACDBE Owner) Date

In collecting the information requested by this form, the Department of Transportation complies with Federal Freedom of Information and Privacy Act (5 U.S.C. 552 and 552a) provisions. The Privacy Act provides comprehensive protections for your personal information. This includes how information is collected, used, disclosed, stored, and discarded. Your information will not be disclosed to third parties without your consent. The information collected will be used solely to determine your firm's eligibility to participate in the Disadvantaged Business Enterprise (DBE) Program or Airport Concessionaire DBE Programs as defined in 49 C.F.R. Parts 23 and 26. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).

General Instructions for Completing the Personal Net Worth Statement for DBE/ACDBE Program Eligibility

Please do not make adjustments to your figures pursuant to U.S. DOT regulations 49 C.F.R. Parts 23 and 26. The agency that you apply to will use the information provided on your completed Personal Net Worth (PNW) Statement to determine whether you meet the economic disadvantage requirements of 49 C.F.R. Parts 23 and 26. If there are discrepancies or questions regarding your form, it may be returned to you to correct and complete again.

An individual's personal net worth according to 49 C.F.R. Parts 23 and 26 includes only his or her own share of assets held separately, jointly, or as community property with the individual's spouse and excludes the following:

- Individual's ownership interest in the applicant firm;
- Individual's equity in his or her primary residence;
- Federal Tax and penalties, if applicable, that would accrue if retirement savings or investments (e.g., pension plans, Individual Retirement Accounts, 401(k) accounts, etc.) were distributed at the present time.

Indicate on the form if any items are jointly owned. If the personal net worth of the majority owner(s) of the firm exceeds $1.32 million, as defined by 49 C.F.R. Parts 23 and 26, the firm is not eligible for DBE or ACDBE certification. If the personal net worth of the majority owner(s) exceeds the $1.32 million cap specified in §26.67(a)(2)(i) at any time after your firm is certified, the firm is no longer eligible for certification. Should that occur, it is your responsibility to contact your certifying agency in writing to advise that your firm no longer qualifies as a DBE or ACDBE. You must fill out all line items on the Personal Net Worth Statement.

If necessary, use additional sheets of paper to report all information and details. If you have any questions about completing this form, please contact the certifying agency.

Assets

All assets must be reported at their current fair market values as of the date of your statement. Assessor's assessed value for real estate, for example, is not acceptable. Assets held in a trust should be included.

Cash and Cash Equivalents: On page 1, enter the total amount of cash or cash equivalents in bank accounts, including checking, savings, money market, certificates of deposit held domestic or foreign. Provide copies of the bank statement.

Retirement Accounts, IRA, 401Ks, 403Bs, Pensions: On page 1, enter the full value minus Federal tax and penalties that would apply if assets were distributed as of the date of the form. Describe the number of shares, name of securities, cost market value, date of quotation, and total value in section 3 on page 2.

Brokerage and Custodial Accounts, Stocks, Bonds, Retirement Accounts: Report total value on page 1, and on page 2, section 3, enter the name of the security, brokerage account, retirement account, etc.; the cost; market value of the asset; the date of quotation; and total value as of the date of the PNW statement.

Assets Held in Trust: Enter the total value of the assets held in trust on page 1, and provide the names of beneficiaries and trustees, and other information in Section 6 on page 3.

Loans from you to the firm, other Entities, Individuals, and Other Receivables not listed: Enter current balances of loans you have extended to this firm and to other entities or individuals, plus interest payable on those loans; and other receivables not listed above. Complete Section 6 on page 3.

Real Estate: The total value of real estate excluding your primary residence should be listed on page 1. In section 4 on page 2, please list your primary residence in column 1, including the address, method of acquisition, date of acquired, names of deed, purchase price, present fair market value, source of market valuation, names of all mortgage holders, mortgage account number and balance, equity line of credit balance, and amount of payment. List this information for all real estate held. Please ensure that this section contains all real estate owned, including rental properties, vacation properties, commercial properties, personal property leased or rented for business purposes, farm properties and any other income producing properties, etc. Attach additional sheets if needed.

Life Insurance: On page 1, enter the cash surrender value of this asset. In section 5 on page 2, enter the name of the insurance company, the face value of the policy, cash surrender value, names of beneficiaries, and loans on the policy.

Other Personal Property and Assets: Enter the total value of personal property and assets you own on page 1. Personal property includes motor vehicles, boats, trailers, jewelry, furniture, household goods, collectibles, clothing, and personally owned vehicles that are leased or rented to businesses or other individuals. In section 6 on page 3, list these assets and enter the present value, the balance of any liabilities, whether the asset is insured, and lien or note information and terms of payments. For accounts and notes receivable, enter the total value of all monies owed to you personally, if any. You may also be asked to provide a copy of any liens or notes on the property.

Other Business Interests Other than Applicant Firm: On page 1, enter the total value of your other business investments (excluding the applicant firm). In section 7 on page 3, enter information concerning the businesses you

hold an ownership interest in, such as sole proprietorships, partnerships, joint ventures, corporations, or limited liability corporations (other than the applicant firm). Do not reduce the value of these entries by any loans from the outside firm to the DBE/ACDBE applicant business.

Liabilities

Mortgages on Real Estate: Enter the total balance on all mortgages payable on real estate on page 1.

Loans on Life Insurance: Enter the total value of all loans due on life insurance policies on page 1, and complete section 5 on page 2.

Notes & Accounts Payable to Bank and Others: On page 1, section 2, enter details concerning any liability, including name of notcholders, original and current balances, payment terms, and security/collateral information. The entries should include automobile installment accounts. This should not, however, include any mortgage balances as this information is captured in section 4. Do not include loans for your business or mortgages for your properties in this section. You may be asked to submit copy of note/security agreement, and the most recent account statement.

Other Liabilities: On page 1, enter the total value due on all other liabilities not listed in the previous entries. In section 8, page 3, report the name of the individual obligated, names of co-signers, description of the liability, the name of the entity owed, the date of the obligation, payment amounts and terms. Note: Do not include contingent liabilities in this section. Contingent liabilities are liabilities that belong to you only if an event(s) should occur. For example, if you have co-signed on a relative's loan, but you are not responsible for the debt until your relative defaults, that is a contingent liability. Contingent liabilities do not count toward your net worth until they become actual liabilities.

Unpaid Taxes: Enter the total amount of all taxes that are currently due, but are unpaid on page 1, and complete section 8 on page 3. Contingent tax liabilities or anticipated taxes for current year should not be included. Describe in detail the name of the individual obligated, names of co-signers, the type of unpaid tax, to whom the tax is payable, due date, amount, and to what property, if any, the tax lien attaches. If none, state "NONE." You must include documentation, such as tax liens, to support the amounts.

Transfers of Assets:

Transfers of Assets: If you checked the box indicating yes on page 3 in this category, provide details on all asset transfers (within 2 years of the date of this personal net worth statement) to a spouse, domestic partner, relative, or entity in which you have an ownership or beneficial interest including a trust. Include a description of the asset; names of individuals on the deed, title, note or other instrument indicating ownership rights; the names of individuals receiving the assets and their relation to the transferor; the date of the transfer; and the value or consideration received. Submit documentation requested on the form related to the transfer.

Affidavit

Be sure to sign and date the statement. The Personal Net Worth Statement must be notarized.

Appendix F

UNIFORM CERTIFICATION APPLICATION

DISADVANTAGED BUSINESS ENTERPRISE (DBE) / AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) 49 C.F.R. Parts 23 and 26

Roadmap for Applicants

1. Should I apply?

You may be eligible to participate in the DBE/ACDBE program if:

- The firm is a for-profit business that performs or seeks to perform transportation related work (or a concession activity) for a recipient of Federal Transit Administration, Federal Highway Administration, or Federal Aviation Administration funds.
- The firm is at least 51% owned by a socially and economically disadvantaged individual(s) who also controls it.
- The firm's disadvantaged owners are U.S. citizens or lawfully admitted permanent residents of the U.S.
- The firm meets the Small Business Administration's size standard and does not exceed $23.98 million in gross annual receipts for DBE ($56.42 million for ACDBEs). (Other size standards apply for ACDBE that are banks/financial institutions, car rental companies, pay telephone firms, and automobile dealers.)

2. How do I apply?

First time applicants for DBE certification must complete and submit this certification application and related material to the certifying agency in your home state and participate in an on-site interview conducted by that agency. The attached document checklist can help you locate the items you need to submit to the agency with your completed application. If you fail to submit the required documents, your application may be delayed and/or denied. Firms already certified as a DBE do not have to complete this form, but may be asked by certifying agencies outside of your home state to provide a copy of your initial application form, supporting documents, and any other information you submitted to your home state to obtain certification or to any other state related to your certification.

3. Where can I send my application? [INSERT UCP PARTICIPATING MEMBER CONTACT INFORMATION]

4. Who will contact me about my application and what are the eligibility standards? A transportation agency in your state that performs certification functions will contact you. The agency is a member of a statewide Unified Certification Program (UCP), which is required by the U.S. Department of Transportation. The UCP is a one-stop certification program that eliminates the need for your firm to obtain certification from multiple certifying agencies within your state. The UCP is responsible for certifying firms and maintaining a database of certified DBEs and ACDBEs, pursuant to the eligibility standards found in 49 C.F.R. Parts 23 and 26.

5. Where can I find more information?

U.S. DOT—https://www.transportation.gov/civil-rights (This site provides useful links to the rules and regulations governing the DBE/ACDBE program, questions and answers, and other pertinent information)

SBA—Small Business Size Standards matched to the North American Industry Classification System (NAICS): http://www.census.gov/eos/www/naics/ and http://www.sba.gov/content/table-small-business-size-standards.

In collecting the information requested by this form, the Department of Transportation (Department) complies with the provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Privacy Act provides comprehensive protections for your personal information. This includes how information is collected, used, disclosed, stored, and discarded. Your information will not be disclosed to third parties without your consent. The information collected will be used solely to determine your firm's eligibility to participate in the Department's Disadvantaged Business Enterprise Program as defined in 49 C.F.R. §26.5 and the Airport Concession Disadvantaged Business Enterprise Program as defined in 49 C.F.R. §23.3. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).

Under 49 C.F.R. §26.107, dated February 2, 1999 and January 28, 2011, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 2 C.F.R. Parts 180 and 1200, Nonprocurement Suspension and Department, take enforcement action under 49 C.F.R. Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) UNIFORM CERTIFICATION APPLICATION

NOTE: All participating firms must be for-profit enterprises. If your firm is not for profit, then you do NOT qualify for the DBE/ACDBE program and should not complete this application. If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Basic Contact Information

(1) Enter the contact name and title of the person completing this application and the person who will serve as your firm's contact for this application.
(2) Enter the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
(3) Enter the primary phone number of your firm.
(4) Enter a secondary phone number, if any.
(5) Enter your firm's fax number, if any.
(6) Enter the contact person's email address.
(7) Enter your firm's website addresses, if any.
(8) Enter the street address of the firm where its offices are physically located (not a P.O. Box).
(9) Enter the mailing address of your firm, if it is different from your firm's street address.

B. Prior/Other Certifications and Applications

(10) Check the appropriate box indicating whether your firm is currently certified in the DBE/ACDBE programs, and provide the name of the certifying agency that certified your firm. List the dates of any site visits conducted by your home state and any other states or UCP members. Also provide the names of state/UCP members that conducted the review.
(11) Indicate whether your firm or any firms owned by the persons listed has ever been denied certification as a DBE/ACDBE, 8(a), or Small Disadvantaged Business (SDB) firm, or state and local MBE/WBE firm. Indicate if the firm has ever been decertified from one of these programs. Indicate if the application was withdrawn or whether the firm was debarred, suspended, or otherwise had its bidding privileges denied or restricted by any state or local agency, or Federal entity. If your answer is yes, identify the name of the agency, and explain fully the nature of the action in the space provided. Indicate if you have ever appealed this decision to the Department and if so, attach a copy of USDOT's final agency decision(s).

Section 2: GENERAL INFORMATION

A. Business profile:

(1) Give a concise description of the firm's primary activities, the product(s) or services the company provides, or type of construction. If your company offers more than one product/service, list primary product or service first (attach additional sheets if necessary). This description may be used in our UCP online directory if you are certified as a DBE.
(2) If you know the appropriate NAICS Code for the line(s) of work you identified in your business profile, enter the codes in the space provided.
(3) State the date on which your firm was established as stated in your firm's Articles of Incorporation or charter.
(4) State the date each person became a firm owner.
(5) Check the appropriate box describing the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.
(6) Check the appropriate box that indicates whether your firm is "for profit." **If you checked "No," then you do NOT qualify for the DBE/ACDBE program** and should not complete this application. All participating firms must be for-profit enterprises. Provide the Federal Tax ID number as stated on your firm's Federal tax return.
(7) Check the appropriate box that describes the type of legal business structure of your firm, as indicated in your firm's Articles of Incorporation or similar document. If you checked "Other," briefly explain in the space provided.
(8) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time, part-time, and seasonal basis. Attach a list of employees, their job titles, and dates of employment, to your application.
(9) Specify the firm's gross receipts for each of the past three years, as stated in your firm's filed Federal tax returns. You must submit complete copies of the firm's Federal tax returns for each year. If there are any affiliates or subsidiaries of the applicant firm or owners, you must provide these firms' gross receipts and submit complete copies of these firm(s) Federal tax returns. Affiliation is defined in 49 C.F.R. §26.5 and 13 C.F.R. Part 121.

B. Relationships and Dealings with Other Businesses

(1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, financing, or any office staff and/or employees with any other business, organization or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and fully explain the nature of your relationship with these other businesses by identifying the business or person with whom you have any formal, informal, written, or

oral agreement. Provide an explanation of any items shared with other firms in the space provided.

(2) Check the appropriate box indicating whether any other firm currently has or had an ownership interest in your firm at present or at any time in the past. If you checked yes, please explain.

(3) Check the appropriate box that indicates whether at present or at any time in the past your firm:

(a) ever existed under different ownership, a different type of ownership, or a different name;

(b) existed as a subsidiary of any other firm;

(c) existed as a partnership in which one or more of the partners are/were other firms;

(d) owned any percentage of any other firm; and

(e) had any subsidiaries of its own.

(f) served as a subcontractor with another firm constituting more than 25% of your firm's receipts.

If you answered "Yes" to any of the questions in (3)(a-f), you may be asked to explain the arrangement in detail.

Section 3: MAJORITY OWNER INFORMATION

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each owner):

A. Identify the majority owner of the firm holding 51% or more ownership interest

(1) Enter the full name of the owner.

(2) Enter his/her title or position within your firm.

(3) Give his/her home phone number.

(4) Enter his/her home (street) address.

(5) Indicate this owner's gender.

(6) Identify the owner's ethnic group membership. If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.

(7) Check the appropriate box to indicate whether this owner is a U.S. citizen or a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner.

(8) Enter the number of years during which this owner has been an owner of your firm.

(9) Indicate the percentage of the total ownership this person holds and the date acquired, including (if appropriate), the class of stock owned.

(10) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment. Describe how you acquired your business and attach documentation substantiating this investment.

B. Additional Owner Information

(1) Describe the familial relationship of this owner to each other owner of your firm and employees.

(2) Indicate whether this owner performs a management or supervisory function for any other business. If you checked "Yes," state the name of the other business and this owner's function/title held in that business.

(3) (a) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business, the nature of the business relationship, and the owner's function at the firm.

(b) If the owner works for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week, please identify this activity.

(4) (a) Provide the personal net worth of the owner applying for certification in the space provided. Complete and attach the accompanying "Personal Net Worth Statement for DBE/ACDBE Program Eligibility" with your application. Note, complete this section and accompanying statement only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged).

(b) Check the appropriate box that indicates whether any trust has been created for the benefit of the disadvantaged owner(s). If you answered "Yes," you may be asked to provide a copy of the trust instrument.

(5) Check the appropriate to indicate whether any of your immediate family members, managers, or employees, own, manage, or are associated with another company. Immediate family member is defined in 49 C.F.R. §26.5. If you answered "Yes," provide the name of each person, your relationship to them, the name of the company, the type of business, and whether they own or manage the company.

Section 4: CONTROL

A. Identify the firm's Officers and Board of Directors

(1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer.

(2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.

(3) Check the appropriate box to indicate whether any of your firm's officers and/or directors listed above performs a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.

(4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. (e.g., ownership interest, shared office space, financial investments, equipment leases, personnel sharing, etc.) If you answered "Yes," identify the name of the firm, the individual's name, and the nature of his/her business relationship with that other firm.

B. Duties of Owners, Officers, Directors, Managers and Key Personnel

(1), (2) Specify the roles of the majority and minority owners, directors, officers, and managers, and key

personnel who are responsible for the functions listed for the firm. Submit résumés for each owner and non-owner identified below. State the name of the individual, title, race and gender and percentage ownership if any. Circle the frequency of each person's involvement as follows: "always, frequently, seldom, or never" in each area.

Indicate whether any of the persons listed in this section perform a management or supervisory function for any other business. Identify the person, business, and their title/function. Identify if any of the persons listed above own or work for any other firm(s) that has a relationship with this firm (e.g. ownership interest, shared office space, financial investment, equipment, leases, personnel sharing, etc.) If you answered "Yes," describe the nature of his/her business relationship with that other firm.

C. Inventory: Indicate firm inventory in these categories:

(1) Equipment and Vehicles
State the make and model, and current dollar value of each piece of equipment and motor vehicle held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm or owner, whether it is used as collateral, and where this item is stored.

(2) Office Space
State the street address of each office space held and/or used by your firm. Indicate whether your firm or owner owns or leases the office space and the current dollar value of that property or its lease.

(3) Storage Space
State the street address of each storage space held and/or used by your firm. Indicate whether your firm or owner owns or leases the storage space and the current dollar value of that property or its lease.
Provide a signed lease agreement for each property.

D. Does your firm rely on any other firm for management functions or employee payroll?

Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," you may be asked to explain the nature of that reliance and the extent to which the other firm carries out such functions.

E. Financial / Banking Information

State the name, City and State of your firm's bank. Identify the persons able to sign checks on this account. Provide bank authorization and signature cards.

Bonding Information. State your firm's bonding limits both aggregate and project limits.

F. Sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms guaranteeing the loan.

State the name and address of each source, the name of person securing the loan, original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm. Provide copies of signed loan agreements and security agreements

G. Contributions or transfers of assets to/from your firm and to/from any of its owners or another individual over the past two years:

Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.

H. Current licenses/permits held by any owner or employee of your firm.

List the name of each person in your firm who holds a professional license or permit, the type of permit or license, the expiration date of the permit or license, and issuing State of the license or permit. Attach copies of licenses, license renewal forms, permits, and haul authority forms.

I. Largest contracts completed by your firm in the past three years, if any.

List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.

J. Largest active jobs on which your firm is currently working.
For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.

Section 5: AIRPORT CONCESSION (ACDBE) APPLICANTS

Complete the entries in this section if you are applying for ACDBE certification. Indicate in Section A if you operate a concession at the airport, and/or supply a good or service to an airport concessionaire. Indicate in Section B whether the applicant firm owns or operates any off-airport locations, providing the type of business, lease information, address/location, and annual gross receipts generated. Provide similar information in section C for any airport concession locations the firm currently owns or operates. If the applicant firm has any affiliates, provide the requested information in Section D. Indicate whether the ACDBE firm is participating in any joint ventures, and if so, include the original and any amended joint venture agreements.

AFFIDAVIT & SIGNATURE

The Affidavit of Certification must accompany your application. Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

Section 1: CERTIFICATION INFORMATION

A. Basic Contact Information I am applying for certification as ❑ DBE ❑ACDBE

(1) Contact person and Title: _____ **(2) Legal name of firm:** _____

(3) Phone #: (___) _____ - _____ **(4) Other Phone #:** (____) _____ - _____ **(5) Fax #:** (____) _____ - _____

(6) E-mail: _____ **(7) Firm Websites:** _____

(8) Street address of firm *(No P.O. Box)*: _____ **City:** _____ **County/Parish:** _____ **State:** _____ **Zip:** _____ - ___

(9) Mailing address of firm *(if different)*: _____ **City:** _____ **County/Parish:** _____ **State:** _____ **Zip:** _____ - ___

B. Prior/Other Certifications and Applications

(10) Is your firm currently certified for any of the following U.S. DOT programs?
❑ DBE ❑ ACDBE Names of certifying agencies: _____

⊘ If you are certified in your home state as a DBE/ACDBE, you do not have to complete this application for other states. Ask your state UCP about the interstate certification process.

List the dates of any site visits conducted by your home state and any other states or UCP members:

Date ___/ ___/___ State/UCP Member: _____ Date ___/ ___/___ State/UCP Member: _____

(11) Indicate whether the firm or any persons listed in this application have ever been:

(a) Denied certification or decertified as a DBE, ACDBE, 8(a), SDB, MBE/WBE firm? ❑ Yes ❑No
(b) Withdrawn an application for these programs, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity? ❑ Yes ❑ No

If yes, explain the nature of the action. *(If you appealed the decision to DOT or another agency, attach a copy of the decision,*
_____
_____

Section 2: GENERAL INFORMATION

A. Business Profile: (1) Give a concise description of the firm's primary activities and the product(s) or service(s) it provides. If your company offers more than one product/service, list the primary product or service first. Please use additional paper if necessary. This description may be used in our database and the UCP online directory if you are certified as a DBE or ACDBE.

_____
_____
_____
_____

(2) Applicable NAICS Codes for this line of work include: _____ _____ _____ _____ _____ _____

(3) This firm was established on ___/___/___ **(4) I/We have owned this firm since:** ___/___/___

(5) Method of acquisition *(Check all that apply)*:
❑ Started new business ❑ Bought existing business ❑ Inherited business ❑ Gifted
❑ Merger or consolidation ❑ Other *(explain)* _____

(6) Is your firm "for profit"? ❑ Yes ❑No→ ⊗ **STOP!** If your firm is NOT for-profit, then you do NOT qualify for this program and should not fill out this application.
Federal Tax ID# _____

(7) Type of Legal Business Structure: *(check all that apply)*:
❑ Sole Proprietorship ❑ Limited Liability Partnership
❑ Partnership ❑Corporation
❑ Limited Liability Company ❑ Other, Describe _____

(8) Number of employees: Full-time _____ Part-time _____ Seasonal _____Total _____
(Provide a list of employees, their job titles, and dates of employment, to your application).

(9) Specify the firm's gross receipts for the last 3 years. *(Submit complete copies of the firm's Federal tax returns for each year. If there are affiliates or subsidiaries of the applicant firm or owners, you must submit complete copies of these firms' Federal tax returns).*

Year _____ Gross Receipts of Applicant Firm $ _____ Gross Receipts of Affiliate Firms $_____
Year _____ Gross Receipts of Applicant Firm $_____Gross Receipts of Affiliate Firms $_____
Year _____ Gross Receipts of Applicant Firm $ _____ Gross Receipts of Affiliate Firms $_____

B. Relationships and Dealings with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office or storage space, yard, warehouse, facilities, equipment, inventory, financing, office staff, and/or employees with any other business, organization, or entity? ❑ Yes ❑ No

If Yes, explain the nature of your relationship with these other businesses by identifying the business or person with whom you have any formal, informal, written, or oral agreement. Also detail the items shared

_____
_____
_____
_____
_____
_____
_____
_____
_____

(2) Has any other firm had an ownership interest in your firm at present or at any time in the past?
❑ Yes ❑ No If Yes, explain_____

(3) At present, or at any time in the past, has your firm:
(a) Ever existed under different ownership, a different type of ownership, or a different name? ❑ Yes ❑ No
(b) Existed as a subsidiary of any other firm? ❑ Yes ❑ No
(c) Existed as a partnership in which one or more of the partners are/were other firms? ❑ Yes ❑ No
(d) Owned any percentage of any other firm? ❑ Yes ❑ No
(e) Had any subsidiaries? ❑ Yes ❑ No
(f) Served as a subcontractor with another firm constituting more than 25% of your firm's receipts? ❑ Yes ❑ No

(If you answered "Yes" to any of the questions in (2) and/or (3)(a)-(f), you may be asked to provide further details and explain whether the arrangement continues).

Section 3: MAJORITY OWNER INFORMATION

A. Identify the majority owner of the firm holding 51% or more ownership interest.

(1) Full Name: _____ **(2) Title:** _____ **(3) Home Phone #:** ( ) _____ - _____

(4) Home Address *(Street and Number)*: _____ **City:** _____ **State:** _____ **Zip:** _____ - _____

(5) Gender: ❑ Male ❑ Female

(6) Ethnic group membership *(Check all that apply)*:

❑ Black ❑ Hispanic
❑ Asian Pacific ❑ Native American
❑ Subcontinent Asian
❑ Other (*specify*) _____

(7) U.S. Citizenship:

❑ U.S. Citizen
❑ Lawfully Admitted Permanent Resident

(8) Number of years as owner: _____
(9) Percentage owned: _____ %
Class of stock owned: _____
Date acquired _____

(10) Initial investment to acquire ownership interest in firm:

Type	Dollar Value
Cash	$
Real Estate	$
Equipment	$
Other	$

Describe how you acquired your business:
❑ Started business myself.
❑ It was a gift from: _____
❑ I bought it from: _____
❑ I inherited it from: _____
❑ Other _____
(Attach documentation substantiating your investment)

B. Additional Owner Information

(1) Describe familial relationship to other owners and employees:

_____

(2) Does this owner perform a management or supervisory function for any other business? ❑ Yes ❑ No
If Yes, identify: Name of Business: _____ Function/Title: _____

(3)(a) Does this owner own or work for any other firm(s) that has a relationship with this firm? (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*) ❑ Yes ❑ No
Identify the name of the business, and the nature of the relationship, and the owner's function at the firm:

_____

(b) Does this owner work for any other firm, non-profit organization, or engage in any other activity more than 10 hours per week? If yes, identify this activity: _____

(4)(a) What is the personal net worth of this disadvantaged owner applying for certification? $_____

(b)Has any trust been created for the benefit of this disadvantaged owner(s)? ❑ Yes ❑ No
(If Yes, you may be asked to provide a copy of the trust instrument).

(5) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? ❑ Yes ❑ No If Yes, provide their name, relationship, company, type of business, and indicate whether they own or manage the company: *(Please attach extra sheets, if needed)*: _____

Section 3: OWNER INFORMATION, Cont'd.

A. Identify all individuals, firms, or holding companies that hold LESS THAN 51% ownership interest in the firm (*Attach separate sheets for each additional owner)*

(1) Full Name: _____ **(2) Title:** _____ **(3) Home Phone #:** ( ) _____ - _____

(4) Home Address (*Street and Number*): _____ **City:** _____ **State:** _____ **Zip:** _____ - _____

(5) Gender: ❑ Male ❑ Female

(6) Ethnic group membership *(Check all that apply)*

❑ Black ❑ Hispanic
❑ Asian Pacific ❑ Native American
❑ Subcontinent Asian
❑ Other (*specify*) _____

(7) U.S. Citizenship:

❑ U.S. Citizen
❑ Lawfully Admitted Permanent Resident

(8) Number of years as owner: _____
(9) Percentage owned: _____ %
Class of stock owned: _____
Date acquired _____

(10) Initial investment to acquire ownership interest in firm:

Type	Dollar Value
Cash	$
Real Estate	$
Equipment	$
Other	$

Describe how you acquired your business:
❑ Started business myself.
❑ It was a gift from: _____
❑ I bought it from: _____
❑ I inherited it from: _____
❑ Other _____
(Attach documentation substantiating your investment)

B. Additional Owner Information

(1) Describe familial relationship to other owners and employees:

_____
_____
_____

(2) Does this owner perform a management or supervisory function for any other business? ❑ Yes ❑ No
If Yes, identify: Name of Business: _____ Function/Title: _____

(3)(a) Does this owner own or work for any other firm(s) that has a relationship with this firm? (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*) ❑ Yes ❑ No
Identify the name of the business, and the nature of the relationship, and the owner's function at the firm:

_____

(b) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week? If yes, identify this activity: _____

(4)(a) What is the personal net worth of this disadvantaged owner applying for certification? $_____

(b) Has any trust been created for the benefit of this disadvantaged owner(s)? ❑ Yes ❑ No
(If Yes, you may be asked to provide a copy of the trust instrument).

(5) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? ❑ Yes ❑ No If Yes, provide their name, relationship, company, type of business, and indicate whether they own or manage: *(Please attach extra sheets, if needed)*: _____

_____

Section 4: CONTROL

A. Identify your firm's Officers and Board of Directors *(If additional space is required, attach a separate sheet)*:

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				

(3) Do any of the persons listed above perform a management or supervisory function for any other business?
❑ Yes ❑ No If Yes, identify for each:

Person: _____ Title: _____
Business: _____ Function: _____

Person: _____ Title: _____
Business: _____ Function: _____

(4) Do any of the persons listed in section A above own or work for any other firm(s) that has a relationship with this firm? *(e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)*
❑ Yes ❑ No If Yes, identify for each:

Firm Name: _____ Person: _____
Nature of Business Relationship: _____

B. Duties of Owners, Officers, Directors, Managers, and Key Personnel
1. Complete for all Owners who are responsible for the following functions of the firm *(Attach separate sheets as needed)*.

A= Always F = Frequently	**S = Seldom N = Never**	Majority Owner (51% or more) Name: _____ Title: _____ Percent Owned: _____				Minority Owner (49% or less) Name: _____ Title: _____ Percent Owned: _____			
Sets policy for company direction/scope of operations		A	F	S	N	A	F	S	N
Bidding and estimating		A	F	S	N	A	F	S	N
Major purchasing decisions		A	F	S	N	A	F	S	N
Marketing and sales		A	F	S	N	A	F	S	N
Supervises field operations		A	F	S	N	A	F	S	N
Attend bid opening and lettings		A	F	S	N	A	F	S	N
Perform office management (billing, accounts receivable/payable, etc.)		A	F	S	N	A	F	S	N
Hires and fires management staff		A	F	S	N	A	F	S	N
Hire and fire field staff or crew		A	F	S	N	A	F	S	N
Designates profits spending or investment		A	F	S	N	A	F	S	N
Obligates business by contract/credit		A	F	S	N	A	F	S	N
Purchase equipment		A	F	S	N	A	F	S	N
Signs business checks		A	F	S	N	A	F	S	N

2. Complete for all Officers, Directors, Managers, and Key Personnel who are responsible for the following functions of the firm. *(Attach separate sheets as needed).*

A= Always S = Seldom **F = Frequently N = Never**	Officer/Director/Manager/Key Personnel Name: _____ Title: _____ Race and Gender: _____ Percent Owned: _____				Officer/Director/Manager/ Key Personnel Name: _____ Title: _____ Race and Gender: _____ Percent Owned: _____			
Sets policy for company direction/scope of operations	A	F	S	N	A	F	S	N
Bidding and estimating	A	F	S	N	A	F	S	N
Major purchasing decisions	A	F	S	N	A	F	S	N
Marketing and sales	A	F	S	N	A	F	S	N
Supervises field operations	A	F	S	N	A	F	S	N
Attend bid opening and lettings	A	F	S	N	A	F	S	N
Perform office management (billing, accounts receivable/payable, etc.)	A	F	S	N	A	F	S	N
Hires and fires management staff	A	F	S	N	A	F	S	N
Hire and fire field staff or crew	A	F	S	N	A	F	S	N
Designates profits spending or investment	A	F	S	N	A	F	S	N
Obligates business by contract/credit	A	F	S	N	A	F	S	N
Purchase equipment	A	F	S	N	A	F	S	N
Signs business checks	A	F	S	N	A	F	S	N

Do any of the persons listed in B1 or B2 perform a management or supervisory function for any other business? If Yes, identify the person, the business, and their title/function: _____

_____

Do any of the persons listed above own or work for any other firm(s) that has a relationship with this firm? *(e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)* If Yes, describe the nature of the business relationship: _____

_____

C. Inventory: Indicate your firm's inventory in the following categories *(Please attach additional sheets if needed):*

1. Equipment and Vehicles

	Make and Model	**Current Value**	**Owned or Leased by Firm or Owner?**	**Used as collateral?**	**Where is item stored?**
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					

2. Office Space

Street Address	**Owned or Leased by Firm or Owner?**	**Current Value of Property or Lease**

3. Storage Space *(Provide signed lease agreements for the properties listed)*

Street Address	Owned or Leased by Firm or Owner?	Current Value of Property or Lease

D. Does your firm rely on any other firm for management functions or employee payroll? ❑ Yes ❑ No

E. Financial/Banking Information *(Provide bank authorization and signature cards)*

Name of bank: _____ City and State: _____
The following individuals are able to sign checks on this account: _____

Name of bank: _____ City and State: _____
The following individuals are able to sign checks on this account: _____

Bonding Information: If you have bonding capacity, identify the firm's bonding aggregate and project limits:
Aggregate limit $ _____ Project limit $ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm including from financial institutions. Identify whether you the owner and any other person or firm loaned money to the applicant DBE/ACDBE. Include the names of any persons or firms guaranteeing the loan, if other than the listed owner. (*Provide copies of signed loan agreements and security agreements).*

	Name of Source	Address of Source	Name of Person Guaranteeing the Loan	Original Amount	Current Balance	Purpose of Loan
1.						
2.						
3.						

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners or another individual over the past two years (*Attach additional sheets if needed*):

	Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.						
2.						
3.						

H. List current licenses/permits held by any owner and/or employee of your firm
(*e.g. contractor, engineer, architect, etc.)(Attach additional sheets if needed)*:

	Name of License/Permit Holder	Type of License/Permit	Expiration Date	State
1.				
2.				
3.				

I. List the three largest contracts completed by your firm in the past three years, if any:

	Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.				
2.				
3.				

J. List the three largest active jobs on which your firm is currently working:

	Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1.						
2.						
3.						

Additional Information:

SECTION 5 - AIRPORT CONCESSION
(ACDBE APPLICANTS ONLY)

A. I am applying for ACDBE certification to: *(check all that apply)*

☐ **Operate a concession at an airport** ☐ **Supply a good or service to an airport concessionaire**

B. Does the applicant firm own/operate any off-airport locations? ☐ **Yes** ☐ **No** *If Yes,* identify *the following*

Type of Business (e.g., F&B, News & Gift, Retail, Duty Free, Advertising, etc.)	**Lease Term** (years) **Lease Start Date**	**Address / Location**	**Annual Gross Receipts Generated**

C. Does the applicant firm currently own/operate any airport concession locations? ☐ **Yes** ☐ **No** *If Yes, supply the following information:*

Airport Name	**Concession Type** (e.g., F&B, News & Gift, Retail, Duty Free, Advertising, etc.)	**Number of Leases**	**Number of Locations**	**Annual Gross Receipts Generated**	**Lease Type** *(e.g. Direct Lease, Subcontract Management Agreement, etc. enter all that apply to the leases listed)*

D. Does the applicant firm have any affiliates? ☐ **Yes** ☐ **No** *If Yes, provide the following information concerning any locations owned/operated by affiliate firms.*

Airport Name	**Concession Type** (e.g., F&B, News & Gift, Retail, Duty Free, Advertising, etc.)	**Number of Leases**	**Number of Locations**	**Annual Gross Receipts Generated**	**Lease Type** *(e.g. Direct Lease, Subcontract Management Agreement, etc. enter all that apply to the leases listed)*

E. Is the ACDBE applicant firm a participant in any joint ventures? ☐ **Yes** ☐ **No** *If Yes, attach all original and any amended Joint Venture Agreements and any amendments to the agreements.*

AFFIDAVIT OF CERTIFICATION

This form must be signed and notarized for <u>each</u> owner upon which disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name printed), swear or affirm under penalty of law that I am _____(title) of the applicant firm _____ and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its places(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract, subcontract, concession lease or sublease, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership changes, address/telephone number, personal net worth exceeding $1.32 million, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise or Airport Concession Disadvantaged Business Enterprise. In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s): (Check all that apply):

❑ Female ❑ Black American ❑ Hispanic American
❑ Native American ❑ Asian-Pacific American
❑ Subcontinent Asian American ❑ Other (specify)

_____

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed $1.32 million, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Signature _____ _____
(DBE/ACDBE Applicant) (Date)

<u>NOTARY CERTIFICATE</u>

UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE or ACDBE certification, you must attach copies of all of the following REQUIRED documents. A failure to supply any information requested by the UCP may result in your firm denied DBE/ACDBE certification.

Required Documents for All Applicants

☐ Résumés (that include places of employment with corresponding dates), for all owners, officers, and key personnel of the applicant firm
☐ Personal Net Worth Statement for each socially and economically disadvantaged owners who the applicant firm relies upon to satisfy the Regulation's 51% ownership requirement.
☐ Personal Federal tax returns for the past 3 years, if applicable, for each disadvantaged owner
☐ Federal tax returns (and requests for extensions) filed by the firm and its affiliates with related schedules, for the past 3 years.
☐ Documented proof of contributions used to acquire ownership for each owner (*e.g., both sides of cancelled checks*)
☐ Signed loan and security agreements, and bonding forms
☐ List of equipment and/or vehicles owned and leased including VIN numbers, copy of titles, proof of ownership, insurance cards for each vehicle.
☐ Title(s), registration certificate(s), and U.S. DOT numbers for each truck owned or operated by your firm
☐ Licenses, license renewal forms, permits, and haul authority forms
☐ Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
☐ Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past 2 years
☐ DBE/ACDBE and SBA 8(a), SDB, MBE/WBE certifications, denials, and/or decertifications, if applicable; and any U.S. DOT appeal decisions on these actions.
☐ Bank authorization and signatory cards
☐ Schedule of salaries (or other remuneration) paid to all officers, managers, owners, and/or directors of the firm
☐ List of all employees, job titles, and dates of employment.
☐ Proof of warehouse/storage facility ownership or lease arrangements

Partnership or Joint Venture

☐ Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

☐ Official Articles of Incorporation (*signed by the state official*)
☐ Both sides of all corporate stock certificates and your firm's stock transfer ledger
☐ Shareholders' Agreement(s)
☐ Minutes of all stockholders and board of directors meetings
☐ Corporate by-laws and any amendments
☐ Corporate bank resolution and bank signature cards
☐ Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Optional Documents to Be Provided on Request

The certifying agency to which you are applying may require the submission of the following documents. If requested to provide these document, you must supply them with your application or at the on-site visit.

☐ Proof of citizenship
☐ Insurance agreements for each truck owned or operated by your firm
☐ Audited financial statements (if available)
☐ Trust agreements held by any owner claiming disadvantaged status
☐ Year-end balance sheets and income statements for the past 3 years (*or life of firm, if less than three years*)

Suppliers

☐ List of product lines carried and list of distribution equipment owned and/or leased

BILLING CODE 4910–9X–C

Appendix B to Part 26—Uniform Report of DBE Awards or Commitments and Payments Form

Instructions for Completing the Uniform Report of DBE Awards/Commitments and Payments

Recipients of Department of Transportation (DOT) funds are expected to keep accurate data regarding the contracting opportunities available to firms paid for with DOT dollars. Failure to submit contracting data relative to the DBE program will result in noncompliance with Part 26. All dollar values listed on this form should represent the DOT share attributable to the Operating Administration (OA): Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) or Federal Transit Administration (FTA) to which this report will be submitted.

1. Indicate the DOT (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.

2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If you are an FTA recipient, indicate the Grant/Project numbers covered by this report. If more than ten attach a separate sheet.

3. Specify the Federal fiscal year (*i.e.,* October 1–September 30) in which the covered reporting period falls.

4. State the date of submission of this report.

5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. For FHWA and FTA recipients, if this report is due June 1, data should cover October 1–March 31. If this report is due December 1, data should cover April 1–September 30. If the report is due to the FAA, data should cover the entire fiscal year.

6. Provide the name and address of the recipient.

7. State your overall DBE goal(s) established for the Federal fiscal year of the report being submitted to and approved by the relevant OA. Your overall goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral projections (both of which include gender-conscious/neutral projections). The Race Conscious projection should be based on measures that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a race conscious measure. The Race Neutral projection should include measures that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.

Section A: Awards and Commitments Made During This Period

The amounts in items 8(A)–10(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts and should be rounded to the nearest dollar.

Line 8: Prime contracts awarded this period: The items on this line should correspond to the contracts directly between the recipient and a supply or service contractor, with no intermediaries between the two.

8(A). Provide the *total dollar amount* for all prime contracts assisted with DOT funds and awarded during this reporting period. This value should include the entire Federal share of the contracts without removing any amounts associated with resulting subcontracts.

8(B). Provide the *total number* of all prime contracts assisted with DOT funds and awarded during this reporting period.

8(C). From the total dollar amount awarded in item 8(A), provide the *dollar amount* awarded in prime contracts to certified DBE firms during this reporting period. This amount should not include the amounts sub contracted to other firms.

8(D). From the total number of prime contracts awarded in item 8(B), specify the *number* of prime contracts awarded to certified DBE firms during this reporting period.

8(E&F). This field is closed for data entry. Except for the very rare case of DBE-set asides permitted under 49 CFR part 26, all prime contracts awarded to DBES are regarded as race-neutral.

8(G). From the total dollar amount awarded in item 8(C), provide the *dollar amount* awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral in item 7 and the explanation in item 8 of project types to include.

8(H). From the total number of prime contracts awarded in 8(D), specify the *number* awarded to DBEs through Race Neutral methods.

8(I). Of all prime contracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round the percentage to the nearest tenth.

Line 9: Subcontracts awarded/committed this period: Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.

9(A). If filling out the form for general reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded in prime contracts in 8(A), and therefore should never be greater than the amount awarded in prime contracts. If filling out the form for project reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded or previously in prime contracts in 8(A). The sum of all subcontract amounts in consecutive periods should never exceed the sum of all prime contract amounts awarded in those periods.

9(B). Provide the total number of all sub contracts assisted with DOT funds that were awarded or committed during this reporting period.

9(C). From the total dollar amount of sub contracts awarded/committed this period in item 9(A), provide the total dollar amount awarded in sub contracts to DBEs.

9(D). From the total number of sub contracts awarded or committed in item 9(B), specify the number of sub contracts awarded or committed to DBEs.

9(E). From the total dollar amount of sub contracts awarded or committed to DBEs this period, provide the amount in dollars to DBEs using Race Conscious measures.

9(F). From the total number of sub contracts awarded or committed to DBEs this period, provide the number of sub contracts awarded or committed to DBEs using Race Conscious measures.

9(G). From the total dollar amount of sub contracts awarded/committed to DBEs this period, provide the amount in dollars to DBEs using Race Neutral measures.

9(H). From the total number of sub contracts awarded/committed to DBEs this period, provide the number of sub contracts awarded to DBEs using Race Neutral measures.

9(I). Of all subcontracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the dollar amount in item 9(C) by the dollar amount in item 9(A) to derive this percentage. Round the percentage to the nearest tenth.

Line 10: Total contracts awarded or committed this period. These fields should be used to show the total dollar value and number of contracts awarded to DBEs and to calculate the overall percentage of dollars awarded to DBEs.

10(A)–10(B). These fields are unavailable for data entry.

10(C–H). Combine the total values listed on the prime contracts line (Line 8) with the corresponding values on the subcontracts line (Line 9).

10(I). Of all contracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the total dollars awarded to DBEs in item 10(C) by the dollar amount in item 8(A) to derive this percentage. Round the percentage to the nearest tenth.

Section B: Breakdown by Ethnicity & Gender of Contracts Awarded to DBEs This Period

11–17. Further breakdown the contracting activity with DBE involvement. The Total Dollar Amount to DBEs in 17(C) should equal the Total Dollar Amount to DBEs in 10(C). Likewise, the total number of contracts to DBEs in 17(F) should equal the Total Number of Contracts to DBEs in 10(D).

Line 16: The ''Non-Minority'' category is reserved for any firms whose owners are not members of the presumptively disadvantaged groups already listed, but who are either ''women'' OR eligible for the DBE program on an individual basis. All DBE firms must be certified by the Unified Certification Program to be counted in this report.

Section C: Payments on Ongoing Contracts

Line 18(A–E). Submit information on contracts that are currently in progress. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.

18(A). Provide the total number of prime and sub-contracts where work was performed during the reporting period.

18(B). Provide the total dollar amount paid to all firms performing work on contracts.

18(C). From the total number of contracts provided in 18(A) provide the total number of contracts that are currently being performed by DBE firms for which payments have been made.

18(D). From the total dollar amount paid to all firms in 18(A), provide the total dollar value paid to DBE firms currently performing work during this period.

18(E). Provide the total number of DBE firms that received payment during this reporting period. For example, while 3 contracts may be active during this period, one DBE firm may be providing supplies or services on all three contracts. This field should only list the number of DBE firms performing work.

18(F). Of all payments made during this period, calculate the percentage going to DBEs. Divide the total dollar value to DBEs in item 18(D) by the total dollars of all payments in 18(B). Round the percentage to the nearest tenth.

Section D: Actual Payments on Contracts Completed This Reporting Period

This section should provide information only on contracts that are closed during this period. All dollar amounts are to reflect the entire Federal share of such contracts, and should be rounded to the nearest dollar.

19(A). Provide the total number of contracts completed during this reporting period that used Race Conscious measures. Race Conscious contracts are those with contract goals or another race conscious measure.

19(B). Provide the total dollar value of prime contracts completed this reporting period that had race conscious measures.

19(C). From the total dollar value of prime contracts completed this period in 19(B), provide the total dollar amount of dollars awarded or committed to DBE firms in order to meet the contract goals. This applies only to Race Conscious contracts.

19(D). Provide the actual total DBE participation in dollars on the race conscious contracts completed this reporting period.

19(E). Of all the contracts completed this reporting period using Race Conscious measures, calculate the percentage of DBE participation. Divide the total dollar amount to DBEs in item 19(D) by the total dollar value provided in 19(B) to derive this percentage. Round to the nearest tenth.

20(A)–20(E). Items 21(A)-21(E) are derived in the same manner as items 19(A)-19(E), except these figures should be based on contracts completed using Race Neutral measures.

20(C). This field is closed.

21(A)–21(D). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.

21(C). This field is closed.

21(E). Calculate the overall percentage of dollars to DBEs on completed contracts. Divide the Total DBE participation dollar value in 21(D) by the Total Dollar Value of Contracts Completed in 21(B) to derive this percentage. Round to the nearest tenth.

22. Name of the Authorized Representative preparing this form.

23. Left blank for future use.

24. Signature of the Authorized Representative.

25. Phone number of the Authorized Representative.

**Submit your completed report to your Regional or Division Office.

[FR Doc. 2018–17301 Filed 8–10–18; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Availability of Report of 2017 Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, and the Government in the Sunshine Act, a report summarizing the closed meeting activities of the Art Advisory Panel during Fiscal Year 2017 has been prepared. A copy of this report has been filed with the Assistant Secretary for Management of the Department of the Treasury.

DATES: *Effective Date:* This report is available August 2, 2018.

ADDRESSES: The report is available at *https://www.irs.gov/compliance/appeals/art-appraisal-services.*

FOR FURTHER INFORMATION CONTACT: Maricarmen R. Cuello, AP:SPR:AAS, Internal Revenue Service/Appeals, 51 SW 1st Avenue, Room 1014, Miami, FL 33130, Telephone number (305) 982–5364 (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. App. 2, section 10(d), of the Federal Advisory Committee Act, and 5 U.S.C. 552b, of the Government in the Sunshine Act, a report summarizing the closed meeting activities of the Art Advisory Panel during Fiscal Year 2017 has been prepared. A copy of this report has been filed with the Assistant Secretary for Management of the Department of the Treasury.

It has been determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is, therefore, not required. Additionally, this document does not constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Donna Hansberry,

Chief, Appeals.

[FR Doc. 2018–17286 Filed 8–10–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA), Debt Management Center.

ACTION: Notice of modified system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 522a (e) (4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is modifying a system of records entitled ''Centralized Accounts Receivable System/Centralized Accounts Receivable On-Line System (CARS/CAROLS) (88VA244)''. This system was previously called ''Accounts Receivable Records VA'' (88VA244). This system had also been previously numbered ''88VA20A6''.

DATES: Comments on this modified system of records must be received no later than September 12, 2018. If no public comment is received during the period allowed for comment, or unless otherwise published in the **Federal Register** by VA, the modified system will become effective a minimum of 30 days after publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov*; by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (not a toll-free number). Comments should indicate that they are submitted in response to ''Centralized Accounts Receivable System/Centralized Accounts Receivable On-Line System (CARS/CAROLS)''. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for

an appointment. (This is not a toll-free number.) In addition, comments may be viewed online at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Chief, Support Services Division, Debt Management Center (189/00), U.S. Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111. The internet email address for Debt Management Center is: *SUPPORTSER.VAVBASPL@va.gov.*

SUPPLEMENTARY INFORMATION: Notification of this system of records was originally published under system number 88VA20A6 on November 3, 1994, at 59 FR 55155. The System Name has been changed to clarify the identity of the system. The revisions to the system of records were done to reflect current terminology and new citations for reference material. In some cases, routine uses have been more fully described and clarified to promote transparency. Routine uses 2 & 3 have been added to support an effective response in the event of a data breach. To broaden the application of the system of records to a department-wide basis and to reflect consolidation of collection responsibilities for additional types of debts under the administration of VA's Debt Management Center (DMC) in Ft. Snelling, Minnesota, an altered system of records was published November 26, 1996 at 61 FR 60148. The Debt Collection Improvement Act of 1996 (DCIA), section 31001 of Pub. L. 104–134, was enacted April 26, 1996 and provides for a Government-wide system of debt collection managed by the Department of the Treasury. The debt collection program adheres to VA security and reporting requirements under title 38, Code of Federal Regulations and other Federal regulations, as well as the Privacy Act of 1974, as amended (5 U.S.C. 552a), and the appropriate provisions of the Internal Revenue Code, title 26, United States Code.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John Oswalt, Executive Director for Privacy, Quality, Privacy, and Risk, Department of Veterans Affairs approved this document on June 1, 2018 for publication.

Dated: August 7, 2018.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy, Information and Identity Protection, Quality, Privacy and Risk, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

Centralized Accounts Receivable System/Centralized Accounts Receivable On-Line System. (CARS/CAROLS, combined system referred to as CAO)—88VA244

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Automated indebtedness records for first-party medical billing, pay administration, compensation, pension, educational assistance, survivors' and dependents' educational assistance and most home loan debts are maintained at VA's Financial Services Center (FSC) and Automation/Systems Development Center (AA/SDC) in Austin, Texas. Automated records of debts referred to the Department of Veterans Affairs for Government-wide cross-servicing authorized under 31 U.S.C. 3711(g)(4) are maintained at VA's AA/SDC in Austin, Texas. Extracts of benefit and home loan debt automated records are maintained in the Veterans Service Network (VETSNET) for accounting and adjudication purposes. VETSNET is housed at the Austin Information Technology Center (AITC), located in Austin, Texas. The Benefits Delivery Network (BDN) is administered by the Benefit Delivery Center (BDC) in Hines, Illinois. First-party medical billing information is extracted from records maintained at VA medical facilities and in automated media as more fully described in the Privacy Act system of records, 24VA19, ''Patient Medical Records—VA'' as published at 40 FR 38095 (Aug. 26, 1975), and amended as follows: 40 FR 52125 (Nov. 7, 1975); 41 FR 2881 (Jan. 20, 1976); 41 FR 11631 (Mar. 19, 1976); 42 FR 30557 (Jun. 15, 1977); 44 FR 31058 (May 30, 1979); 45 FR 77220 (Nov. 21, 1980); 46 FR 2766 (Jan. 12, 1981); 47 FR 28522 (Jun. 30, 1982); 47 FR 51841 (Nov. 17, 1982); 50 FR 11610 (Mar. 22, 1985); 51 FR 25968 (Jul. 17, 1986); 51 FR 44406 (Dec. 9, 1986); 52 FR 381 (Jan. 5, 1987); 53 FR 49818 (Dec. 9, 1988); 55 FR 5112 (Feb. 13, 1990); 55 FR 37604 (Sept. 12, 1990); 55 FR 42534 (Oct. 19, 1990); 56 FR 1054 (Jan. 10, 1991); 57 FR 28003 (Jun. 23, 1992); 57 FR 4519 (Oct. 1, 1992); 58 FR 29853 (May 24, 1993); 58 FR 40852 (Jul. 30, 1993); and, 58 FR 57674 (Oct. 26, 1993), 62 FR 35545, July 1, 1997; and 67 FR 72721, December 6, 2002. Automated and paper indebtedness records for the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) are maintained at the Health Administration Center (HAC) in Denver, Colorado and are more fully described in the Privacy Act system of records, 54VA17 ''Health Administration Center Civilian Health and Medical program Records–VA'' as published at 40 FR 38095 (Aug. 26, 1975) and amended at 53 FR 23845 (Jun. 24, 1998), 53 FR 25238 (Jul. 5, 1988) and 56 FR 26186 (Jun. 6, 1992). Pay administration indebtedness records are extracted from other automated and paper records maintained at all VA facilities and the Austin Finance Center and are more fully described in the Privacy Act system of records, 27VA047, ''Personnel and Accounting Integrated Data System'' as published at 40 FR 38095 (Aug. 26, 1975), and amended as follows: 48 FR 16372 (April 15, 1983); 50 FR 23100 (May 30, 1985); 51 FR 6858 (Feb. 26, 1986); 51 FR 25968 (Jul. 17, 1986); 55 FR 42534 (Oct. 19, 1990); 56 FR 23952 (May 24, 1991); 58 FR 39088 (Jul. 21, 1993); 58 40852 (Jul. 30, 1993); and, 60 FR 35448 (Jul. 7, 1995); 62 FR 41483 (Aug. 1, 1997), 62 FR 68362 (Dec. 31, 1997); and 77 FR 39346 (Jul. 2, 2012). Certain paper records, microfilm and microfiche are maintained at the VA Debt Management Center (DMC), Ft. Snelling, Minnesota. Education loan, miscellaneous home loan and spina bifida monthly allowance automated, paper, microfilm and microfiche records are maintained at DMC. Automated and paper indebtedness records related to the All-Volunteer Force Educational Assistance Program are also maintained at DMC. Paper records related to benefit and home loan accounts receivable may be maintained in individual file folders located at the VA regional office having jurisdiction over the domicile of the claimant or the geographic area in which a property securing a VA guaranteed, insured or direct loan is located. Similarly, paper and automated records related to first-party medical billing and CHAMPVA are also maintained in individual patient medical records at VA health care facilities and HAC. Generally, and with the exception of claims against third-party insurers and certain first-party medical debts, automated records and papers maintained at regional offices, health care facilities and HAC are not used directly in the debt collection process unless they are forwarded by conventional mail, electronic mail or facsimile to DMC. Records provided to

the Department of Housing and Urban Development (HUD) for inclusion in the Credit Alert Verification System (CAIVRS) are located at the HUD Data Processing Center in Lanham, Maryland. Records referred to the Department of the Treasury for inclusion in the Treasury Offset Program (TOP) are located at the Financial Management Service Debt Collection Operations System in Hyattsville, Maryland.

SYSTEM MANAGER(S):

Joseph Schmitt, Executive Director, Debt Management Center (189/00), U.S. Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111. Email: *SUPPORTSER.VAVBASPL@va.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Government records are maintained and managed under the authority set forth in 31 U.S.C. 3101 and 31 U.S.C. 3102. The purpose of the system is consistent with the financial management provisions of title 31, United States Code, chapter 37, the pay administration provisions of title 5, United States Code, chapter 55, and special provisions relating to VA benefits in title 38, United States Code, chapter 53.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to maintain records of individuals, organizations and other entities: (1) Indebted to the United States as a result of their participation in benefit and health care programs administered by VA; (2) indebted as a result of erroneous pay administration; (3) indebted under any other program administered by any agency of the United States Government and whose indebtedness record has been referred to VA for Government-wide cross-servicing under 31 U.S.C. 3711(g)(4); and (4) indebted under any Federal, State or local government program and whose debt was referred to VA for collection under any valid interagency agreement. Information in this system of records is used for the administrative management and collection of debts owed the United States and any State or local government and for which records are maintained in accordance with the preceding sentence.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons indebted to the United States Government as a result of their participation in benefit programs (including health care programs) administered by VA under title 38, United States Code, chapters 11, 13, 15, 17, 18, 21, 30, 31, 32, 33, 34, 35, 36 and 37, including persons indebted to the United States Government by virtue of their ownership, contractual obligation or rental of property owned by the Government or encumbered by a VA-guaranteed, insured, direct or vendee loan. The individuals covered are persons indebted to the United States Government as a result of their participation in a benefit program administered by VA, but who did not meet the requirements for receipt of such benefits or services. Persons indebted to the United States, a State or local government whose debts are referred to the Department of Veterans Affairs for Government-wide cross-servicing under 31 U.S.C. 3711(g)(4) or any valid interagency agreement. Persons indebted to the United States as the result of erroneous payment of pay or allowances or as the result of erroneous payment of travel, transportation or relocation expenses and allowances (previously and hereinafter referred to as ''pay administration'') under the provisions of title 5, United States Code, part III, subpart D.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information varies depending on the source of the debt. Identifying information including VA claim number, Social Security number, Tax Identification Number (TIN), name and address and, when appropriate, loan reference number, obtained from, among other sources, indebtedness records of Federal agencies other than VA and the following Privacy Act systems of records: ''Debt Collection Operations System—Treasury/Financial Management Service'' (Treasury/FMS .014); ''Compensation, Pension, Education and Vocational Rehabilitation Records—VA'' (58VA21/22/28); ''Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records—VA'' (55VA26); ''Patient Medical Records—VA'' (24VA136); and, ''Health Administration Center Civilian Health and Medical Program Records—VA'' (54VA17). Initial indebtedness amount, amounts claimed for reimbursement type of benefit from which the debt arose, identifying number of the VA regional office with jurisdiction over the underlying benefit claim or property subject to default or foreclosure, station number of the VA health care facility rendering services, name of co-obligor and property address of the defaulted home loan from 58VA21/22/28, 55VA26, 24VA136 and 54VA17 History of debt collection activity on the person, organization or entity includes correspondence, telephone calls, referrals to other Federal, State or local agencies, VA regional counsel, private collection and credit reporting agencies. Payments received, refunds made, interest amount, current balance of debt and indication of status of current VA benefit payments. Federal employment status obtained by computer matching with Government agencies and the United States Postal Service. No personal medical information concerning the nature of disease, injury or disability is transmitted to or maintained in this system of records.

RECORD SOURCE CATEGORIES:

The records in this system are derived from five other systems of records as set forth in ''Categories Of Records In The System,'' above, persons indebted to the United States by virtue of their participation in programs administered by VA or other Government agencies, dependents of those persons, fiduciaries for those persons (VA or court appointed), other Federal agencies, State and local agencies, private collection agencies, consumer reporting agencies, State, local and county courts and clerks, other third parties and other VA records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

For purposes of the following routine uses:

(a) The term, ''veteran'', includes present, former or retired members of the United States Armed Forces, the reserve forces or National Guard;

(b) The term, ''debtor'', means any person falling within the categories of individuals covered by this system, as set forth above. A ''debtor'' may be a veteran, as defined above, a veteran's dependent entitled to VA benefits (including health care) in his or her own right or a person who is neither a veteran nor a veteran's dependent for benefit purposes; and,

(c) The terms, ''benefit'', ''benefit program'' and ''VA program'' include any gratuitous benefit, home loan (including miscellaneous home loan) or health care (including CHAMPVA) program administered by the Secretary of Veterans Affairs.

1. Congress

VA may disclose information from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

VA must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of

constituents who have sought their assistance.

2. Data breach response and remedial efforts

To appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724.

A. Effective Response. A federal agency's ability to respond quickly and effectively in the event of a breach of federal data is critical to its efforts to prevent or minimize any consequent harm. An effective response necessitates disclosure of information regarding the breach to those individuals affected by it, as well as to persons and entities in a position to cooperate, either by assisting in notification to affected individuals or playing a role in preventing or minimizing harms from the breach.

B. *Disclosure of Information.* Often, the information to be disclosed to such persons and entities is maintained by federal agencies and is subject to the Privacy Act (5 U.S.C. 552a). The Privacy Act prohibits the disclosure of any record in a system of records by any means of communication to any person or agency absent the written consent of the subject individual, unless the disclosure falls within one of twelve statutory exceptions. In order to ensure an agency is in the best position to respond in a timely and effective manner, in accordance with 5 U.S.C. 552a(b)(3) of the Privacy Act, agencies should publish a routine use for appropriate systems specifically applying to the disclosure of information in connection with response and remedial efforts in the event of a data breach.

3. Data breach response and remedial efforts with another Federal agency VA may, on its own initiative, disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. Law Enforcement

VA may, on its own initiative, disclose information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

VA must be able to provide on its own initiative information that pertains to a violation of laws to law enforcement authorities in order for them to investigate and enforce those laws. Under 38 U.S.C. 5701(a) and (f), VA may only disclose the names and addresses of veterans and their dependents to Federal entities with law enforcement responsibilities. This is distinct from the authority to disclose records in response to a qualifying request from a law enforcement entity, as authorized by Privacy Act subsection 5 U.S.C. 552a(b)(7).

5. Litigation

VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

To determine whether to disclose records under this routine use, VA will comply with the guidance promulgated by the Office of Management and Budget in a May 24, 1985, memorandum entitled ''Privacy Act Guidance—Update,'' currently posted at *http://www.whitehouse.gov/omb/inforeg/guidance1985.pdf.*

VA must be able to provide information to DoJ in litigation where the United States or any of its components is involved or has an interest. A determination would be made in each instance that under the circumstances involved; the purpose is compatible with the purpose for which VA collected the information. This routine use is distinct from the authority to disclose records in response to a court order under subsection (b)(11) of the Privacy Act, 5 U.S.C. 552(b)(11), or any other provision of subsection (b), in accordance with the court's analysis in *Doe* v. *DiGenova,* 779 F.2d 74, 78–84 (D.C. Cir. 1985) and *Doe* v. *Stephens,* 851 F.2d 1457, 1465–67 (D.C. Cir. 1988).

6. Contractors

VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement.

This routine use includes disclosures by an individual or entity performing services for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

This routine use, which also applies to agreements that do not qualify as contracts defined by Federal procurement laws and regulations, is consistent with OMB guidance in OMB Circular A–130, App. I, paragraph 5a(1)(b) that agencies promulgate routine uses to address disclosure of

Privacy Act-protected information to contractors in order to perform the services contracts for the agency.

7. Equal Employment Opportunity Commission (EEOC)

VA may disclose information from this system to the EEOC when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

VA must be able to provide information to EEOC to assist it in fulfilling its duties to protect employees' rights, as required by statute and regulation.

8. Federal Labor Relations Authority (FLRA)

VA may disclose information from this system to the FLRA, including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Service Impasses Panel, investigate representation petitions, and conduct or supervise representation elections.

VA must be able to provide information to FLRA to comply with the statutory mandate under which it operates.

9. Merit Systems Protection Board (MSPB)

VA may disclose information from this system to the MSPB, or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

VA must be able to provide information to MSPB to assist it in fulfilling its duties as required by statute and regulation.

10. National Archives and Records Administration (NARA) and General Services Administration (GSA):

VA may disclose information from this system to NARA and GSA in records management inspections conducted under title 44, U.S.C.

NARA is responsible for archiving old records which are no longer actively used but may be appropriate for preservation, and for the physical maintenance of the Federal government's records. VA must be able to provide the records to NARA in order to determine the proper disposition of such records.

11. Federal Agencies, for Computer Matches

VA may disclose identifying information, including social security number, concerning veterans, spouses of veterans, and the beneficiaries of veterans to other federal agencies for the purpose of conducting computer matches to obtain information to determine or verify eligibility of veterans receiving VA benefits under Title 38, U.S.C.

Office of Personal Management (OPM) may disclose limited individual identification information to another Federal agency for the purpose of matching and acquiring information held by that agency for OPM to use for the purposes stated for this system of records. OPM may act as an intermediary when a Veteran makes statements to OPM that are inconsistent with information furnished by the VA.

A complete list of specific details of Computer Matches is listed below:

A. Any information in this system may be disclosed, by computer matching or otherwise, in connection with any proceeding for the collection of an amount owed the United States when, in the judgment of the Secretary, or official generally delegated such authority under standard agency delegation of authority rules (38 CFR 2.6), such disclosure is deemed necessary and proper in accordance with 38 U.S.C. 5701(b)(6) for debts. resulting from participation in VA benefit programs or pay administration, with 31 U.S.C. 3711(g)(5) for other debts referred to VA in its capacity as a Government-wide cross-servicing facility or with a valid interagency agreement for collection services independent of the cross-servicing provisions of section 3711(g)(4) and (g)(5).

B. Identifying information, including the debtor's name, Social Security number and VA claim number, along with the amount of indebtedness, may be disclosed to any Federal agency, including the U.S. Postal Service, in the course of conducting computer matching to identify and locate delinquent debtors employed by or receiving retirement benefits from those agencies. Such debtors may be subject to offset of their pay or retirement benefits under the provisions of 5 U.S.C. 5514.

C. Any information in this system, including the nature and amount of a financial obligation as well as the history of debt collection activity against a debtor, may be disclosed to the Federal agency administering salary or retirement benefits to the debtor to assist that agency in initiating offset of salary or retirement benefits to collect delinquent debts owed the United States.

D. The name(s) and address(es) of a debtor(s) may be disclosed to another Federal agency or to a contractor of that agency, at the written request of the head of that agency or designee of the head of that agency for the purpose of conducting Government research or oversight necessary to accomplish a statutory purpose of that agency.

E. Debtors' social security numbers, VA claim numbers, loan account numbers and other information as is reasonably necessary to identify individual indebtedness accounts may be disclosed to the Department of Housing and Urban Development for inclusion in the Credit Alert Verification System (CAIVRS). Information in CAIVRS may be disclosed to all participating agencies and lenders who participate in the agencies' programs to enable them to verify information provided by new loan applicants and evaluate the creditworthiness of applicants. Records are disclosed to participating agencies and private-sector lenders by an ongoing computer matching program.

F. Name, Social Security numbers and any other information reasonably necessary to ensure accurate identification may be disclosed to the Department of the Treasury, Internal Revenue Service, to obtain the mailing address of taxpayers who are debtors under this system of records. Disclosure is made by computer matching and pursuant to 26 U.S.C. 6103(m)(2).

G. Any information in a record under this system of records may be disclosed to the United States Government Accountability Office (GAO) to enable GAO to pursue collection activities authorized to that office or any other activities within their statutory authority.

H. Any information in this system concerning a debt over 180 days delinquent may be disclosed, by computer matching or otherwise, to the Secretary of the Treasury or to any designated Government disbursing official for purposes of conducting administrative offset of any eligible Federal payments under the authority set forth in 31 U.S.C. 3716. Payments subject to offset include those payments disbursed by the Department of the Treasury, the Department of Defense, the United States Postal Service, any Government corporation or any disbursing official of the United States designated by the Secretary of the Treasury. Subject to certain exemptions, Social Security, Black Lung, Railroad

Retirement benefits and tax refunds may be included in those Federal payments eligible for administrative offset.

I. Any information in this system of records concerning a debt over 180 days delinquent may be disclosed, by computer matching or otherwise, to the Secretary of the Treasury for appropriate collection or termination action, including the transfer of the indebtedness for collection or termination, in accordance with 31 U.S.C. 3711(g)(4), to a debt collection center designated by the Secretary of the Treasury, to a private collection agency or to the Department of Justice. The Secretary of the Treasury, through the Department of the Treasury, a designated debt collection center, a private collection agency or the Department of Justice, may take any appropriate action on a debt in accordance with the existing laws under which the debt arose.

12. Federal Agencies, for Litigation

VA may, on its own initiative, disclose information to another federal agency, court, or party in litigation before a court or other administrative proceeding conducted by an agency, if VA is a party to the proceeding and needs to disclose the information to protect its interests.

13. Federal, State, Local Agencies, Hiring, Retention, Contract, Security Clearance, Grant, or Permit

VA may disclose information in this system, except the names and home addresses of veterans and their dependents, to a Federal, State, or local agency maintaining civil or criminal violation records, or other pertinent information such as prior employment history, prior Federal employment background investigations, and/or personal or educational background in order for the VA to obtain information relevant to the hiring, transfer or retention of an employee, the letting of a contract, the granting of a security clearance, or the issuance of a grant or other benefit. The names and home addresses of veterans and their dependents may be disclosed to a Federal agency in order to respond to the VA inquiry.

14. Federal Agencies, for Employment

VA may disclose information from this system of records to a federal agency or the District of Columbia government, in response to its request, in connection with the hiring or retention of an employee and the issuance of a security clearance as required by law, the reporting of an investigation of an employee, the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision.

15. State or Local Agency, for Hiring

Any information in this system may be disclosed to a State or local agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision on: The hiring, transfer or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance or continuance of a license, grant or other benefit by the agency; provided, that if the information pertains to a veteran, the name and address of the veteran will not be disclosed unless the name and address is provided first by the requesting State or local agency.

16. Consumer Reporting Agencies

VA may disclose the name and address of a veteran or beneficiary, and other information as is reasonably necessary to identify such individual or concerning that individual's indebtedness to the United States by virtue of the person's participation in a benefits program administered by the Department, to a consumer reporting agency for the purpose of locating the individual, obtaining a consumer report to determine the ability of the individual to repay an indebtedness to the United States, or assisting in the collection of such indebtedness, provided that the provisions of 38 U.S.C. 57019(g)(2) and (4) have been met. The purpose of this information disclosure to a consumer-reporting agency is to assist VA in locating an individual, obtaining a consumer report to determine his or her ability to repay indebtedness, and to collect indebtedness.

17. DOJ, for FTCA claims

Relevant information may be disclosed to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

18. Treasury, IRS

VA may disclose the name of a veteran or beneficiary, other information as is reasonably necessary to identify such individual, and any other information concerning the individual's indebtedness by virtue of a person's participation in a benefits program administered by VA, may be disclosed to the Department of the Treasury, Internal Revenue Service, for the collection of Title 38 benefit overpayments, overdue indebtedness, and/or costs of services provided to an individual not entitled to such services, by the withholding of all or a portion of the person's Federal income tax refund. The purpose of this disclosure is to collect a debt owed the VA by an individual by offset of his or her Federal income tax refund.

19. Treasury, to Report Waived Debt as Income

VA may disclose an individual's name, address, social security number, and the amount (excluding interest) of any indebtedness which is waived under 38 U.S.C. 3102, compromised under 4 CFR part 103, otherwise forgiven, or for which the applicable statute of limitations for enforcing collection has expired, to the Department of the Treasury, Internal Revenue Service, as a report of income under 26 U.S.C. 61(a)(12).

20. Guardians Ad Litem, for Representation

VA may disclose information to a fiduciary or guardian ad litem in relation to his or her representation of a claimant in any legal proceeding, but only to the extent necessary to fulfill the duties of the fiduciary or guardian ad litem.

This disclosure permits VA to provide individual information to an appointed VA Federal fiduciary or to the individual's guardian ad litem that is needed to fulfill appointed duties.

21. Guardians, for Incompetent Veterans

VA may disclose relevant information from this system of records in the course of presenting evidence to a court, magistrate, or administrative tribunal; in matters of guardianship, inquests, and commitments; to private attorneys representing veterans rated incompetent in conjunction with issuance of Certificates of Incompetency; and to probation and parole officers in connection with court-required duties.

22. Claims Representatives

VA may disclose information from this system of records relevant to a claim of a veteran or beneficiary, such as the name, address, the basis and nature of a claim, amount of benefit payment information, medical information, and military service and active duty separation information, at the request of the claimant to accredited service organizations, VA-approved claim agents, and attorneys acting under a declaration of representation, so that these individuals can aid claimants in the preparation, presentation, and prosecution of claims under the laws administered by VA. The name and address of a claimant will not, however, be disclosed to these individuals under this routine use if the claimant has not requested the assistance of an accredited service organization, claims agent or an attorney.

VA must be able to disclose this information to accredited service organizations, VA-approved claim agents, and attorneys representing veterans so they can assist veterans by preparing, presenting, and prosecuting claims under the laws administered by VA.

23. Third Parties

A. Any information in this system, including available identifying information regarding a person, such as the person's name, address, Social Security number, VA insurance number, VA claim number, VA loan number, date of birth, employment information or identification number assigned by any Government component, may be disclosed, except to consumer reporting agencies, to a third party in order to obtain current name, address and credit report in connection with any proceeding for the collection of an amount owed the United States. Such disclosure may be made in the course of computer matching having the purpose of obtaining the information indicated above. Third parties may include other Federal agencies or State probate courts.

B. Any information concerning a person's indebtedness to the United States, including personal information obtained from other Federal agencies through computer matching programs, may be disclosed to any third party, except consumer reporting agencies, in connection with any proceeding for the collection of any amount owed to the United States. Purposes of these disclosures include, but are not limited to (a) assisting the Government in collection of debts resulting from participation in Government programs of all categories and pay administration, and (b) initiating legal actions for prosecuting individuals who willfully or fraudulently obtain Government benefits, pay or allowances without entitlement. Third parties may include, but are not limited to, persons, organizations or other entities with contracts for collection services with the Government.

C. The name and address of a debtor, other information as is reasonably necessary to identify such person, including personal information obtained from other Federal, state or local agencies as well as private sources through computer matching, and other information concerning the person's indebtedness to the United States, may be disclosed to third parties, including Federal, State and local government agencies to determine the debtor's employer. Such information may be used to initiate garnishment of disposable pay in accordance with the provisions of 31 U.S.C. 3720D.

D. The name and address of a debtor, and such other information as may be necessary for identification of that debtor, may be disclosed to a debtor's employer for purposes of initiating garnishment of the disposable pay of that debtor under the provisions of 31 U.S.C. 3720D.

E. The names and addresses of delinquent debtors, along with the amounts of their debts, may be published or otherwise publicly disseminated subject to the provisions of 31 U.S.C 3720E.

F. Any information in this system may be disclosed to a third-party purchaser of debt more than 90 days delinquent and for which the sale of such debt was conducted pursuant to the provisions of 31 U.S.C. 3711(i).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Storage for CARS/CAROLS is located on disk packs for the mainframe part (CARS) and network storage for the CAROLS portion. All storage is housed within the Austin Information Technology Center. Records are maintained on magnetic tape and disk, microfilm, microfiche, optical disk and paper documents. DMC does not routinely maintain paper records of individual debtors in file folders with the exception of correspondence, and replies thereto, from Congress, the White House, members of the Cabinet and other similar sources. Paper records related to accounts receivable may be maintained in individual file folders located at VA regional offices, health care facilities, HAC and other agencies referring debts to VA in its capacity as a Government-wide cross-servicing debt collection center. Generally, and with the exception of claims against third-party insurers and certain first-party medical debts, such papers maintained outside of DMC are not used directly in the debt collection process unless they are first forwarded to DMC. Records of debts referred to VA in its capacity as a Government-wide cross servicing debt collection center will be accessible only to employees of DMC. Information stored on magnetic media and related to the All-Volunteer Force Educational Assistance, education loan, miscellaneous home loan or HAC debt collection programs may be accessed through personal computers. Records provided to the Department of Housing and Urban Development for inclusion in the Credit Alert Verification System (CAIVRS) are maintained on magnetic media at the HUD Data Processing Center in Lanham, Maryland. Records provided to the Department of the Treasury for administrative offset or referral to a designated debt collection center, private collection agency or the Department of Justice are maintained on magnetic media at the Financial Management Service Debt Collection Operations System in Hyattsville, Maryland. For VA benefit debts other than miscellaneous home loan, first-party medical and CHAMPVA, identifying information, the amount of the debt and benefit source of the debt may be stored on magnetic media in records that serve as the database for the VA Benefits Delivery Network (BDN) and Veterans Service Network (VETSNET). BDN and VETSNET are operated for the adjudication of VA claims and the entry of certain fiscal transactions. The identifying information, the amount of the debt and benefit source of the debt is transmitted to the Centralized Accounts Receivable System (CARS) or a personal computer local area network system before collection activity commences. When a debtor is awarded gratuitous benefits under VA programs, the BDN and VETSNET may operate to offset all or part of retroactive funds awarded, if any, to reduce the balance of the indebtedness. The Veterans Health Information Systems and Technology Architecture (VISTA), through its various modules, are used to create and store first-party medical charges and debts associated with the provision of health care benefits. The identifying information about the person, the amount of the debt and program source of the debt may be transmitted to CARS as part of the collection process. When a person receives care under the auspices of VA, a VA medical facility may collect all or part of a charge or debt.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Paper documents, microfilm and microfiche related to VA claims and debts are indexed by VA file number or Social Security Number or date of receipt. Automated records of VA claims and debts are indexed by VA claim number, Social Security account number, name and loan account number in appropriate circumstances. Paper documents, microfilm, microfiche and automated records of pay administration debts and debts referred to VA for cross servicing are indexed by Social Security account number or Taxpayer Identification Number. Records in CAIVRS may only be retrieved by Social Security number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Microfilm and microfiche are retained in metal cabinets in DMC for 25 years. CARS records are retained until termination of debt collection (payment in full, write off, compromise or waiver). All other automated storage media are retained and disposed of in accordance with disposition authorization approved by the Archivist of the United States. DMC generally forwards all substantive paper documents to VA regional offices, health care facilities and CHAMPVA Center for storage in claims files, patient treatment files, imaging systems or loan files. Those documents are retained and disposed of in accordance with the appropriate system of records. Information provided to HUD for CAIVRS is stored on magnetic tape. The tapes are returned to VA for updating each month. HUD does not keep separate copies of the tapes. Information provided to the Department of the Treasury for the Treasury Offset Program is transferred electronically and stored by Treasury on magnetic media. In the case of CARS/CAROLS there are no physical items, only electronic. The electronic records being keep on CARS/CAROLS change daily and exist until the debt is otherwise settled. There is no history currently being kept by this system and no archiving.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. Physical Security:

(a) Access to working spaces and document storage areas in DMC is restricted by cipher locks and to VA employees on a need-to-know basis. Generally, document storage areas in VA offices other than DMC are restricted to VA employees on a need-to-know basis. VA offices are generally protected from outside access by the Federal Protective Service or other security personnel. Strict control measures are enforced to ensure that access to and disclosure from documents, microfilm and microfiche are limited to a need-to-know basis.

(b) Access to CAROLS data telecommunications terminals is by authorization controlled by the site security officer. The security officer is assigned responsibility for privacy-security measures, especially for review of violation logs, information logs and control of password distribution.

(c) Access to data processing centers is generally restricted to center employees, custodial personnel, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other personnel gaining access to computer rooms are escorted.

2. CAROLS and Personal Computer Local Area Network (LAN) Security:

(a) Usage of CAROLS and LAN terminal equipment is protected by password access. Electronic keyboard locks are activated on security errors.

(b) At the data processing centers, identification of magnetic media containing data is rigidly enforced using labeling techniques. Automated storage media which are not in use are stored in tape libraries which are secured in locked rooms. Access to programs is controlled at three levels: Programming, auditing and operations. Access to CARS is maintained and control via the CUPS application which allows management at DMC to request specific staff to have specific levels of access within the system. Access to CAROLS is maintained by the St. Paul VBA RO National Support Center staff. DMC makes requests for access for specific staff and the St. Paul RO NSC staff updates the system accordingly.

3. CAIVRS Security: Access to the HUD data processing center from which CAIVRS is operated is generally restricted to center employees and authorized contact employees. Access to computer rooms is restricted to authorized operational personnel through locking devices. All other persons gaining access to computer rooms are escorted. Records in CAIVRS use Social Security numbers as identifiers. Access to information files is restricted to authorized employees of participating agencies and authorized employees of lenders who participate in the agencies' programs. Access is controlled by agency distribution of passwords. Information in the system may be accessed by use of a touch-tone telephone by authorized agency and lender employees on a need-to-know basis.

4. Department of the Treasury Security: Access to the system is on a need-to-know basis, only, as authorized by the system manager. Procedural and physical safeguards are utilized to include accountability, receipt records and specialized communications security. The data system has an internal mechanism to restrict access to authorized officials. The building is patrolled by uniformed security guards.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of records maintained by VA may write, call or visit the nearest VA regional office. Address locations are listed in VA Appendix 1 of 58VA21/22/28.

CONTESTING RECORD PROCEDURES:

See record access procedures above.

NOTIFICATION PROCEDURES:

An individual, who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the nearest VA regional office or center. Address locations are listed in VA Appendix 1 of 58VA21/22/28. VA employees wishing to inquire whether the system of records contains employee productivity information about themselves should contact their supervisor at the regional office or center of employment.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

88VA244 ''Accounts Receivable Records—VA'' published at 63 FR 16864 on 4/6/1998.

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