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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1003

RIN 3170–AA81

Partial Exemptions From the Requirements of the Home Mortgage Disclosure Act Under the Economic Growth, Regulatory Relief, and Consumer Protection Act (Regulation C)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interpretive and procedural rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing an interpretive and procedural rule to implement and clarify the requirements of section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act, which amended certain provisions of the Home Mortgage Disclosure Act.

DATES: This interpretive and procedural rule is effective on September 7, 2018.

FOR FURTHER INFORMATION CONTACT: Rachel Ross, Project Analyst; Alexandra Reimelt, Counsel; or Amanda Quester, Senior Counsel, Office of Regulations, at 202–435–7700 or *https://reginquiries.consumerfinance.gov/.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary

On May 24, 2018, the President signed the Economic Growth, Regulatory Relief, and Consumer Protection Act (the Act) into law.[1] Section 104(a) of the Act amends section 304(i) of the Home Mortgage Disclosure Act (HMDA) by adding partial exemptions from HMDA's requirements for certain insured depository institutions and insured credit unions. Financial institutions have raised questions about the new partial HMDA exemptions and how the exemptions affect collection and reporting of data for transactions with final action taken in 2018 or subsequent years. To provide timely answers to these questions, the Bureau is issuing this interpretive and procedural rule that implements and clarifies section 104(a) of the Act and effectuates the purposes of the Act and HMDA.

The rule clarifies that insured depository institutions and insured credit unions covered by a partial exemption have the option of reporting exempt data fields as long as they report all data fields within any exempt data point for which they report data; clarifies that only loans and lines of credit that are otherwise HMDA reportable count toward the thresholds for the partial exemptions; clarifies which of the data points in Regulation C are covered by the partial exemptions; designates a non-universal loan identifier for partially exempt transactions for institutions that choose not to report a universal loan identifier; and clarifies the exception to the partial exemptions for negative Community Reinvestment Act examination history. At a later date, the Bureau anticipates that it will initiate a notice-and-comment rulemaking to incorporate these interpretations and procedures into Regulation C and further implement the Act.

II. Background

A. Home Mortgage Disclosure Act and Regulation C

The Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801 through 2810, requires certain depository institutions and for-profit nondepository institutions to collect, report, and disclose data about originations and purchases of mortgage loans, as well as mortgage loan applications that do not result in originations (for example, applications that are denied or withdrawn). The purposes of HMDA are to provide the public with loan data that can be used: (i) To help determine whether financial institutions are serving the housing needs of their communities; (ii) to assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and (iii) to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.[2] Regulation C, 12 CFR part 1003, implements HMDA. Prior to enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Regulation C required reporting of 22 data points and allowed for optional reporting of reasons an institution denied an application.[3]

B. Dodd-Frank Act

In 2010, Congress enacted the Dodd-Frank Act, which amended HMDA and also transferred HMDA rulemaking authority and other functions from the Board of Governors of the Federal Reserve System (Board) to the Bureau.[4] Among other changes, the Dodd-Frank Act expanded the scope of information relating to mortgage applications and loans that institutions must compile, maintain, and report under HMDA. Specifically, the Dodd-Frank Act amended HMDA section 304(b)(4) by adding one new data point, the age of loan applicants and mortgagors. The Dodd-Frank Act also added new HMDA section 304(b)(5) and (6), which requires the following additional new data points: information relating to the total points and fees payable at origination (total loan costs or total points and fees); the difference between the annual percentage rate (APR) associated with the loan and a benchmark rate or rates for all loans (rate spread); the term of any prepayment penalty; the value of real property to be pledged as collateral; the term of the loan and of any introductory interest rate on the loan; the presence of contract terms allowing non-amortizing payments; the channel through which the application was made; and the credit scores of applicants and mortgagors.[5] New HMDA section 304(b)(6) in addition authorizes the Bureau to require, ''as [it] may determine to be appropriate,'' a unique identifier that identifies the loan originator, a universal loan identifier (ULI), and the parcel number that corresponds to the real property pledged

[1] Public Law 115–174, 132 Stat. 1296 (2018).

[2] 12 CFR 1003.1.

[3] As used in this interpretive and procedural rule, the term ''data point'' refers to items of information that entities are required to compile and report, generally listed in separate paragraphs in Regulation C. Some data points are reported using multiple data fields.

[4] Public Law 111–203, 124 Stat. 1376, 1980, 2035–38, 2097–101 (2010).

[5] Dodd-Frank Act section 1094(3), *amending* HMDA section 304(b), 12 U.S.C. 2803(b).

as collateral for the mortgage loan.[6] New HMDA section 304(b)(5)(D) and (b)(6)(J) further provides the Bureau with the authority to mandate reporting of ''such other information as the Bureau may require.'' [7]

C. 2015 and 2017 HMDA Final Rules

In October 2015, the Bureau issued a final rule implementing the Dodd-Frank Act amendments to HMDA (2015 HMDA Final Rule).[8] The 2015 HMDA Final Rule implemented the new data points specified in the Dodd-Frank Act,[9] added a number of additional data points pursuant to the Bureau's discretionary authority under HMDA section 304(b)(5) and (6),[10] and made revisions to certain pre-existing data points to clarify their requirements, provide greater specificity in reporting, and align certain data points more closely with industry data standards,[11] among other changes.

The 2015 HMDA Final Rule also established transactional thresholds that determine whether financial institutions are required to collect and report data on open-end lines of credit or closed-end mortgage loans.[12] The 2015 HMDA Final Rule set the closed-end threshold at 25 loans in each of the two preceding calendar years and the open-end threshold at 100 open-end lines of credit in each of the two preceding calendar years.[13] Most of the 2015 HMDA Final Rule took effect on January 1, 2018.[14]

After issuing the 2015 HMDA Final Rule, the Bureau heard concerns that the open-end threshold of 100 transactions was too low. In August 2017, the Bureau finalized a rule after notice and comment (2017 HMDA Final Rule) that temporarily increases the open-end threshold to 500 open-end lines of credit for calendar years 2018 and 2019.[15] In doing so, the Bureau indicated that the two-year period would allow time for the Bureau to decide, through an additional rulemaking, whether any permanent adjustments to the open-end threshold are needed.[16]

Recognizing the significant systems and operations challenges needed to adjust to the revised regulation, the Bureau issued a statement in December 2017 indicating that, for HMDA data collected in 2018 and reported in 2019, the Bureau does not intend to require data resubmission unless data errors are material.[17] The statement also explained that the Bureau does not intend to assess penalties with respect to errors in data collected in 2018 and reported in 2019.[18] As explained in the statement, any supervisory examinations of 2018 HMDA data will be diagnostic to help institutions identify compliance weaknesses and will credit good-faith compliance efforts. The Board, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC) released similar statements.

D. Economic Growth, Regulatory Relief, and Consumer Protection Act

Section 104(a) of the Act amends HMDA section 304(i) by adding partial exemptions from HMDA's requirements for certain insured depository institutions and insured credit unions.[19] New HMDA section 304(i)(1) provides that the requirements of HMDA section 304(b)(5) and (6) shall not apply with respect to closed-end mortgage loans of an insured depository institution or insured credit union if it originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years. New HMDA section 304(i)(2) provides that the requirements of HMDA section 304(b)(5) and (6) shall not apply with respect to open-end lines of credit of an insured depository institution or insured credit union if it originated fewer than 500 open-end lines of credit in each of the two preceding calendar years. Notwithstanding the new partial exemptions, new HMDA section 304(i)(3) provides that an insured depository institution must comply with HMDA section 304(b)(5) and (6) if it has received a rating of ''needs to improve record of meeting community credit needs'' during each of its two most recent examinations or a rating of ''substantial noncompliance in meeting community credit needs'' on its most recent examination under section 807(b)(2) of the Community Reinvestment Act of 1977.[20]

The Act does not provide an effective date for section 104(a). Because there is no specific effective date and because there are no other statutory indications that section 104(a) becomes effective upon regulatory action or some other event or condition, the Bureau believes that the best interpretation is that section 104(a) took effect when the Act became law on May 24, 2018. On July 5, 2018, the Bureau, the Board, the FDIC, the NCUA, and the OCC released statements reiterating or referring to their December 2017 compliance statements, providing information about formatting and submission of 2018 loan/application registers, and indicating that the Bureau expected to issue guidance this summer on the applicability of the Act to HMDA data collected in 2018.[21]

III. Legal Authority

The Bureau issues this rule pursuant to the authority granted by the Dodd-Frank Act and HMDA. HMDA authorizes the Bureau to prescribe regulations that it finds necessary to carry out HMDA's purposes.[22] As mentioned earlier, the Dodd-Frank Act transferred to the Bureau the ''consumer financial protection functions'' previously vested in certain other

[6] *Id.*

[7] *Id.*

[8] Home Mortgage Disclosure (Regulation C), 80 FR 66128 (Oct. 28, 2015).

[9] The following 12 data points in 12 CFR 1003.4(a) implement specific provisions in HMDA section 304(b)(5)(A) through (C) or (b)(6)(A) through (I): ULI (1003.4(a)(1)(i)); property address (1003.4(a)(9)(i)); rate spread (1003.4(a)(12)); credit score (1003.4(a)(15)); total loan costs or total points and fees (1003.4(a)(17)); prepayment penalty term (1003.4(a)(22)); loan term (1003.4(a)(25)); introductory rate period (1003.4(a)(26)); non-amortizing features (1003.4(a)(27)); property value (1003.4(a)(28)); application channel (1003.4(a)(33)); and mortgage loan originator identifier (1003.4(a)(34)). *Id.*

[10] For example, the 2015 HMDA Final Rule added a requirement to report debt-to-income ratio in § 1003.4(a)(23). *Id.* at 66218–20.

[11] For example, the 2015 HMDA Final Rule replaced property type with number of total units and construction method in § 1003.4(a)(5) and (31). *Id.* at 66180–81, 66227. It also requires disaggregation of ethnicity and race information in § 1003.4(a)(10)(i). *Id.* at 66187–94.

[12] *Id.* at 66128.

[13] *Id.*

[14] *Id.* at 66128, 66256–58.

[15] Home Mortgage Disclosure (Regulation C), 82 FR 43088 (Sept. 13, 2017).

[16] *Id.* at 43095. The 2017 HMDA Final Rule also, among other things, replaced ''each'' with ''either'' in § 1003.3(c)(11) and (12) to correct a drafting error and to ensure that the exclusion provided in that section mirrors the loan-volume threshold for financial institutions in § 1003.2(g). *Id.* at 43100, 43102.

[17] Bureau of Consumer Fin. Prot., ''Statement with Respect to HMDA Implementation'' (Dec. 21, 2017), *https://files.consumerfinance.gov/f/documents/cfpb_statement-with-respect-to-hmda-implementation_122017.pdf.*

[18] The statement also indicated that collection and submission of the 2018 HMDA data will provide financial institutions an opportunity to identify any gaps in their implementation of amended Regulation C and make improvements in their HMDA compliance management systems for future years. *Id.*

[19] For purposes of HMDA section 104, the Act provides that the term ''insured credit union'' has the meaning given the term in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752, and the term ''insured depository institution'' has the meaning given the term in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

[20] 12 U.S.C. 2906(b)(2).

[21] *See, e.g.,* Bureau of Consumer Fin. Prot., ''Statement on the Implementation of the Economic Growth, Regulatory Relief, and Consumer Protection Act Amendments to the Home Mortgage Disclosure Act'' (July 25, 2018), *https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-issues-statement-implementation-economic-growth-regulatory-relief-and-consumer-protection-act-amendments-home-mortgage-disclosure-act/.*

[22] 12 U.S.C. 2804(a).

Federal agencies, including the Board.[23] The term ''consumer financial protection function'' includes ''all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.'' [24] The Dodd-Frank Act authorizes the Bureau's Director to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' [25] HMDA is an ''enumerated consumer law'' and therefore a ''Federal consumer financial law.'' [26] Accordingly, the Bureau has authority to issue regulations to administer HMDA under both HMDA and the Dodd-Frank Act.

IV. Permissible Optional Reporting

Section 104(a) of the Act provides that the requirements of HMDA section 304(b)(5) and (6) shall not apply to closed-end mortgage loans of an insured depository institution or insured credit union if the institution originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years, and it includes a similar partial exemption with respect to open-end lines of credit.[27] Whether a partial exemption applies to an institution's lending activity for a particular calendar year depends on an institution's origination activity in each of the preceding two years and, in some cases, cannot be determined until just before data collection must begin for that particular calendar year. For example, whether a partial exemption applies to closed-end loans for which final action is taken in 2019 depends on the number of closed-end loans originated by the insured depository institution or insured credit union in 2017 and 2018. Thus, an insured depository institution or insured credit union might not know until the end of 2018 what information it needs to collect in 2019 and report in 2020. Some insured depository institutions and insured credit unions eligible for a partial exemption under the Act may therefore find it less burdensome to report all of the data including the exempt data points than to separate the exempt data points from the required data points and exclude the exempt data points from their submissions. This may be particularly true with respect to data submission in 2019, as collection of 2018 data was already underway when the Act took effect, and system changes implementing the new partial exemptions may take time to complete.[28] Even after insured depository institutions and insured credit unions have had time to adjust their systems, some may still find it less burdensome to report data covered by a partial exemption, especially if their loan volumes tend to fluctuate above or below the threshold from year to year. The Bureau believes that section 104(a) is best interpreted as permitting optional reporting of data covered by the Act's partial exemptions. Section 104(a) provides that certain requirements do not apply to affected institutions but does not prohibit those affected institutions from voluntarily reporting data. This interpretation is consistent not only with the statutory text but also with the apparent congressional intent to reduce burden on certain institutions. Accordingly, the Bureau interprets the Act to permit insured depository institutions and insured credit unions voluntarily to report data that are covered by the Act's partial exemptions.

Aspects of the Bureau's HMDA platform used for receiving HMDA submissions, including edit checks [29] performed on incoming submissions, are set up with the expectation that HMDA reporters will provide data for an entire data point when data are reported for any data field within that data point. Adjusting the HMDA platform to accept submissions for 2018 and all future submissions in which affected institutions report some, but not all, data fields in a data point covered by a partial exemption for a specific transaction would increase operational complexity and costs associated with changing the HMDA edits in the Filing Instructions Guide for HMDA Data Collected in 2018 (2018 FIG). Doing so would result in a less efficient implementation and submission process for the Bureau, HMDA reporters, their vendors, and other key stakeholders. Accordingly, the HMDA platform will continue to accept submissions of a data field that is covered by a partial exemption under the Act for a specific loan or application as long as those insured depository institutions and insured credit unions that choose to voluntarily report the data include all other data fields that the data point comprises. For example, if a partially exempt institution reports a data field that is part of the property address data point (such as street address) for a partially exempt loan or application, it will report all other data fields that are part of the property address data point (including zip code, city, and State [30]) for that transaction in accordance with the 2018 FIG.

V. Loans Counted Toward Partial Exemptions' Thresholds

Section 104(a) of the Act does not define the term ''closed-end mortgage loan'' or ''open-end line of credit.'' It also does not specify whether these terms include loans or lines of credit that would otherwise not be subject to HMDA reporting under Regulation C, such as loans used primarily for agricultural purposes.[31] The Bureau believes that the terms ''closed-end

[23] 12 U.S.C. 5581. The Dodd-Frank Act also replaced the term ''Board'' with ''Bureau'' in most places in HMDA.

[24] 12 U.S.C. 5581(a)(1)(A).

[25] 12 U.S.C. 5512(b)(1).

[26] 12 U.S.C. 5481(12)(K); 12 U.S.C. 5481(14).

[27] The Act's two partial exemptions operate independently of one another. Thus, an insured depository institution or insured credit union could be eligible in a given calendar year for one of the partial exemptions but not the other. For example, if an insured depository institution that does not have a negative Community Reinvestment Act examination history originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years but originated 500 or more open-end lines of credit in either of the two preceding calendar years, it is eligible for the partial exemption for its closed-end loans but is not eligible for the partial exemption for its open-end lines of credit. In this circumstance, the institution is not required to collect and report exempt data for its closed-end loans. It also collects and reports complete data for its open-end lines of credit unless it qualifies for a complete regulatory exclusion under Regulation C, §§ 1003.2(g)(1)(v) and 1003.3(c)(12).

[28] The Bureau interprets the Act to apply to data that are collected or reported under HMDA on or after May 24, 2018. Because data collected from January 1, 2018, to May 23, 2018, would not be reported until early in 2019, the Act relieves insured depository institutions and insured credit unions that are eligible for a partial exemption under the Act of the obligation to report certain data in 2019 that may have been collected before May 24, 2018. If optional reporting of data covered by a partial exemption were not permitted, such institutions would have to remove exempt data previously collected, before submitting their 2018 data in early 2019, a process that could be burdensome for some institutions.

[29] The HMDA edit checks are rules to assist filers in checking the accuracy of HMDA data prior to submission. The Filing Instructions Guide for HMDA Data Collected in 2018 (2018 FIG), a compendium of resources to help financial institutions file HMDA data collected in 2018 with the Bureau in 2019, explains that there are four types of edit checks: syntactical, validity, quality, and macro quality. Table 2 (Loan/Application Register) in the 2018 FIG identifies the data fields currently associated with each data point. *See* Fed. Fin. Insts. Examination Council, ''Filing Instructions Guide for HMDA Data Collected in 2018'' (2018 FIG), at 21–54, *https://www.consumerfinance.gov/data-research/hmda/static/for-filers/2018/2018-hmda-fig.pdf; see also supra* note 3 (discussing the relationship between data points and data fields).

[30] Reporting the State data field is subject to the requirements both for property address, provided in § 1003.4(a)(9)(i), and property location, provided in § 1003.4(a)(9)(ii).

[31] 12 CFR 1003.3(c)(9).

mortgage loan'' and ''open-end line of credit'' as used in the Act are best interpreted to include only those closed-end mortgage loans and open-end lines of credit that would otherwise be reportable under HMDA. This interpretation is consistent with how loans and lines of credit are counted for purposes of the thresholds in Regulation C's existing complete regulatory exclusions, which are independent of the Act's new partial exemptions and unaffected by the Act.[32] Accordingly, the Bureau interprets the term ''closed-end mortgage loan'' to include any closed-end mortgage loan as defined in § 1003.2(d) that is not excluded from Regulation C pursuant to § 1003.3(c)(1) through (10) or (13) and interprets the term ''open-end line of credit'' to include any open-end line of credit as defined in § 1003.2(o) that is not excluded from Regulation C pursuant to § 1003.3(c)(1) through (10).

VI. Data Points Covered by the Partial Exemptions

If a transaction qualifies for one of the Act's partial exemptions, section 104(a) of the Act provides that the requirements of HMDA section 304(b)(5) and (6) shall not apply. For the reasons explained below, the Bureau interprets the requirements of HMDA section 304(b)(5) and (6) to include the 26 data points listed in the first column of table 1 at the end of this part VI. For loans or applications covered by a partial exemption, insured depository institutions and insured credit unions therefore are required to collect and report only the remaining 22 data points specified in the 2015 and 2017 HMDA Final Rules, which are identified in the second column of table 1 below.

As explained in part II.B above, the Dodd-Frank Act added HMDA section 304(b)(5) and (6), which requires certain data points and provides the Bureau discretion to require additional data points.[33] In the 2015 HMDA Final Rule, the Bureau implemented the new data points specified in the Dodd-Frank Act (including those added in new HMDA section 304(b)(5) and (6)), added a number of additional data points pursuant to the Bureau's discretionary authority, and made revisions to certain pre-existing data points to clarify the requirements, provide greater specificity in reporting, and align certain data points more closely with industry data standards.

For purposes of the Act, the Bureau interprets the requirements of HMDA section 304(b)(5) and (6) to include the 12 data points that the Bureau added to Regulation C in the 2015 HMDA Final Rule to implement data points specifically identified in HMDA section 304(b)(5)(A) through (C) or (b)(6)(A) through (I), which are the following: ULI; property address; rate spread[34]; credit score; total loan costs or total points and fees; prepayment penalty term; loan term; introductory rate period; non-amortizing features; property value; application channel; and mortgage loan originator identifier.[35] The Bureau also interprets the requirements of HMDA section 304(b)(5) and (6) to include the 14 data points that were not found in Regulation C prior to the Dodd-Frank Act and that the Bureau required in the 2015 HMDA Final Rule citing its discretionary authority under HMDA section 304(b)(5)(D) and (b)(6)(J). Specifically, these data points are the following: the total origination charges associated with the loan; the total points paid to the lender to reduce the interest rate of the loan (discount points); the amount of lender credits; the interest rate applicable at closing or account opening; the debt-to-income ratio; the ratio of the total amount of debt secured by the property to the value of the property (combined loan-to-value ratio); for transactions involving manufactured homes, whether the loan or application is or would have been secured by a manufactured home and land or by a manufactured home and not land (manufactured home secured property type); the land property interest for loans or applications related to manufactured housing (manufactured home land property interest); the number of individual dwellings units that are income-restricted pursuant to Federal, State, or local affordable housing programs (multifamily affordable units); information related to the automated underwriting system used in evaluating an application and the result generated by the automated underwriting system; whether the loan is a reverse mortgage; whether the loan is an open-end line of credit; whether the loan is primarily for a business or commercial purpose; and the reasons for

[32] The definition of ''depository financial institution'' in § 1003.2(g)(1)(v) is currently limited to institutions that either (1) originated in each of the preceding two years at least 25 closed-end mortgage loans that are not excluded from Regulation C pursuant to § 1003.3(c)(1) through (10) or (13); or (2) originated in each of the two preceding calendar years at least 500 open-end lines of credit that are not excluded from Regulation C pursuant to § 1003.3(c)(1) through (10). *See also* 12 CFR 1003.3(c)(11), (12) (excluding closed-end mortgage loans from the requirements of Regulation C if the financial institution originated fewer than 25 closed-end mortgage loans in either of the two preceding calendar years, and excluding open-end lines of credit from the requirements of Regulation C if the financial institution originated fewer than 500 open-end lines of credit in either of the two preceding calendar years). As noted above, the threshold of 500 open-end lines of credit for the complete regulatory exclusion is temporary, and absent further Bureau action the permanent threshold for the Bureau's complete regulatory exclusion will be 100 open-end lines of credit beginning January 1, 2020. While the temporary Regulation C threshold is in place, all of the open-end lines of credit that would be covered by the Act's partial exemption for open-end lines of credit in HMDA section 304(i)(2) are excluded from the requirements of part 1003 under current §§ 1003.2(g)(1)(v) and 1003.3(c)(12).

[33] HMDA section 304(b)(5) requires disclosure of the number and dollar amount of mortgage loans grouped according to measurements of:

- The total points and fees payable at origination;
- The difference between the APR associated with the loan and a benchmark rate or rates for all loans;
- The term in months of any prepayment penalty or other fee or charge payable on repayment of some portion of principal or the entire principal in advance of scheduled payments; and
- Such other information as the Bureau may require.

HMDA section 304(b)(6) requires disclosure of the number and dollar amount of mortgage loans and completed applications grouped according to measurements of:

- The value of the real property pledged or proposed to be pledged as collateral;
- The actual or proposed term in months of any introductory period after which the rate of interest may change;
- The presence of contractual terms or proposed contractual terms that would allow the mortgagor or applicant to make payments other than fully amortizing payments during any portion of the loan term;
- The actual or proposed term in months of the mortgage loan;
- The channel through which application was made;
- As the Bureau may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in section 5102 of this title;
- As the Bureau may determine to be appropriate, a universal loan identifier;
- As the Bureau may determine to be appropriate, the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral;
- The credit score of mortgage applicants and mortgagors; and
- Such other information as the Bureau may require.

[34] Prior to the passage of the Dodd-Frank Act, the Board required financial institutions to report rate spread for higher-priced mortgage loans. 67 FR 7222 (Feb. 15, 2002); 67 FR 43218 (June 27, 2002). In doing so, the Board noted that ''the collection of loan pricing information is necessary to fulfill the statutory purposes of HMDA and to ensure the continued utility of the HMDA data.'' 67 FR 7222, 7228 (Feb. 15, 2002). The Bureau may propose in a future notice-and-comment rulemaking to use its HMDA authority other than HMDA section 304(b)(5) and (6) to reinstate the Board's requirement to report rate spread for higher-priced mortgage loans covered by the partial exemptions so the Bureau can receive data and views bearing on the costs and benefits of such a proposal. As explained in part IV above, insured depository institutions and insured credit unions may voluntarily report rate spread for transactions covered by the Act's partial exemptions.

[35] 12 CFR 1003.4(a)(1)(i), (a)(9)(i), and (a)(12), (15), (17), (22), (25), (26), (27), (28), (33), (34).

denial of a loan application, which were optionally reported under the Board's rule but became mandatory in the 2015 HMDA Final Rule.[36] Pursuant to the Act, insured depository institutions and insured credit unions need not collect or report these 26 data points for transactions that qualify for a partial exemption under the Act, unless otherwise required by their regulator.[37]

The Bureau interprets the requirements of HMDA section 304(b)(5) and (6) not to include four other data points that are similar or identical to data points added to Regulation C by the Board and that the Bureau re-adopted in the 2015 HMDA Final Rule: lien status of the subject property; whether the loan is subject to the Home Ownership and Equity Protection Act of 1994 (HOEPA); construction method for the dwelling related to the subject property; and the total number of individual dwelling units contained in the dwelling related to the loan (number of units).[38] The 2015 HMDA Final Rule did not alter the pre-existing Regulation C HOEPA status and lien status data requirements.[39] Construction method and total units, together, replaced property type, the pre-existing Regulation C data point; the information required by the new data points is very similar to what the Board required, but institutions now must report the precise number of units rather than categorizing dwellings into one-to-four family dwellings and multifamily dwellings.[40]

The Board adopted its versions of these data points before HMDA section 304(b)(5) and (6) was added to HMDA by the Dodd-Frank Act, pursuant to HMDA authority that pre-existed section 304(b)(5) and (6). Although the Bureau cited HMDA section 304(b)(5) and (6) as additional support for these four data points in the 2015 HMDA Final Rule, the Bureau relied on HMDA section 305(a), which pre-existed the Dodd-Frank Act and independently provides legal authority for their adoption.[41] Given that these data points were not newly added by the Dodd-Frank Act or the Bureau, the Bureau does not interpret the Act as affecting them. This interpretation is consistent with the Act's legislative history, which suggests that Congress was focused on relieving regulatory burden associated with the Dodd-Frank Act.[42]

The requirements of HMDA section 304(b)(5) and (6), and thus the partial exemptions, also do not include 17 other data points included in the 2015 HMDA Final Rule that are similar or identical to pre-existing Regulation C data points established by the Board and that were not required by HMDA section 304(b)(5) and (6) or promulgated using discretionary authority under HMDA section 304(b)(5)(D) and (b)(6)(J). These are: the Legal Entity Identifier (which replaced the pre-existing respondent identifier); application date; loan type; loan purpose; preapproval; occupancy type; loan amount; action taken; action taken date; State; county; census tract; ethnicity; race; sex; income; and type of purchaser.[43] Additionally, the requirements of HMDA section 304(b)(5) and (6), and thus the partial exemptions, do not include age because the Dodd-Frank Act added that requirement instead to HMDA section 304(b)(4).[44]

With respect to transactions covered by one of the Act's new partial exemptions, insured depository institutions and insured credit unions are therefore required to report 22 of the 48 data points currently set forth in Regulation C, as indicated in table 1 below. Because the Act does not make any changes with respect to these 22 data points, insured depository institutions and insured credit unions that are eligible for a partial exemption under the Act must continue to report these 22 data points in the manner currently specified in Regulation C. For example, insured depository institutions and insured credit unions that are eligible for a partial exemption under the Act are still required to report a Legal Entity Identifier as well as lien status for purchased loans.[45]

TABLE 1—EFFECT OF THE ACT'S PARTIAL EXEMPTIONS ON HMDA DATA POINTS

Covered by the Act's partial exemptions	Unchanged by the Act
• Universal Loan Identifier (ULI) (1003.4(a)(1)(i))[46]	• Application Date (1003.4(a)(1)(ii)).
• Property Address (1003.4(a)(9)(i))	• Loan Type (1003.4(a)(2)).
• Rate Spread (1003.4(a)(12))	• Loan Purpose (1003.4(a)(3)).
• Credit Score (1003.4(a)(15))	• Preapproval (1003.4(a)(4)).
• Reasons for Denial (1003.4(a)(16))	• Construction Method (1003.4(a)(5)).
• Total Loan Costs or Total Points and Fees (1003.4(a)(17))	• Occupancy Type (1003.4(a)(6)).
• Origination Charges (1003.4(a)(18))	• Loan Amount (1003.4(a)(7)).
• Discount Points (1003.4(a)(19))	• Action Taken (1003.4(a)(8)(i)).
• Lender Credits (1003.4(a)(20))	• Action Taken Date (1003.4(a)(8)(ii)).
• Interest Rate (1003.4(a)(21))	• State (1003.4(a)(9)(ii)(A)).
• Prepayment Penalty Term (1003.4(a)(22))	• County (1003.4(a)(9)(ii)(B)).
• Debt-to-Income Ratio (1003.4(a)(23))	• Census Tract (1003.4(a)(9)(ii)(C)).
• Combined Loan-to-Value Ratio (1003.4(a)(24))	• Ethnicity (1003.4(a)(10)(i)).
• Loan Term (1003.4(a)(25))	• Race (1003.4(a)(10)(i)).
• Introductory Rate Period (1003.4(a)(26))	• Sex (1003.4(a)(10)(i)).
• Non-Amortizing Features (1003.4(a)(27))	• Age (1003.4(a)(10)(ii)).
• Property Value (1003.4(a)(28))	• Income (1003.4(a)(10)(iii)).
• Manufactured Home Secured Property Type (1003.4(a)(29))	• Type of Purchaser (1003.4(a)(11)).
• Manufactured Home Land Property Interest (1003.4(a)(30))	• HOEPA Status (1003.4(a)(13)).
• Multifamily Affordable Units (1003.4(a)(32))	• Lien Status (1003.4(a)(14)).

[36] 12 CFR 1003.4(a)(16), (18), (19), (20), (21), (23), (24), (29), (30), (32), (35), (36), (37), (38).

[37] Certain financial institutions supervised by the OCC and the FDIC are required by those agencies to report reasons for denial on their HMDA loan/application registers. 12 CFR 27.3(a)(1)(i), 128.6, 390.147.

[38] 12 CFR 1003.4(a)(5), (13), (14), (31).

[39] The 2015 HMDA Final Rule extends the requirement to report lien status to purchased loans and no longer requires reporting of information about unsecured loans. 80 FR 66128, 66201 (Oct. 28, 2015).

[40] Prior to 2018, Regulation C required reporting of property type as one-to-four family dwelling (other than manufactured housing), manufactured housing, or multifamily dwelling, whereas the current rule requires reporting of whether the dwelling is site-built or manufactured home, together with the number of individual dwelling units.

[41] 80 FR 66128, 66180–81, 66199–201, 66227 (Oct. 28, 2015).

[42] *See, e.g.,* 164 Cong. Rec. S1423–24 (daily ed. Mar. 7, 2018) (statement of Sen. Crapo), S1529–30 (statement of Sen. McConnell), S1532–33 (statement of Sen. Cornyn), S.1537–39 (statement of Sen. Lankford), S1619–20 (statement of Sen. Cornyn).

[43] 12 CFR 1003.4(a)(1)(ii), (a)(2), (3), (4), (6), (7), (8), (a)(9)(ii), (a)(10), (11), 1003.5(a)(3).

[44] Dodd-Frank Act section 1094(3)(A)(i).

[45] 12 CFR 1003.4(a)(14), 1003.5(a)(3).

TABLE 1—EFFECT OF THE ACT'S PARTIAL EXEMPTIONS ON HMDA DATA POINTS—Continued

Covered by the Act's partial exemptions	Unchanged by the Act
• Application Channel (1003.4(a)(33))	• Number of Units (1003.4(a)(31)).
• Mortgage Loan Originator Identifier (1003.4(a)(34))	• Legal Entity Identifier (1003.5(a)(3)).
• Automated Underwriting System (1003.4(a)(35)).	
• Reverse Mortgage Flag (1003.4(a)(36)).	
• Open-End Line of Credit Flag (1003.4(a)(37)).	
• Business or Commercial Purpose Flag (1003.4(a)(38)).	

VII. Non-Universal Loan Identifier

In the 2015 HMDA Final Rule, the Bureau interpreted ''universal loan identifier'' (ULI) as used in HMDA section 304(b)(6)(G) to mean an identifier that is unique within the industry and required that the ULI include the Legal Entity Identifier of the institution that assigned the ULI.[47] As explained in part VI above, insured depository institutions and insured credit unions are not required to report a ULI for loans or applications that are partially exempt. Some insured depository institutions and insured credit unions may prefer to report a ULI for partially exempt loans or applications even if they are not required to do so. As explained in part IV above, voluntary reporting of ULIs for partially exempt loans and applications is permissible under the Act.

Regardless, as was true prior to the Dodd-Frank Act HMDA amendments and under Regulation C as it existed prior to the 2015 HMDA Final Rule, loans and applications must be identifiable in the HMDA data to ensure proper HMDA submission, processing, and compliance.[48] The Bureau does not interpret the Act to change this baseline component of data collection and reporting. Accordingly, while insured depository institutions and insured credit unions that are eligible for partial exemptions under the Act do not have to report a ULI for partially exempt transactions, they must continue to provide information so that each loan and application they report for HMDA purposes is identifiable. The ability to identify individual loans and applications is necessary to facilitate efficient and orderly submission of HMDA data and communications between the institution, the Bureau, and other applicable regulators. For example, identification of loans and applications is necessary to ensure that it is possible to address problems identified when edit checks are done upon submission or questions that arise at a later time as HMDA submissions are reviewed by regulators. To ensure the orderly administration of the HMDA program, insured depository institutions and insured credit unions must provide a non-universal loan identifier that complies with the requirements identified below for any partially exempt loan or application for which they do not report a ULI.

A non-universal loan identifier does not need to be unique within the industry and therefore does not need to include a Legal Entity Identifier as the ULI does.[49] The non-universal loan identifier may be composed of up to 22 characters to identify the covered loan or application, which:

1. May be letters, numerals, or a combination of letters and numerals;

2. Must be unique within the insured depository institution or insured credit union; and

3. Must not include any information that could be used to directly identify the applicant or borrower.[50] Information that could be used to directly identify the applicant or borrower includes, but is not limited to, the applicant's or borrower's name, date of birth, Social Security number, official government-issued driver's license or identification number, alien registration number, government passport number, or employer or taxpayer identification number.

To ensure that a non-universal loan identifier is unique within the insured depository institution or insured credit union, the institution must assign only one non-universal loan identifier to any particular covered loan or application, and each non-universal loan identifier must correspond to a single application and ensuing loan in the case that the application is approved and a loan is originated. Similarly, refinancings or applications for refinancing should be assigned a different non-universal loan identifier than the loan that is being refinanced. An insured depository institution or insured credit union with multiple branches must ensure that its branches do not use the same non-universal loan identifier to refer to multiple covered loans or applications. An institution may not use a non-universal loan identifier previously reported if the institution reinstates or reconsiders an application that was reported in a prior calendar year.[51]

VIII. Exception Based on Community Reinvestment Act Exam Reports

Notwithstanding the new partial exemptions, new HMDA section 304(i)(3) provides that an insured depository institution must comply with HMDA section 304(b)(5) and (6) if it has received a rating of ''needs to improve record of meeting community credit needs'' during each of its two most recent Community Reinvestment Act (CRA) examinations or a rating of ''substantial noncompliance in meeting community credit needs'' on its most recent CRA examination. The Act does not specify as of what date an insured depository institution's two most recent CRA examinations must be assessed for purposes of this exception. The Bureau interprets the Act to require that this assessment be made as of December 31 of the preceding calendar year. This is consistent with Regulation C's asset-size threshold and requirement that a financial institution have a home or branch office located in a Metropolitan

[46] *See infra* part VII (Non-Universal Loan Identifier).

[47] 80 FR 66128, 66176 (Oct. 28, 2015).

[48] HMDA requires that covered loans and applications be ''itemized in order to clearly and conspicuously disclose'' the applicable data for each loan or application. 12 U.S.C. 2803(a)(2).

[49] Additionally, if a financial institution that is subject to HMDA and not eligible for a partial exemption purchases a loan originated by a partially exempt institution that assigned a non-universal loan identifier rather than a ULI, the purchasing institution does not report the non-universal loan identifier previously assigned. Instead, the purchasing institution assigns its own ULI because no ULI was assigned by the institution that originated the loan. *See* comment 4(a)(1)(i)–3.

[50] A check digit is not required as part of a non-universal loan identifier, as it is for a ULI under 12 CFR 1003.4(a)(1)(i)(C), but may be voluntarily included in a non-universal loan identifier provided that the non-universal loan identifier, including the check digit, does not exceed 22 characters.

[51] For example, if an insured depository institution or insured credit union reports a denied application in its annual 2020 data submission, pursuant to § 1003.5(a)(1), but then reconsiders the application, resulting in an origination in 2021, the institution reports a denied application under the original non-universal loan identifier in its annual 2020 data submission and an origination with a different non-universal loan identifier in its annual 2021 data submission, pursuant to § 1003.5(a)(1).

Statistical Area, which are both assessed as of the preceding December 31.[52]

For example, in 2020, the preceding December 31 is December 31, 2019. Assume Insured Depository Institution A received a rating of ''needs to improve record of meeting community credit needs'' during each of its two most recent examinations under section 807(b)(2) of the CRA [53] that occurred on or before December 31, 2019. Accordingly, in 2020, Insured Depository Institution A is not eligible for the Act's partial exemptions.

IX. Effective Date

Because this rule is solely interpretive and procedural, it is not subject to the 30-day delayed effective date for substantive rules under section 553(d) of the Administrative Procedure Act.[54] The Bureau also believes that this rule meets the requirements for the section 553(d)(3) exception for good cause. As noted above, the Bureau believes that the best interpretation of the Act is that section 104(a) took effect when the Act became law on May 24, 2018. Because of HMDA's ongoing collection and reporting requirements, the impact of the Act on the collection and reporting of data for transactions with final action in 2018, and the related questions raised by financial institutions, there is good cause to implement and clarify section 104(a) of the Act without delay. The Bureau therefore finds that there is good cause to make this rule effective on September 7, 2018.

X. Dodd-Frank Act Section 1022(b) Analysis

Section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) directs the Bureau to consult with the appropriate prudential regulators or other Federal agencies regarding consistency with objectives those agencies administer. The manner and extent to which these provisions apply to a rulemaking of this kind, which interprets and provides guidance regarding existing law and establishes Bureau procedures but does not establish standards of conduct, is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the analyses and consultations described in those provisions of the Dodd-Frank Act.

A. Overview

Section 104(a) of the Act amends HMDA section 304(i) by adding partial exemptions from HMDA's requirements for certain institutions. This interpretive and procedural rule implements the requirements of section 104(a). The rule provides clarification and guidance to all affected entities on the institutions covered by the partial exemption and what data must be collected, recorded, and reported.

The rule provides clarification and guidance on five general items:

1. Partially exempt institutions have the option to report data points covered by the partial exemption. If a data point covered by the partial exemption includes multiple data fields, partially exempt institutions report all of the data fields if they choose to report at least one of the data fields.

2. The terms ''closed-end mortgage loan'' and ''open-end line of credit'' include only loans and lines of credit that are otherwise reportable under HMDA.

3. Partially exempt institutions are not required to report 26 data points specified in this rule.

4. Partially exempt institutions are required to report a non-universal loan identifier if they choose not to report a ULI.

5. For a given reporting year, the CRA ratings used to determine whether the CRA reporting exception applies are the two most recent CRA ratings as of December 31 of the preceding calendar year.

In developing this rule, the Bureau has considered potential benefits, costs, and impacts of these clarifications and guidance. The Bureau has consulted with, or offered to consult with, the Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Department of Housing and Urban Development, the Securities and Exchange Commission, the Department of Justice, the Department of Veterans Affairs, the Federal Housing Finance Agency, the Department of the Treasury, the Department of Agriculture, the Federal Trade Commission, and the Federal Financial Institutions Examination Council.

B. Institutions Affected by Rule or Act

Under section 104(a) of the Act, an insured depository institution or insured credit union is eligible for a partial exemption for its closed-end mortgage loans if it originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years and did not receive a rating of ''needs to improve record of meeting community credit needs'' during both of its two most recent CRA examinations or a rating of ''substantial noncompliance in meeting community credit needs'' during its most recent CRA examination. After applying all current HMDA reporting requirements, including Regulation C's complete regulatory exclusion for institutions that originated fewer than 25 closed-end mortgage loans in either of the two preceding calendar years, the Bureau estimates that section 104(a) of the Act provides a partial exemption with respect to collection, recording, and reporting of 2018 HMDA data to approximately 3,300 institutions.[55] As a point of reference, 5,852 institutions reported data under HMDA in 2018.

For open-end lines of credit, the Bureau estimates that the new reporting criteria in section 104(a) of the Act will not have any effect on data collected in 2018. Regulation C currently provides a complete regulatory exclusion for open-end lines of credit for institutions that originated fewer than 500 open-end lines of credit in either of the preceding two years, and this exclusion applies to more institutions than the section 104(a) partial exemption criterion of fewer than 500 originations in each of the two preceding calendar years. The effect that section 104(a) will have on data collected for open-end lines of credit on or after January 1, 2020, is unclear because the temporary threshold of 500 open-end lines of credit for the complete regulatory exclusion applies only for 2018 and 2019. The Bureau has indicated that it intends to reconsider the threshold for the permanent regulatory exclusion for open-end lines of credit, which is currently set at 100

[52] 12 CFR 1003.2(g)(1)(i)–(ii), 1003.2(g)(2)(i), comment 2(g)–1.

[53] 12 U.S.C. 2906(b)(2).

[54] 5 U.S.C. 553(d).

[55] To generate this estimate, the Bureau first identified all depository institutions (including credit unions) that met all reporting requirements and reported 2017 HMDA data in 2018. From this set of depository institutions, the Bureau then excluded all depository institutions that do not have to report 2018 HMDA data in 2019 because they originated fewer than 25 closed-end mortgage loans in either 2016 or 2017. Of the remaining depository institutions, approximately 3,300 originated fewer than 500 closed-end mortgage loans in each of 2016 and 2017. For purposes of this estimate, the Bureau assumes that these institutions are insured and do not have a negative CRA examination history and are partially exempt.

open-end lines of credit starting in 2020.[56]

C. Potential Benefits and Costs to Consumers and Covered Persons

The Bureau is using a post-statute baseline to assess the impact of this rule because the rule merely interprets and provides guidance regarding what Congress required in section 104(a) of the Act and provides procedures related to applying those requirements.[57] It does not impose new, or change existing, substantive requirements that would require exercise of the Bureau's legislative rulemaking authority. Using a post-statute baseline, the analysis evaluates the benefits, costs, and impacts of the rule as compared to the state of the world if the proposed interpretive and procedural rule were not adopted. Without this interpretive and procedural rule, affected institutions would lack authoritative clarification and guidance regarding how to comply with certain changes to HMDA made by section 104(a) of the Act.

Covered persons should benefit from this rule because it will ease review, understanding, and compliance with section 104(a) of the Act, which will in turn reduce the likelihood of potentially inconsistent or incorrect implementation. It is not practicable to quantify the precise magnitude of these informational benefits; however, they will likely vary over time, with earlier guidance providing higher benefits because covered persons have more time to incorporate this information into their planning and preparation. Without this rule, covered persons would either need to rely more heavily on their own independent evaluations of the statute, which would increase the likelihood of inconsistent or incorrect implementation and non-compliance, or wait for guidance in the anticipated notice-and-comment rulemaking, which would provide covered persons less time to incorporate authoritative guidance while adopting the changes under the Act.

These short-run benefits of the rule are somewhat offset by guidance the Bureau provided in December 2017, indicating that it does not intend to require data resubmission of 2018 HMDA data unless data errors are material or to assess penalties for data errors. The Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the National Credit Union Administration released similar statements. Decreased potential for data resubmission and penalties in the short-run reduces the value to covered persons of receiving earlier guidance and clarification.

An additional benefit is that this rule provides covered persons with additional options, and increased options generally translate into increased benefits. For example, the rule allows for voluntary reporting of partially exempt data points such as ULI. During the 2015 HMDA rulemaking process, however, some commenters suggested that options increased reporting burden, because they added uncertainty and required more interpretation.

The Bureau expects this rule to impose negligible costs on covered persons. There are three items of note here. First, this rule provides specific definitions of the terms ''closed-end mortgage loan'' or ''open-end line of credit,'' which are not defined in section 104(a) of the Act. The Bureau is interpreting these terms to include only loans and lines of credit that would otherwise be reportable under Regulation C. The Bureau believes that tying the definitions to the same criteria that already determines HMDA reportability will not impose any additional costs. By contrast, if the Bureau had interpreted these terms to have a broader meaning, the rule would have resulted in fewer covered persons being eligible for the Act's partial exemptions and additional costs for covered persons.

Second, requiring partially exempt institutions that choose not to report a ULI (an exempt data point) to report a non-universal loan identifier, consistent with criteria specified in the rule, could potentially increase burden. However, the Bureau believes that this burden, if any, will be negligible, because most institutions will already have a loan identifier for internal processing and tracking purposes, and, for those that do not, creating and reporting a loan identifier will be low cost.

Third, requiring a partially exempt institution to report all data fields for an exempt data point if it voluntarily chooses to report at least one of the data fields could increase burden. In some circumstances, the institution could face increased costs in having to report all data fields rather than only the data fields it chooses to report. However, the Bureau believes that this additional burden will be small. This requirement will affect only partially exempt institutions that would prefer to voluntarily report some, but not all, data fields for a particular data point, and the number of such institutions is likely small. In addition, of the 26 exempt data points, only seven have multiple data fields (property address, credit score, reason for denial, total loan costs or total points and fees, non-amortizing features, application channel, and automated underwriting system), which also serves to limit the burden associated with this provision.

In addition to effects on covered persons discussed above, this rulemaking is expected to have negligible impact on consumers, in terms of either costs or benefits.

D. Impact on Depository Institutions With No More Than $10 Billion in Assets

The Bureau estimates that approximately 3,300 institutions are partially exempt under section 104(a) of the Act, and that most of these institutions are depository institutions with no more than $10 billion in assets. The benefits of this rule to these institutions are summarized in part X.C. The Bureau expects the burden of this rule on these institutions to be negligible.

E. Impact on Access to Credit

The Bureau does not expect this rule to affect consumers' access to credit. The scope of the rulemaking is limited to clarification of reporting requirements that would not be of sufficient magnitude to materially affect access to credit.

F. Impact on Consumers in Rural Areas

The Bureau does not believe that this rule will have a unique impact on consumers in rural areas. Any potential effects on consumers, expected to be negligible in all cases, would be indirect effects passed through by HMDA reporters, and any impact on HMDA reporters is not expected to vary by geographic area. In addition, many rural lenders are not required to report because of HMDA's requirement that a financial institution have a home or branch office located in a Metropolitan Statistical Area, so the rule would have no specific impacts on rural areas.

XI. Regulatory Requirements

This rule articulates the Bureau's interpretation of section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act. It also alters the manner and procedure in which insured depository institutions and insured credit unions eligible for

[56] 82 FR 43088 (Sept. 13, 2017).

[57] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits, costs, and impacts and an appropriate baseline. As noted earlier, the Bureau anticipates an upcoming notice-and-comment rulemaking and expects that the accompanying 1022(b) analysis will assess the benefits, costs, and impacts of the statute as well as the implementing regulation.

the Act's new partial exemptions may present their data to the Bureau, but it does not alter those institutions' rights or interests or encode substantive value judgments beyond furthering efficiency and operational goals. This interpretive and procedural rule is exempt from notice-and-comment rulemaking requirements under the Administrative Procedure Act, 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[58]

The Bureau has determined that this interpretive and procedural rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 through 3521. To the extent that eligible reporters may take advantage of the Act's partial exemptions, the Bureau lacks sufficient information at present to estimate the potential burden reduction. When the Bureau has sufficient data to make an estimate, it will revise its burden estimates as appropriate.

XII. Congressional Review Act

Pursuant to the Congressional Review Act,[59] the Bureau will submit a report containing this interpretive rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

Dated: August 30, 2018.

Mick Mulvaney,

Acting Director, Bureau of Consumer Financial Protection.

[FR Doc. 2018–19244 Filed 9–6–18; 8:45 am]

BILLING CODE 4810–AM–P

[58] 5 U.S.C. 603(a), 604(a).

[59] 5 U.S.C. 801–808.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0777; Product Identifier 2018–NE–28–AD; Amendment 39–19366; AD 2018–17–12]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all General Electric Company (GE) GE90–76B, GE90–77B, GE90–85B, GE90–90B, and GE90–94B turbofan engines with full authority digital engine control (FADEC) software, version 9.3.2.4 or earlier, installed. This AD requires upgrading the FADEC software to a software version eligible for installation. This AD was prompted by an ice-crystal icing (ICI) event that caused damage to both engines, a single engine stall, and subsequent engine shutdown. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 24, 2018.

We must receive comments on this AD by October 22, 2018.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ge.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0777.

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–2018–0777; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: John Frost, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7756; fax: 781–238–7199; email: *john.frost@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We received a report of a commanded in-flight shutdown and an air turn back shortly after takeoff. After further investigation, the operator found high-pressure compressor (HPC) damage, which was the result of an earlier ICI event. After the ICI event and subsequent progressive HPC damage, engine performance decreased and an engine stall occurred. As a result, GE improved the FADEC software to provide ICI event detection and to provide an alternate variable bypass valve (VBV) schedule that opens the VBV doors to extract ice crystals from the core flowpath and reduce accretion when ICI is detected. This condition, if not addressed, could result in failure of the HPC, failure of one or more engines, loss of thrust control, and loss of the airplane. We are issuing this AD to address the unsafe condition on these products.

Related Service Information

We reviewed GE GE90 Service Bulletin (SB) 73–0146, dated May 2, 2018. The SB introduces new FADEC software and describes procedures for upgrading the FADEC software.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or

develop in other products of the same type design.

AD Requirements

This AD requires upgrading the FADEC software to a software version eligible for installation.

Differences Between the AD and the Service Information

GE GE90 SB 73–0146, dated May 2, 2018, recommends that you load the new FADEC software as soon as possible, but no later than six months after the original issue date of the SB. This AD requires compliance within 90 days after the effective date of this AD. We expect this difference to be minimal because the GE SB was issued earlier than this AD.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because engine failure due to an ICI event is more likely to occur during the current convective weather season and such failure could result in failure of one or more engines and loss of the airplane. Because of this, the compliance time for the required action is shorter than the time necessary for the public to comment and for us to publish the final rule to ensure the unsafe condition is fixed during the convective weather season. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reason stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2018–0777 and Product Identifier 2018–NE–28–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule 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 final rule.

Costs of Compliance

We estimate that this AD affects 57 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Upgrade the FADEC software	1 work-hour × $85 per hour = $85	$0	$85	$4,845

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–17–12 General Electric Company: Amendment 39–19366; Docket No. FAA–2018–0777; Product Identifier 2018–NE–28–AD.

(a) Effective Date

This AD is effective September 24, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all GE GE90–76B, GE90–77B, GE90–85B, GE90–90B, and GE90–94B turbofan engines with full authority digital engine control (FADEC) software, version 9.3.2.4 or earlier, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by an ice-crystal icing event that caused damage to both engines, a single engine stall, and subsequent engine shutdown. We are issuing this AD to prevent failure of the high-pressure compressor (HPC). The unsafe condition, if not addressed, could result in failure of the HPC, failure of one or more engines, loss of thrust control, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Within 90 days after the effective date of this AD, remove FADEC software, version 9.3.2.4 or earlier, from the engine.

(2) Install a FADEC software version eligible for installation.

(h) Installation Prohibition

Within 90 days after the effective date of this AD, do not operate any engine with FADEC software, version 9.3.2.4 or earlier, installed.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov*.

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

(j) Related Information

For more information about this AD, contact John Frost, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7756; fax: 781–238–7199; email: *john.frost@faa.gov*.

(k) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on August 30, 2018.

Karen M. Grant,

Acting Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2018–19282 Filed 9–6–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–1050; Product Identifier 2017–NE–39–AD; Amendment 39–19393; AD 2018–18–14]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Rolls-Royce Deutschland Ltd & Co KG (RRD) BR700–710A2–20 and BR700–710C4–11 turbofan engines. This AD was prompted by reports of deterioration of the intumescent heat resistant paint system on the electronic engine controller (EEC) firebox assembly that was found to be beyond acceptable limits. This AD requires replacement of affected EEC firebox assembly parts with improved parts, which have a more durable paint system. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective October 12, 2018.

ADDRESSES: For service information identified in this final rule, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: +49 (0) 33 7086 2673; fax: +49 (0) 33 7086 3276. You may view this service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1050.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1050; 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 AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7146; fax: 781–238–7199; email: *barbara.caufield@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain RRD BR700–710A2–20 and BR700–710C4–11 turbofan engines. The NPRM published in the **Federal Register** on February 12, 2018 (83 FR 5963). The NPRM was prompted by reports of deterioration of the intumescent heat resistant paint system on the EEC firebox assembly that was found to be beyond acceptable limits. The NPRM proposed to require replacement of affected EEC firebox assembly parts with improved parts, which have a more durable paint system. We are issuing this AD to address the unsafe condition on these products.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2017–0198, dated October 10, 2017 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> Occurrences were reported where deterioration of an Electronic Engine Controller (EEC) firebox assembly intumescent heat resistant paint system was found to be beyond acceptable limits. Subsequent investigation determined that lack of paint adhesion, due to incorrect surface preparation during manufacturing, had caused this deterioration.
>
> This condition, if not corrected, could reduce the fire protection capability of the EEC firebox, possibly leading to reduced control of an engine during engine fire, engine overspeed and release of high-energy debris, resulting in damage to, and/or reduced control of, the aeroplane.
>
> To address this potential unsafe condition, RRD issued Alert SB SB–BR700–73–A101977, SB–BR700–73–A101981 and SB–BR700–73–A101985 to provide modification

instructions introducing improved new or reworked EEC firebox assembly parts, which have a more durable paint system.

For the reason described above, this AD requires replacement of affected EEC firebox assembly parts with improved parts.

You may obtain further information by examining the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1050.

Comments

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

Request To Revise Compliance Time

RRD requested that we align the compliance time of this AD with EASA AD 2017–0198, dated October 10, 2017, and RRD Alert Service Bulletins (ASBs) SB–BR700–73–A101977, SB–BR700–73–A101981 and SB–BR700–73–A101985. RRD suggested that we revise the compliance time of the FAA AD to meet the end date of the RRD ASBs, which is January 31, 2021.

We agree. The proposed compliance time of 6 months in the NPRM was an error. We revised the compliance time for performance of the required actions of this AD to a timeframe consistent with the EASA AD and the RRD ASBs. The revised compliance time requires performance of the required actions within 28 months after the effective date of this AD.

Conclusion

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

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

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

Related Service Information

We reviewed RRD ASB SB–BR700–73–A101977, Revision 3, dated July 10, 2017; RRD ASB SB–BR700–73–A101981, Revision 3, dated July 10, 2017; and RRD ASB SB–BR700–73–A101985, Revision 3, dated July 10, 2017. The service information describes procedures for installing new or reworked EEC firebox assembly parts for BR700–710A2–20 and BR700–710C4–11 turbofan engines, which includes BR700–710C4–11/10 turbofan engines.

Costs of Compliance

We estimate that this AD affects 842 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
EEC firebox assembly replacement	2.5 work-hours × $85 per hour = $212.50	$4,900	$5,112.50	$4,304,725

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–18–14 Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by Rolls-Royce Deutschland GmbH, formerly BMW Rolls-Royce GmbH): Amendment 39–19393; Docket No. FAA–2017–1050; Product Identifier 2017–NE–39–AD.

(a) Effective Date

This AD is effective October 12, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to:

(1) Rolls-Royce Deutschland Ltd & Co KG (RRD) BR700–710A2–20 turbofan engines with any electronic engine controller (EEC) firebox assembly installed, with any of the following component part numbers (P/Ns): FW42888, FW42886, FW38590, FW38591, or FW58255.

(2) RRD BR700–710C4–11 turbofan engines with any EEC firebox assembly installed, with any of the following component P/Ns: FW38504, FW38503, FW38590, FW38591, or FW58255.

(d) Subject

Joint Aircraft System Component (JASC) Code 7600, Engine Controls.

(e) Unsafe Condition

This AD was prompted by reports of deterioration of the intumescent heat resistant paint system on the EEC firebox assembly that was found to be beyond acceptable limits. We are issuing this AD to prevent failure of the EEC. The unsafe condition, if not addressed, could result in failure of the EEC, loss of engine thrust control, and reduced control of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Within 28 months after the effective date of this AD, perform the following:

(i) For RRD BR700–710A2–20 engines, remove from service the EEC firebox assembly components with P/N FW42888, FW42886, FW38590, FW38591, and FW58255, and replace with parts eligible for installation.

(ii) For RRD BR700–710C4–11 engines, remove from service the EEC firebox assembly components with P/N FW38504, FW38503, FW38590, FW38591, and FW58255, and replace with parts eligible for installation.

(2) Reserved.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (i)(1) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov*.

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

(i) Related Information

(1) For more information about this AD, contact Barbara Caufield, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7146; fax: 781–238–7199; email: *barbara.caufield@faa.gov*.

(2) Refer to EASA AD No. 2017–0198, dated October 10, 2017, for more information. You may examine the EASA AD in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2017–1050.

(j) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on August 30, 2018.

Karen M. Grant,

Acting Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2018–19365 Filed 9–6–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0770; Amendment No. 71–50]

RIN 2120–AA66

Airspace Designations; Incorporation by Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** of August 28, 2018, that amends Title 14 Code of Federal Regulations (14 CFR) part 71 relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.11C, Airspace Designations and Reporting Points. This action corrects the Airspace Designations and Reporting Points, signature date from August 8, 2017, to August 13, 2018.

DATES: These regulations are effective September 15, 2018, through September 15, 2019. The incorporation by reference of FAA Order 7400.11C is approved by the Director of the Federal Register as of September 15, 2018, through September 15, 2019.

FOR FURTHER INFORMATION CONTACT: Sarah A. Combs, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** (83 FR 43759; August 28, 2018) for Docket No. FAA–2018–0770 amending Title 14 Code of Federal Regulations (14 CFR) part 71 relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.11C, Airspace Designations and Reporting Points. Subsequent to publication, the FAA found that the signature date for the FAA Order 7400.11C, Airspace Designations and Reporting Points, under the Availability and Summary of Documents for Incorporation by Reference section is incorrect. This action corrects the date from August 8, 2017 to August 13, 2018.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, Airspace Designations; Incorporation by Reference, published in the **Federal Register** of August 28, 2018 (83 FR 43756), FR Doc. 2018–18507, is corrected as follows:

§ 71.1 [Amended]

■ On page 43756, column 3, line 43, under Availability and Summary of Documents for Incorporation by Reference remove ''August 8, 2017'' and add in its place ''August 13, 2018'', and on page 43757, row 1, line 48, remove ''August 8, 2018'' and add in its place ''August 13, 2018''.

Issued in Washington, DC, on August 29, 2018.

Scott M. Rosenbloom,

Acting Manager, Airspace Policy Group.

[FR Doc. 2018–19349 Filed 9–6–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0219; Airspace Docket No. 17–AGL–23]

RIN 2120–AA66

Amendment of Air Traffic Service (ATS) Routes in the Vicinity of Mattoon and Charleston, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies two VHF Omnidirectional Range (VOR) Federal airways (V–72 and V–429) in the vicinity of Mattoon and Charleston, IL.

The FAA is taking this action due to the planned decommissioning of the Mattoon, IL, VOR/Distance Measuring Equipment (VOR/DME) navigation aid (NAVAID), which provides navigation guidance for portions of the affected ATS routes. The Mattoon VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, November 8, 2018. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would support the route structure in the Mattoon and Charleston, IL, area as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

History

The FAA published a notice of proposed rulemaking in the **Federal Register** for Docket No. FAA–2018–0219 (83 FR 12883; March 26, 2018) to amend VOR Federal airways V–72 and V–429 due to the planned decommissioning of the Mattoon, IL, VOR. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received from the Illinois Department of Transportation (IDOT).

In their comment, IDOT recommended the FAA amend the V–429 airway segment between the Bible Grove, IL, VOR/Tactical Air Navigation (VORTAC), Mattoon, IL, VOR/DME, and Champaign, IL, VORTAC by establishing a segment running directly between the Bible Grove VORTAC and Champaign VORTAC. They argued the discontinuity of the FAA proposal to remove the V–429 airway segment between the Bible Grove and Champaign VORTACs does not make effective use of the airspace in the area. In support of their recommendation, they noted the Bible Grove and Champaign VORTACs are located 68 nautical miles (NM) apart and establishing an airway segment between the two NAVAIDs is within the associated standard service volume (40 NM each) with a total segment service volume of 80 NM.

In support of Next Generation Air Transportation System (NextGen) initiatives aimed at modernizing the NAS to make flying safer, more efficient, and more predictable, the FAA is working to reduce the NAS dependency on its conventional navigational infrastructure and transition to a performance based navigation (PBN) infrastructure. To that end, as part of a NAS Efficient Streamlined Services Initiative, the VOR MON program is working to gradually reduce the number of conventional legacy NAVAIDs while more efficient PBN area navigation (RNAV) air traffic service (ATS) routes and procedures are being implemented throughout the NAS. As such, the FAA's goal is to provide additional RNAV ATS routes, point-to-point navigation where operationally beneficial, and to remove most conventional ATS routes, except where needed in mountainous regions and areas without radar coverage.

As noted in the NPRM, the FAA identified available mitigations to overcome the proposed gaps in the V–72 and V–429 ATS routes. Instrument flight rules (IFR) traffic could use adjacent VOR Federal airways (including V–5, V–7, V–69, V–171, V–191, V–192, V–262, and V–586) to circumnavigate the affected area; file point to point through the affected area using fixes that will remain in place; or receive air traffic control (ATC) radar vectors through the area. And, visual flight rules (VFR) pilots who elect to navigate via V–72 and V–429 through the affected area could also take advantage of the adjacent VOR Federal airways or ATC services. Additionally, the FAA planned to retain the Mattoon DME facility, charted as a DME facility, using the existing ''MTO'' three-letter identifier.

In consideration of IDOT's recommendation, the FAA agrees that amending V–429 by establishing an airway segment directly between the Bible Grove and Champaign legacy VORTACs would continue to provide an uninterrupted, conventional ATS route between the Cape Girardeau, MO, VOR/DME and Joliet, IL, VORTAC. However, the FAA also notes that IDOT's recommendation does not support the FAA's NextGen efforts to modernize the NAS and that the mitigations identified in the NPRM provide alternatives for pilots to overcome and navigate through the ATS route gaps in the Charleston and Mattoon area that are successfully used in other parts of the NAS. As such, the FAA is moving forward with the ATS route amendments as proposed in the NPRM.

Although the determination is to proceed with the amendments to V–72 and V–429 addressed in the NPRM, the FAA is in the planning stages for establishing a PBN area navigation (RNAV) T-route that closely mirrors the ATS route segment recommended by IDOT, beginning near the Bible Grove VORTAC and proceeding northbound to near the Champaign VORTAC. Once all the coordination and development actions for establishing that RNAV T-route are completed, the FAA will propose the new T-route in a separate rulemaking action.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11B dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document will be subsequently published in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017,

and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 by modifying the descriptions of VOR Federal airways V–72 and V–429 due to the planned decommissioning of the Mattoon, IL, VOR. The VOR Federal airway changes are described below.

V–72: V–72 extends between the Razorback, AR, VOR/Tactical Air Navigation (VORTAC) and the Bloomington, IL, VOR/DME. The airway segment between the Bible Grove, IL, VORTAC and the Bloomington, IL, VOR/DME is removed. The unaffected portions of the existing airway remain as charted.

V–429: V–429 extends between the Cape Girardeau, MO, VOR/DME and the Joliet, IL, VORTAC. The airway segment between the Bible Grove, IL, VORTAC and the Champaign, IL, VORTAC is removed. The unaffected portions of the existing airway remain as charted.

All radials in the route descriptions below are unchanged and stated in True degrees.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of modifying VOR Federal airways V–72 and V–429 in the vicinity of Mattoon and Charleston, IL, qualifies for categorical exclusion under the National Environmental Policy Act, 42 U.S.C. 4321, and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5-6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5-2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017 and effective September 15, 2017, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–72 [Amended]

From Razorback, AR; Dogwood, MO; INT Dogwood 058° and Maples, MO, 236° radials; Maples; Farmington, MO; Centralia, IL; to Bible Grove, IL.

* * * * *

V–429 [Amended]

From Cape Girardeau, MO; Marion, IL; INT Marion 011° and Bible Grove, IL, 207° radials; to Bible Grove. From Champaign, IL; Roberts, IL; to Joliet, IL.

Issued in Washington, DC, on August 29, 2018.

Scott M. Rosenbloom,

Acting Manager, Airspace Policy Group.

[FR Doc. 2018–19347 Filed 9–6–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2018–0821]

RIN 1625–AA08

Special Local Regulation; Upper Mississippi River, St. Paul, MN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for the navigable waters of the Upper Mississippi River from Mile Marker (MM) 846 to MM 847. The special local regulation is necessary to protect event participants, spectators, and vessels transiting the area from potential hazards during the WCCO–TV Pulling Together marine event. Entry of vessels or persons into the regulated area is prohibited unless specifically authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative.

DATES: This rule is effective from 10 a.m. through 5 p.m. on September 8, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0821 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 Chief Petty Officer Joshua Wilson, Sector Upper Mississippi River, Waterways Management Division, U.S. Coast Guard; telephone 314–269–2548, email *Joshua.A.Wilson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Upper Mississippi River
DHS Department of Homeland Security
FR Federal Register
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 would be impracticable. This rule must be established by September 8, 2018 and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. The NPRM process would delay the establishment of the temporary special local regulation until after the scheduled date of the event, which would 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 the effective date of this rule would be contrary to the public interest because immediate action is necessary to ensure the safety of event participants, and persons and vessels transiting the regulated area.

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 Sector Upper Mississippi River (COTP) has determined that there are potential hazards associated with the WCCO–TV Pulling Together event consisting of a tug of war competition between teams on opposing banks of the Upper Mississippi River between Mile Marker (MM) 846 and MM 847. This event will span the entire width of the river, potentially causing an extra or unusual hazard to the safety of life on the navigable waters of the United States. This rule is necessary to protect event participants, and persons and vessels transiting the regulated area during the event.

IV. Discussion of the Rule

This rule establishes a temporary special local regulation during the WCCO–TV Pulling Together event from 10 a.m. until 5 p.m. on September 8, 2018, or until cancelled by the COTP, whichever occurs first. The regulated area will cover all navigable waters of the Upper Mississippi River from MM 846 to MM 847. This special local regulation is intended to protect the public from potential navigation hazards during the event. No person or vessel is permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. A designated representative may be a Patrol Commander (PATCOM). If established, the PATCOM may be contacted on VHF–FM Channel 16 by using the call sign ''PATCOM''. The COTP or designated representative may be contacted by phone at 314–269–2332 or VHF–FM Channel 16.

All persons and vessels not registered with the event sponsor as sponsors or official patrol vessels are considered ''spectators''. The ''official patrol vessels'' consist of any Coast Guard, State and local law enforcement, and sponsor provided vessels assigned or approved by the COTP to patrol the regulated area.

Spectator vessels desiring to enter, transit through or within, or exit the regulated area may do so only with permission from the COTP or a designated representative and, when permitted by the COTP or a designated representative, must operate at a minimum safe navigation speed in a manner which will not endanger event participants or other persons or vessels within the regulated area.

No spectator vessel shall anchor, block, loiter, or impede the through transit of event participant or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel.

The COTP or designated representative may forbid and control the movement of any and all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, a citation for failure to comply, or both.

The COTP or designated representative may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property. The COTP or a designated representative will terminate the enforcement of the temporary special local regulation at the conclusion of the event.

The COTP or a designated representative will inform the public of the enforcement times and the establishment of a PATCOM for this regulated area through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Safety Marine Information Bulletins (SMIBs), 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 13563 (''Improving Regulation and Regulatory Review'') and 12866 (''Regulatory Planning and Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs'') directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017).This regulatory action determination is based on the size, location, and duration for the temporary special local regulation. The regulated area will be enforced on a one-mile stretch of the Upper Mississippi River for a period of up to seven hours on one day. Vessel traffic may request to transit the regulated area by contacting the COTP or a designated representative. Moreover, the COTP or a

designated representative will publish details of the regulated area in LNMs and will issue BNMs via VHF–FM Channel 16 to allow waterways users to plan accordingly.

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 regulated area 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 the establishment of a temporary special local regulation that will restrict access on a one-mile stretch of the Upper Mississippi River for seven hours on one day. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. Because this rulemaking is to establish a temporary special local regulation for a permitted marine event that is not located in, proximate to, or above an area designated environmentally sensitive by an environmental agency of the Federal, State, or local government a Record of Environmental Consideration (REC) is not required. Should any detail of this rule change to such an extent that will require a REC, a REC will be available in the docket 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 100

Maritime safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 33 CFR 1.05–1.

■ 2. Add § 100.T08–0821 to read as follows:

§ 100.T08–0821 Special Local Regulation; Upper Mississippi River, St. Paul, MN.

(a) *Location.* A temporary special local regulation is established for the following area: all navigable waters of the Upper Mississippi River from Mile Marker (MM) 846 to MM 847, extending the entire width of the river.

(b) *Effective period.* This section will be enforced from 10 a.m. through 5 p.m. on September 8, 2018, or until cancelled by the COTP, whichever occurs first

(c) *Regulations.* (1) In accordance with the general regulations in § 100.35 of this part, entry of vessels or persons into this regulated area is prohibited unless specifically authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or 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 Sector Upper Mississippi River. A designated representative may be a

Patrol Commander (PATCOM). If established, the PATCOM may be contacted on VHF–FM Channel 16 by using the call sign ''PATCOM''. The COTP or designated representative may be contacted by phone at 314–269–2332 or VHF–FM Channel 16.

(2) All persons and vessels not registered with the event sponsor as sponsors or official patrol vessels are considered ''spectators''. The ''official patrol vessels'' consist of any Coast Guard, State and local law enforcement, and sponsor provided vessels assigned or approved by the COTP to patrol the regulated area.

(3) Spectator vessels desiring to enter, transit through or within, or exit the regulated area may do so only with permission from the COTP or a designated representative and, when permitted by the COTP or a designated representative, must operate at a minimum safe navigation speed in a manner which will not endanger event participants or other persons or vessels within the regulated area.

(4) No spectator vessel shall anchor, block, loiter, or impede the through transit of event participant or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(5) Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel.

(6) The COTP or designated representative may forbid and control the movement of any and all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, a citation for failure to comply, or both.

(7) The COTP or designated representative may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property. The COTP or a designated representative will terminate the enforcement of the temporary special local regulation at the conclusion of the event.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and the establishment of a PATCOM for this regulated area through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Safety Marine Information Bulletins (SMIBs) as appropriate.

Dated: September 4, 2018

R.M. Scott,

Commander, U.S. Coast Guard, Acting Captain of the Port Sector Upper Mississippi River.

[FR Doc. 2018–19448 Filed 9–6–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0814]

RIN 1625-AA00

Safety Zone; Perch and Pilsner Fireworks; Lake Erie, Conneaut, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 210-foot radius of the fireworks launch site at 500 Erie Street, Conneaut, OH. This safety zone is needed to restrict vessels from a portion of Lake Erie during the Perch and Pilsner Festival fireworks display. This temporary safety zone is necessary to protect personnel, vessels, and the marine environment from the potential hazards associated with a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Buffalo.

DATES: This rule is effective from 8:15 p.m. until 9:00 p.m. on September 8, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0814 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 LT Ryan Junod, Chief of Waterways Management, U.S. Coast Guard Marine Safety Unit Cleveland; telephone 216–937–0124, email *Ryan.S.Junod@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 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 find that those procedures are ''impracticable, unnecessary, or contrary to public interest.'' Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event sponsor did not submit notice to the Coast Guard with sufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be contrary to the public interest by inhibiting the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display.

Under 5 U.S.C. 553 (d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register** because doing so would be impracticable and contrary to the public interest. Delaying the effective date would be contrary to the rule's objectives of ensuring safety of life on the navigable waters and protection of persons and vessels near the maritime fireworks display.

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 Buffalo, NY (COTP) has determined that potential hazards associated with vessels in the vicinity of firework displays on September 8, 2018 will be a safety concern for vessels and spectators within a 210 foot radius of the launch point of the fireworks. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks display is happening.

IV. Discussion of the Rule

This rule establishes a safety zone from 8:15 p.m. through 9:00 p.m. on September 8, 2018. The safety zone will cover all navigable waters within 210-foot of the fireworks launch site at position 41°58′01.64″ N, 080°33′38.22″ W, 500 Erie St, Conneaut, OH. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a

designated representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

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 conclusion that this rule is not a significant regulatory action. We anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

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 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 one hour that will prohibit entry within 210-foot radius of the launch area for the fireworks display. 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.T09–0814 to read as follows:

§ 165.T09–0814 Safety Zone; Perch and Pilsner Fireworks; Lake Erie, Conneaut, OH.

(a) *Location.* This zone will encompass all U.S waterways within a 210-foot radius of the fireworks launch site located at position 41°58′01.64″ N, 080°33′38.22″ W, Conneaut, OH (NAD 83).

(b) *Effective and enforcement period.* This regulation is effective and will be enforced on September 8, 2018 from 8:15 p.m. until 9:00 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: September 4, 2018.

Kenneth E. Blair,

Commander, U.S. Coast Guard, Acting Captain of the Port Buffalo.

[FR Doc. 2018–19457 Filed 9–6–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0854]

RIN 1625–AA00

Safety Zone; Moonlight on the Bay Fireworks, Presque Isle Bay, Lake Erie, Erie, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 280-foot radius of the launch site located at Erie Sand and Gravel, Presque Isle Bay, Erie, PA. This safety zone is intended to restrict vessels from portions of Presque Isle Bay during the Moonlight on the Bay fireworks display. This temporary safety zone is necessary to protect mariners and vessels from the navigational hazards associated with a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Buffalo.

DATES: This rule is effective from 9:30 p.m. until 11:00 p.m. on September 7, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2018–0854 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 LTJG Sean Dolan, Chief Waterways Management Division, U.S. Coast Guard; telephone 716–843–9322, email *D09-SMB-SECBuffalo-WWM@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 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)(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 event sponsor did not submit notice to the Coast Guard with sufficient time remaining before the event to publish an NPRM. Delaying the effective date would be contrary to the rule's objectives of enhancing safety of life on the navigable water and protection of persons and vessels in vicinity of the fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the rule's objectives of enhancing safety of life on the navigable waters and protection of persons and vessels in vicinity of the fireworks display.

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 Buffalo (COTP) has determined that a fireworks display presents significant risks to the public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks display takes place.

IV. Discussion of the Rule

This rule establishes a temporary safety zone on September 7, 2018, from 9:30 p.m. until 11:00 p.m. The safety zone will encompass all waters of Presque Isle Bay, Erie, PA contained within a 280-foot radius of: 42°08′55.3″ N, 80°04′58.1″ W.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

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 conclusion that this rule is not a significant regulatory action. We anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

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 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 establishes a temporary safety zone. 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.T09–0854 to read as follows:

§ 165.T09–0854 Safety Zone; Moonlight on the Bay Fireworks, Presque Isle Bay, Lake Erie, Erie, PA.

(a) *Location.* The safety zone will encompass all waters of Presque Isle Bay; Erie, PA contained within a 280-foot radius of: 42°08′55.3″ N, 80°04′58.1″ W.

(b) *Enforcement period.* This regulation will be enforced from 9:30 p.m. until 11:00 p.m. on September 7, 2018.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: August 30, 2018.

Kenneth E. Blair,

Commander, U.S. Coast Guard, Acting Captain of the Port Buffalo.

[FR Doc. 2018–19414 Filed 9–6–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0856]

RIN 1625–AA00

Safety Zone; PA Municipal Authorities Annual Conference Fireworks, Presque Isle Bay, Erie, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 280-foot radius of the launch site located at Dobbins Landing, Erie, PA. This safety zone is intended to restrict vessels from portions of Presque Isle Bay during the Pennsylvania Municipal Authorities Annual Conference fireworks display. This temporary safety zone is necessary to protect mariners and vessels from the navigational hazards associated with a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Buffalo.

DATES: This rule is effective from 8:45 p.m. until 9:45 p.m. on September 11, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2018–0856 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 LTJG Sean Dolan, Chief Waterways Management Division, U.S. Coast Guard; telephone 716–843–9322, email *D09-SMB-SECBuffalo-WWM@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 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)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule due to it being impracticable and contrary to public interest. The final details of this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish a NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the rule's objectives of enhancing safety of life on the navigable waters and protection of persons and vessels in vicinity of the Pennsylvania Municipal Authorities Annual Conference fireworks display.

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 Buffalo (COTP) has determined that a fireworks display presents significant risks to the public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks display takes place.

IV. Discussion of the Rule

This rule establishes a safety zone on September 11, 2018, from 8:45 p.m. until 9:45 p.m. The safety zone will encompass all waters of Presque Isle Bay; Erie, PA contained within 280-foot radius of: 42°08′19.87″ N, 80°05′29.45″ W.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

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 conclusion that this rule is not a significant regulatory action. We anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

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 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 establishes a temporary safety zone. 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.T09–0856 to read as follows:

§ 165.T09–0856 Safety Zone; Pennsylvania Municipal Authorities Annual Conference Fireworks Display; Presque Isle Bay, Erie, PA.

(a) *Location.* The safety zone will encompass all waters of Presque Isle Bay; Erie, PA contained within a 280-foot radius of: 42°08′19.87″ N, 80°05′29.45″ W.

(b) *Enforcement period.* This regulation will be enforced from 8:45 p.m. until 9:45 p.m. on September 11, 2018.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: August 30, 2018.

Kenneth E. Blair,

Commander, U.S. Coast Guard, Acting Captain of the Port Buffalo.

[FR Doc. 2018–19413 Filed 9–6–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0280; FRL–9982–60—Region 5]

Air Plan Approval; Wisconsin; 2017 Revisions to NR 400 and 406

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving certain changes to the Wisconsin State Implementation Plan (SIP). This action relates to changes in Wisconsin's construction permit rules as well as the change in the definition for ''emergency electric generators'' in NR 400. This request for the revision of the SIP was submitted by the Wisconsin Department of Natural Resources (WDNR) on May 16, 2017.

DATES: This final rule is effective on October 9, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2017–0280. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Rachel Rineheart, Environmental Engineer, at (312) 886–7017 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Rachel Rineheart, Environmental Engineer, Air Permits Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7017, *rineheart.rachel@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: is used, we mean EPA. This supplementary information section is arranged as follows:

I. Review of State Submittal

This final rulemaking addresses the May 16, 2017 WDNR submittal for a SIP revision, revising the rules in the Wisconsin SIP to align them with Federal requirements. WDNR's submittal includes changes to the term ''electric generator,'' replacing it with ''restricted internal combustion engine'' as well as other minor language and administrative changes. Specifically, NR 400.02(136m) replaces the existing definition of emergency ''electric generator'' with a definition of ''restricted use internal combustion engine,'' and NR 406.04(1)(w) amends the exemption language for ''emergency electric generators,'' replacing it with an exemption for ''restricted use reciprocating internal combustion engines.'' NR 406.08(1) and NR 406.10 involve minor changes to language, and NR 406.11(1) amends procedures for revoking construction permits. These changes serve the purpose of aligning Wisconsin's definitions with the Federal definitions.

WDNR is also requesting the removal of NR 406.16(2)(d) and NR 406.17(3)(e) from the SIP. These provisions address the eligibility of coverage under general and registration construction permits based on whether the project constituted a Type 2 action under the previous chapter NR 150. However, the current chapter NR 150 was amended and no longer defines or sets requirements for Type 2 actions. Removing these provisions from Wisconsin's SIP ensures consistency with the Wisconsin Environmental Protection Act (WEPA), and does not affect consistency with the Clean Air Act (CAA). It is also consistent with Section 110(l) of the CAA. Sources covered under registration and general permits are still subject to all emission caps and applicable requirements contained in those permits.

II. What is our response to comments received on the proposed rulemaking?

EPA published a direct final rule on November 7, 2017 (82 FR 51575), approving Wisconsin's requested revisions to the SIP, along with a proposed rule (82 FR 51594) that provided a 30-day public comment period. EPA received two comment letters during the public comment process. There were comments on the proposed approval from Sierra Club and the Center for Biological Diversity combined and one comment from an anonymous commenter. The letter from the anonymous commenter was dated December 2, 2017 and the letter from Sierra Club and the Center for Biological Diversity was dated December 7, 2017. Consequently, the direct final rule on this approval was withdrawn on December 21, 2017 (82 FR 60545). A summary of the comments received and EPA's response follows.

A. Section 110(l) Determination

Comment 1: The revisions to the prior exemption for emergency generators are a relaxation of the SIP and EPA cannot approve the SIP relaxation without an analysis that the relaxation will not interfere with attainment or maintenance of the National Ambient Air Quality Standards (NAAQS) or any other CAA requirement pursuant to Section 110(l) of the CAA.

EPA Response: Section 110(l) states ''each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171 of this title), or any other applicable requirement of this Act.'' Wisconsin has adequately demonstrated that the

change in exemption will not interfere with attainment or maintenance of the NAAQS. EPA does not interpret section 110(l) to require a full attainment or maintenance demonstration before any changes to a SIP may be approved. Generally, a SIP revision may be approved under section 110(l) if EPA finds it will at least preserve status quo air quality. *See Kentucky Resources Council, Inc.* v. *EPA,* 467 F.3d 986 (6th Cir. 2006); *GHASP* v. *EPA,* No. 06–61030 (5th Cir. Aug. 13, 2008); *see also, e.g.,* 70 FR 53, 57 (Jan. 3, 2005), 70 FR 28429, 28430 (May 18, 2005) (proposed and final rules, upheld in *Kentucky Resources,* which discuss EPA's interpretation of section 110(l).[1]

As mentioned in Subsection A, above, Wisconsin has included two categories of engines within its definition of Restricted Use Reciprocating Internal Combustion Engines (RICE):

(a) One that is operated no more than 200 hours per year and that meets the definition of emergency stationary RICE or black start engine in 40 CFR 63.6675.

(b) One that is operated in accordance with the definition of limited use RICE in 40 CFR 63.6675.

In order to evaluate whether the air quality will be maintained despite the change in definition, we have addressed the two categories of engines separately. The first category of engines within the definition of emergency stationary RICE or black start engines, as defined in 40 CFR 63.6675, operates no more than 200 hours per year (NR 400.02(136m)(a)). NR 406.04(1)(w) exempts restricted use reciprocating internal combustion engines fueled by gaseous fuels, gasoline or a clean fuel and which have a combined electrical output of less than 3000 kilowatts. This is consistent with the definition and exemption for emergency electric generators prior to the revision, which referred to an electric generator whose purpose is to provide electricity to a facility if normal electrical service is interrupted and which is operated no more than 200 hours per year. The prior exemption excluded ''emergency electric generators powered by internal combustion engines which are fueled by gaseous fuels, gasoline or distillate fuel oil with an electrical output of less than 3000 kilowatts.'' Since the size as well as the number of operating hours per year of engines used for emergency purposes remains the same before and after the revision, there will be no additional impact to air quality as a result of this revision.

The second category of engine within Wisconsin's definition of restricted use RICE are limited use engines as defined in 40 CFR 63.6675 that operate less than 100 hours per year (NR 400.02(136m)(b)). We reviewed information on how the State permitted limited use RICE prior to the proposed exemption. Limited use RICE, as opposed to restricted use RICE, was not a defined category and these engines were permitted as stationary RICE with permit restrictions. However, this provision in the Wisconsin code exempting limited use RICE from obtaining a permit will not result in an increase in emissions beyond what would result from construction or modification of these types of engines through an individual minor new source review (NSR) construction permit. Wisconsin has shown that this permit exemption is consistent with conditions that would have been part of a construction permit under the prior version of the state regulations.

For example, prior to the exemption, limited use RICE were included in permits with a permit limitation or an operational restriction. The permit may or may not have included a restriction in the number of hours. Under the proposed exemption, however, sources will need to operate for less than 100 hours per year in order to be eligible for this exemption, in accordance with 40 CFR 63.6675. Therefore, in some cases, this provision in the rule may be more protective of air quality than an individual permit. An increase in the hours of operation to over 100 hours per year will make the source ineligible for this exemption, as per the definition of limited use engines. Further, an increase to 100 hours per year or greater will make the source subject to the requirements under the Federal National Emission Standards for Hazardous Air Pollutants (NESHAP). An exemption from obtaining a permit does not relieve the source from having to comply with the NESHAP. Therefore, the NESHAP acts as a backstop to ensure emissions from these engines are controlled. As mentioned above, EPA may approve a SIP revision under section 110(l) if EPA finds it will at least preserve status quo air quality. *Kentucky Resources, supra.*

B. Aligning With Federal Requirements

Comment 1: ''It is unclear what Federal requirements or Federal program EPA is referencing throughout this notice''.

EPA response: In this action, EPA is referring to the Federal definition of RICE under 40 CFR 63.6675. The Federal regulations do not specifically define emergency generators. 40 CFR 63.6675 defines internal combustion engines that are used for emergency purposes. WDNR's revised definition conforms to the Federal definition of internal combustion engines used for emergency purposes.

EPA does not find the need to re-propose this action, since commenters had adequate notice of these Federal requirements. The Federal citation is clearly mentioned in Wisconsin's revised definition of RICE under NR 400.02(136m).

Comment 2: The Federal NESHAPs are not the same program as the NSR program and are not designed to meet the same goals. Thus EPA's statement that these changes ''serve the purpose of aligning the state and Federal regulations'' is not grounded in the CAA.

EPA response: EPA understands that NESHAPs and the NSR program are different programs, but that does not eliminate the value in aligning state and Federal regulations. Consistency among state and Federal regulatory requirements, whether from the same or different programs, is valuable to achieve goals such as simplifying applicability and regulatory requirements and promoting compliance. Such alignment need not be mandated by the CAA to add such value, and EPA and states need only assure that an alignment of state and Federal requirements across programs is not inconsistent with the CAA requirements for either program. The revisions approved in this action pass this test.

Further, this action is only aligning Wisconsin's definitions with the Federal definitions, thereby aligning permitting exemptions with certain NESHAP exemptions. The revision does not attempt to align the regulatory requirements or the pollutants addressed by these programs in a manner that is inconsistent with the CAA requirements for either program.

C. Exclusions From Modifications, NR 406.04(4)(e)

The Wisconsin Code NR 406.04(4) has provisions that exclude certain types of changes from constituting a modification. The purpose of these exclusions is to minimize the administrative and economic burdens on both the agency and low emitting sources without sacrificing environmental protection. NR 406.04(4)(e) excludes from the definition of modification sources that increase their hours of operation if: (1)

[1] Discussed in Utah Approval, Disapproval, and Promulgation of Air Quality Implementation Plans; Utah; Revisions to New Source Review Rules, 76 FR 41712 at 41713 (Aug 15, 2011).

The increase is not prohibited by any permit, plan approval or special order applicable to the source; and (2) the increase will not cause or exacerbate the violation of an ambient air quality standard or ambient air increment or violate an emission limit.

Comment 1: The exemption in NR 406.04(1)(w), when considered in conjunction with the existing exemptions under NR 406.04(4)(e), could allow the construction of a stationary reciprocating internal combustion engine without a permit that could ultimately be allowed to operate 8760 hours per year with no construction permit being issued prior to review.

EPA response: 40 CFR 51.160 requires that a SIP set forth legally enforceable procedures that enable the permitting authority to determine whether the source is in violation of applicable portions of the control strategy or would result in an interference with the attainment or maintenance of a NAAQS. The exemption in NR 406.04(1)(w) exempts restricted use RICE that (1) operated no more than 200 hours per year and meet the definition of emergency stationary RICE in 40 CFR 63.6675; or (2) are operated in accordance with the definition of limited use RICE in 40 CFR 63.6675, *i.e.* RICE that is operated no more than 100 hours per year. An increase in hours of operation above these thresholds, as applicable, will cause the source to no longer qualify for the permit exemption and will thereby result in a SIP violation. Further, the exemption in NR 406.04(1)(w)2. requires that records be kept of total hours the engines operate each year to verify that the units continue to meet the criteria for an exemption.

D. Air Quality Analysis

Comment 1: Wisconsin's exemption could apply to generators used for peak shaving. Peaking units typically go through frequent startups and shutdowns and thus could have disproportionately high emissions on a short-term basis despite the limited operating hours per year. EPA must require a worst case evaluation of impacts on the NAAQS—particularly the 1-hour SO_2 and 1-hour NO2 NAAQS.

EPA response: WDNR's definition of restricted use RICE mirrors the Federal definition of emergency stationary RICE in 40 CFR 63.6675. This definition, while allowing an engine to operate for up to 50 hours per year for non-emergency purposes, clearly precludes the source from using the engines for ''. . . peak shaving or non-emergency demand response, or to generate income for a facility to an electric grid or otherwise supply power as part of a financial arrangement with another entity.'' Prior to adopting the proposed definition, Wisconsin did not have a category called ''limited-use'' engines. An engine could either be operated as a ''limited-use'' engine by restricting the number of operating hours through a permit, or have permit limits based on its usage. Engines that had restrictions on the number of operating hours were required to maintain records of the number of hours they operate, with no further requirements. Under the revised regulation, operating hours equal to or greater than the applicable thresholds under the definition will trigger a permit requirement and the requirements of Wisconsin's minor source permit program. These permitting requirements include an analysis of the impact on ambient air quality. Moreover, an increase in the number of hours will trigger requirements under the NESHAP. As discussed above in the context of section 110(l), EPA has conducted an evaluation sufficient to support the conclusion that the approved changes will preserve the status quo air quality.

III. What action is EPA taking?

EPA is approving the requested revisions to WDNR's SIP. Specifically EPA is approving revisions to Wisconsin rules NR 400.02(136m), NR 406.04(1)(w), NR 406.08(1), NR 406.10 and NR 406.11(1). EPA is also approving the removal of NR 406.16(2)(d) and NR 406.17(3)(e) from the SIP.

IV. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Wisconsin Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

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 application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 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 8, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.2570 is amended by revising paragraph (c)(113)(i)(D), and by adding paragraph (c)(137) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(113) * * *

(i) * * *

(D) NR 400.02(73m) and (131m), 406.02(1) and (2), 406.04(2m), NR 406.11(1)(g)(1), 406.11(3), 406.16, 406.17, 406.18, 407.02(3m), 407.105, 407.107, 407.14 Note, 407.14(4)(c), 407.15(8)(a) and 410.03(1)(a)(6) and (7) as created and published in the (Wisconsin) Register, August 2005, No. 596, effective September 1, 2005. Sections NR 406.16(2)(d) and NR 406.17(3)(e) were repealed in 2015 and are removed without replacement; see paragraph (c)(137) of this section.

* * * * *

(137) On May 16, 2017, the Wisconsin Department of Natural Resources submitted a request to revise Wisconsin's air permitting rules NR 400.02(136m), NR 406.04(1)(w), NR 406.08(1), NR 406.10 and NR 406.11(1). These revisions replace the existing definition of ''emergency electric generator'' with the Federal definition of ''restricted internal combustion engine'', amends procedures for revoking construction permits and include minor language changes and other administrative updates. Wisconsin has also requested to remove from the SIP NR 406.16(2)(d) and NR 406.17(3)(e), provisions affecting eligibility of coverage under general and registration construction permits, previously approved in paragraph (c)(113) of this section. This action ensures consistency with Wisconsin Environmental Protection Act (WEPA) laws.

(i) Incorporation by reference.

(A) Wisconsin Administrative Code, NR 400.02(136m) as published in the Wisconsin Administrative Register November 2015 No. 719, effective December 1, 2015.

(B) Wisconsin Administrative Code, NR 406.04(1)(w), NR 406.08(1), NR 406.10 and NR 406.11(1) as published in the Wisconsin Administrative Register November 2015 No. 719, effective December 1, 2015.

[FR Doc. 2018–19161 Filed 9–6–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0399; FRL–9983–33—Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Nonattainment New Source Review Requirements for the 2008 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Commonwealth of Virginia's state implementation plan (SIP). The revision is in response to EPA's February 3, 2017 Findings of Failure to Submit for various requirements relating to the 2008 8-hour ozone national ambient air quality standards (NAAQS). This SIP revision is specific to nonattainment new source review (NNSR) requirements. EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on October 9, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2017–0399. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814–2117, or by email at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 4, 2018 (83 FR 14386), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. In the NPR, EPA proposed approval of the SIP submitted in response to EPA's final 2008 8-hour ozone NAAQS Findings of Failure to Submit for NNSR requirements. *See* 82 FR 9158 (February 3, 2017). Specifically, Virginia is certifying that its existing NNSR program, covering the Washington, DC nonattainment area (which includes Alexandria City, Arlington County, Fairfax County, Fairfax City, Falls Church City, Loudoun County, Manassas City, Manassas Park City, and Prince William County in Virginia) (hereafter, Washington, DC Nonattainment Area) for the 2008 8-hour ozone NAAQS, is at least as stringent as the requirements at 40 CFR 51.165, as amended by the final rule entitled ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements'' (SIP Requirements Rule),

for ozone and its precursors.[1] *See* 80 FR 12264 (March 6, 2015). The formal SIP revision was submitted by the Virginia Department of Environmental Quality (VADEQ) on behalf of the Commonwealth of Virginia on May 11, 2017.

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). *See* 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR 50.15, the 2008 8-hour ozone NAAQS is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.075 ppm.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data available at the conclusion of the designation process. The Washington, DC Nonattainment Area was classified as a marginal nonattainment area for the 2008 8-hour ozone NAAQS on May 21, 2012 (effective July 20, 2012) using 2008–2010 ambient air quality data. *See* 77 FR 30088. On March 6, 2015, EPA issued the final SIP Requirements Rule, which establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2008 8-hour ozone NAAQS. *See* 80 FR 12264. Areas that were designated as marginal ozone nonattainment areas were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2015, based on 2012–2014 monitoring data. The Washington, DC Nonattainment Area did not attain the 2008 8-hour ozone NAAQS by July 20, 2015; however, this area did meet the CAA section 181(a)(5) criteria, as interpreted in 40 CFR 51.1107, for a one-year attainment date extension. *See* 81 FR 26697 (May 4, 2016). Therefore, on April 11, 2016, the EPA Administrator signed a final rule extending the Washington, DC Nonattainment Area 2008 8-hour ozone NAAQS attainment date from July 20, 2015 to July 20, 2016.[2]

Based on initial nonattainment designations for the 2008 8-hour ozone standard, as well as the March 6, 2015 final SIP Requirements Rule, Virginia was required to develop a SIP revision addressing certain CAA requirements for the Washington, DC Nonattainment Area, and submit to EPA a NNSR Certification SIP or SIP revision no later than 36 months after the effective date of area designations for the 2008 8-hour ozone NAAQS (*i.e.,* July 20, 2015).[3] *See* 80 FR 12264 (March 6, 2015). EPA is proposing to approve Virginia's May 11, 2017 NNSR Certification SIP revision. EPA's analysis of how this SIP revision addresses the NNSR requirements for the 2008 8-hour ozone NAAQS is provided in Section II.

II. Summary of SIP Revision and EPA Analysis

This rulemaking action is specific to Virginia's NNSR requirements. NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources located in a nonattainment area.[4] The specific NNSR requirements for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.160–165. As set forth in the SIP Requirements Rule, for each nonattainment area, a NNSR plan or plan revision was due no later than 36 months after the effective date of area designations for the 2008 8-hour ozone standard (*i.e.,* July 20, 2015).[5]

The minimum SIP requirements for NNSR permitting programs for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.165. *See* 40 CFR 51.1114. These NNSR program requirements include those promulgated in the ''Phase 2 Rule'' implementing the 1997 8-hour ozone NAAQS (75 FR 71018 (November 29, 2005)) and the SIP Requirements Rule implementing the 2008 8-hour ozone NAAQS. Under the Phase 2 Rule, the SIP for each ozone nonattainment area must contain NNSR provisions that: Set major source thresholds for oxides of nitrogen (NO_X) and volatile organic compounds (VOC) pursuant to 40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv) and (2); classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3); consider any significant net emissions increase of NO_X as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); consider certain increases of VOC emissions in extreme ozone nonattainment areas as a significant net emissions increase and a major modification for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); set significant emissions rates for VOC and NO_X as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A)–(C) and (E); contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(1)–(2); provide that the requirements applicable to VOC also apply to NO_X pursuant to 40 CFR 51.165(a)(8); and set offset ratios for VOC and NO_X pursuant to 40 CFR 51.165(a)(9)(i)–(iii) (renumbered as (a)(9)(ii)–(iv) under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS). Under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS, the SIP for each ozone nonattainment area designated nonattainment for the 2008 8-hour ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS on April 6, 2015, must also contain NNSR provisions that include the anti-backsliding requirements at 40 CFR 51.1105. *See* 40 CFR 51.165(a)(12).

Virginia's SIP-approved NNSR program is implemented through Article 9, Permits for Major Stationary Sources and Major Modifications Locating in Nonattainment Areas or the Ozone Transport Region, in the Virginia Administrative Code (VAC), 9VAC5–80—*Permits for Stationary Sources.* In its May 11, 2017 SIP revision, Virginia certifies that the version of 9VAC5–80

[1] The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 8-hour ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The rule also revokes the 1997 ozone NAAQS and establishes anti-backsliding requirements. On February 16, 2018, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued an opinion granting a number of challenges to the EPA's SIP Requirements Rule. *South Coast Air Quality Mgmt. Dist.* v. *EPA,* 882 F.3d 1138 (D.C. Cir. 2018). Specifically, as relevant here, the Court vacated the ''redesignation substitute'' provision in the implementation rule, which allowed states a way to satisfy anti-backsliding requirements for revoked standards. EPA and South Coast Air Quality Management District filed petitions for rehearing and those petitions are pending before the Court.

[2] EPA finalized approval of a Determination of Attainment (DOA) for the 2008 8-hour ozone NAAQS for the Washington, DC Nonattainment Area on November 14, 2017. This final action was based on complete, certified, and quality assured ambient air quality monitoring data for the 2013–2015 monitoring period. *See* 82 FR 52651 (November 14, 2017). It should be noted that a DOA does not alleviate the need for Virginia to certify that their existing SIP approved NNSR program is as stringent as the requirements at 40 CFR 51.165, as NNSR applies in nonattainment areas until an area has been redesignated to attainment.

[3] Neither Virginia's obligation to submit the NNSR Certification SIP nor the requirements governing that submission were affected by the D.C. Circuit's February 16, 2018 decision on portions of the SIP Requirements Rule in *South Coast Air Quality Mgmt. Dist.* v. *EPA.*

[4] *See* CAA sections 172(c)(5), 173 and 182.

[5] With respect to states with nonattainment areas subject to a finding of failure to submit NNSR SIP revisions, such revisions would no longer be required if the area were redesignated to attainment. The CAA's prevention of significant deterioration (PSD) program requirements apply in lieu of NNSR after an area is redesignated to attainment. For areas outside the OTR, NNSR requirements do not apply in areas designated as attainment.

in the SIP is at least as stringent as the federal NNSR requirements for the Washington, DC Nonattainment Area. EPA last approved revisions to Virginia's major NNSR SIP on August 28, 2017. In that action, EPA approved revisions to Virginia's SIP which made Virginia's NNSR program consistent with federal requirements. Additionally, those revisions corrected a deficiency which had been grounds for limited approval of Virginia's program. EPA found, therefore, that Virginia's program met all CAA requirements and was fully approvable. *See* 82 FR 40703.

EPA notes that neither 9VAC5–80 nor Virginia's approved SIP have the regulatory provision for any emissions change of VOC in extreme nonattainment areas, specified in 40 CFR 51.165(a)(1)(v)(F), because Virginia has never had an area designated extreme nonattainment for any of the ozone NAAQS. Nonetheless, the Virginia SIP is not required to have this requirement for VOC in extreme nonattainment areas until such time as Virginia has an extreme ozone nonattainment area. In Virginia's May 11, 2017 SIP revision, VADEQ asserted that anti-backsliding provisions do not apply to any area within Virginia, including the northern Virginia/Metropolitan Washington, DC area, because Virginia submitted to EPA a final ''redesignation substitute'' request for the 1997 ozone NAAQS for the Washington, DC area on April 29, 2016. As noted, in its February 16, 2018 decision, the *South Coast* Court vacated the provision in the implementation rule for the 2008 ozone NAAQS that created the ''redesignation substitute.'' The Court disagreed with EPA's interpretation of the Clean Air Act that once a standard is revoked, the Agency no longer has authority to change designations or classifications for that revoked standard. The Court ruled that in order for 1997 ozone nonattainment areas to be relieved from anti-backsliding requirements under the old revoked standard, those areas would need to seek, and EPA would need to approve, full statutory redesignations to attainment in compliance with CAA section 107(d)(3). The Court thus vacated the ''redesignation substitute,'' because it held that areas could not receive the benefits of a redesignation without meeting all of the elements in CAA section 107(d)(3)(E).

Given the D.C. Circuit's vacatur of the redesignation substitute mechanism in *South Coast,* EPA cannot approve Virginia's redesignation substitute request. Therefore, until the Washington, DC Nonattainment Area is redesignated under section 107(d)(3), the state remains required to comply with the anti-backsliding provisions found in 40 CFR 51.165(a)(12) and located in 9VAC5–80 of its SIP which applied to NSR requirements for the 1997 ozone NAAQS. EPA finds that the Virginia SIP presently includes all required major stationary source thresholds and emissions offset ratios for NSR purposes which were established for the SIP for Virginia's 1997 8-hour ozone NAAQS nonattainment designation. *See* 82 FR 40703 (finding Virginia's NNSR program consistent with all federal requirements in August 2017).

Thus, EPA finds that Virginia's SIP includes relevant and required anti-backsliding requirements. Virginia has not changed these major stationary source threshold and offset provisions in 9VAC5–80–2010 C, and furthermore, they remain in Virginia's federally-approved SIP unless and until EPA approves a full redesignation request in accordance with CAA section 107.[6] EPA expects that VADEQ will continue to implement its NNSR program consistently with its approved SIP for major stationary source thresholds and emission offset ratios.

EPA has not amended the SIP provisions related to 9VAC5–80 since the August 28, 2017 rulemaking where EPA last approved Virginia's NNSR provisions as meeting CAA requirements for a NNSR program. The SIP-approved version of 9VAC5–80 covers Virginia's portion of the Washington, DC Nonattainment Area and remains adequate to meet all applicable NNSR requirements for the 2008 8-hour ozone NAAQS in 40 CFR 51.165, the Phase 2 Rule, and the SIP Requirements Rule.

III. Public Comments and EPA Response

EPA received a total of sixteen sets of comments on the April 4, 2018 NPR. Fifteen of those did not concern any of the specific issues raised in the NPR, nor did they address EPA's rationale for the proposed approval of VADEQ's submittal. Therefore, EPA is not responding to those comments. EPA did receive one set of relevant comments. Those comments and EPA's responses are discussed in this Section. All of the comments received are included in the docket for this rulemaking action.

Comment 1: The commenter asserts that EPA's proposed approval failed to adequately address whether Virginia's SIP ensures that the CAA's anti-backsliding requirements are met. In support of this claim, the commenter first points to Virginia's May 11, 2017 submittal in which VADEQ claims that anti-backsliding provisions don't apply because Virginia submitted a redesignation substitute request on April 26, 2016, and asserts that redesignation substitutes were ruled unlawful by the D.C. Circuit in the *South Coast* decision. Second, the commenter takes issue with EPA's assertion in the NPR that Virginia's NNSR SIP contains all of the requirements necessary to implement the 2008 8-hour ozone NAAQS, citing EPA's failure to address a February 18, 2018 approval action related to the implementation of the 2008 ozone NAAQS and the revocation of the 1997 ozone NAAQS.[7] The commenter asserts that until EPA addresses how ''the SIP as a whole,'' (including the revisions from EPA's February 18, 2018 approval) meets the anti-backsliding requirements, approval of Virginia's May 17, 2017 submittal would be arbitrary and unlawful.

EPA Response 1: The anti-backsliding requirements at both 40 CFR 51.165(a)(12) and 51.1105 provide that the minimum SIP elements for NNSR outlined at 40 CFR 51.165 continue to apply in areas designated as nonattainment for the 1997 ozone NAAQS that had not been redesignated to attainment by EPA prior to the April 6, 2015 revocation date of the 1997 NAAQS. EPA agrees with the commenter that VADEQ's assertion that the April 26, 2016 redesignation substitute request relieves Virginia of the CAA's anti-backsliding requirements is not correct, first because EPA never acted on that request and second because even if the Agency had approved such request, the *South Coast* Court held that redesignation substitutes cannot relieve nonattainment areas of anti-backsliding requirements. EPA clearly and unambiguously stated in the NPR (and restated in Section II of this document): ''Virginia remains required to comply with the anti-backsliding provisions found in 40 CFR 51.165(a)(12) and located in 9VAC5–80 of its SIP which applied to NSR requirements for the 1997 ozone NAAQS.'' [8] EPA further stated that Virginia is expected to implement its NNSR program consistent with its approved SIP (which does contain the CAA's anti-backsliding requirements) unless and until EPA promulgates a full redesignation of the DC Area for the

[6] Under the 1997 8-hour ozone NAAQS, the Washington, DC Area was classified as moderate nonattainment.

[7] *See* 83 FR 7610.

[8] *See* 83 FR 14388

2008 ozone NAAQS in accordance with CAA section 107(d)(3).

With respect to the commenter's assertion that EPA must evaluate the SIP as a whole and in light of the February 18, 2018 approval action, in order to grant approval to Virginia's May 17, 2017 submittal, EPA disagrees. EPA clearly stated in the NPR, and reiterates in this action, this action is specific to the NNSR program requirements of 40 CFR 51.165, which are codified by Virginia under Article 9 of 9VAC5–80. EPA's February 18, 2018 approval action did not revise or address any of the NNSR requirements in 9VAC5–80 and is therefore irrelevant to this action. EPA is not obligated, when reviewing each SIP submission, to re-review all prior SIP submissions already acted on. Such an interpretation of the CAA would subject the Agency to never-ending review of the state's implementation plan.

The February 18, 2018 action approved revisions to 9VAC5–20–204, 9VAC5–30–55, 9VAC5–151–20, and 9VAC5–160–30. The amendment to 9VAC5–30–55 added text stating that the primary and secondary ambient air quality standard of 0.08 ppm shall no longer apply after April 6, 2015, consistent with EPA's revocation of the 1997 standard. The revisions to 9VAC5–151–20 and 9VAC5–160–30 were related to transportation conformity and general conformity, neither of which are germane to this action. Subdivision (A)(2) of 9VAC5–20–204 defines and classifies the nonattainment area for the 1997 ozone standard. EPA's February 18, 2018 final rulemaking action approved a revision to 9VAC5–20–204 which provided that subdivision (A)(2) would no longer be effective after April 6, 2015. This is appropriate given the revocation of the 1997 standard. It is important to note that subdivision (A)(2) was not removed. Pursuant to 9VAC5–80–2000(B), the NNSR requirements of Article 9 apply to ''. . . nonattainment areas designated in 9VAC5–20–204 . . .'' This is the mechanism through which Virginia's NNSR requirements are applied to the various nonattainment areas in the Commonwealth. While the nonattainment area status for the 1997 ozone NAAQS is no longer active or ''effective'' due to the fact that that standard has been revoked, the only ''designation'' and ''classification'' that applies to the Washington DC Nonattainment Area for purposes of the revoked 1997 ozone NAAQS, and specifically for purposes of establishing the NNSR preconstruction permitting requirements of Article 9, remain on the books at 9VAC5–20–204. Therefore, even if the February 18, 2018 action might require amendment in light of *South Coast,* such a revision would not impact the effectiveness of EPA's final action approving Virginia's NNSR SIP.

Comment 2: The commenter asserts that EPA's proposed approval fails to ensure compliance with certain other NNSR requirements in 40 CFR 51.165(a)(1)(v)(E), specifically the requirement that any significant net emissions increase of nitrogen oxides (NO_X) be considered significant for ozone. The commenter points to part b. of the definition of ''Major modification'' in 9VAC5–80–2010 which states: ''[a]ny significant emissions increase from any emissions units or net emissions increase at a source that is considered significant for volatile organic compounds shall be considered significant for ozone,'' and claims that the lack of similar language pertaining to NO_X creates ambiguity as to whether the requirements of 40 CFR 51.165(a)(1)(v)(E) are met.

EPA Response 2: EPA disagrees that there is any ambiguity in Virginia's NNSR SIP with regard to the potential for a significant net increase of NO_X to be considered significant for ozone. The language identified by the commenter in part b. of the definition of ''Major modification'' in 9VAC5–80–2010 that is specific to volatile organic compounds is simply a recitation of nearly identical language in 40 CFR 51.165(a)(1)(v)(B) which is also specific to volatile organic compounds and has no implications with regard to NO_X. Virginia's May 17, 2017 submittal identified the provisions of the SIP which satisfy the requirement of 40 CFR 51.165(a)(1)(v)(E). First, under the definition of ''regulated NSR pollutant'' at 9VAC5–80–2010C, subdivisions a. and c.(1) include NO_X and make clear that NO_X is regulated as a precursor to ozone.[9] Additionally, subdivisions a. and c. of the definition of ''Significant'' contain the appropriate significance thresholds for NO_X (40 tons per year (tpy), or 25 tpy in areas designated as serious or severe nonattainment). Finally, part a. of the definition of ''Major modification'' in 9VAC5–80–2010 states that a major modification means ''any physical change in or change in the method of operation of a major stationary source that would result in (i) a significant emissions increase of a *regulated NSR pollutant;* and (ii) *a significant net emissions increase of that pollutant* from the source.'' (emphasis added) Because NO_X is clearly included in the definition of a ''Regulated NSR Pollutant,'' a significant emissions increase and a significant net emissions increase of NO_X would meet the definition of ''Major Modification,'' thus satisfying the requirement of 40 CFR 51.165(a)(1)(v)(E).

[9] 9VAC5–80–2010C in pertinent part reads as follows: '''Regulated NSR Pollutant' means any of the following: a. Nitrogen oxides or any volatile organic compound. . . . c. . . . . Precursors identified for purposes of this article shall be the following: (1) (1) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.''

IV. Final Action

EPA is approving Virginia's May 17, 2017 SIP revision addressing the NNSR requirements for the 2008 ozone NAAQS for the Washington DC Nonattainment Area. EPA has concluded that the State's submission fulfills the 40 CFR 51.1114 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165, as well as its obligations under EPA's February 3, 2017 Findings of Failure to Submit. *See* 82 FR 9158.

V. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its NSR program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 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).

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 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 pertaining to Virginia's NNSR program and the 2008 ozone NAAQS 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 27, 2018.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart VV—Virginia

■ 2. Amend § 52.2420, paragraph (e)(1) table by adding an entry entitled ''2008 8-Hour Ozone NAAQS Nonattainment New Source Review Requirements'' at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	* * *	*	*	*
2008 8-Hour Ozone NAAQS Nonattainment New Source Review Requirements.	Virginia portion of the Washington, DC-MD-VA nonattainment area for the 2008 ozone NAAQS (*i.e.,* Arlington County, Fairfax County, Loudoun County, Prince William County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City) as well as the portions of Virginia included in the Ozone Transport Region (OTR) (*i.e.,* Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City).	5/17/17	9/7/17, [Insert **Federal Register** citation].	

* * * * *

[FR Doc. 2018–19364 Filed 9–6–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2017–0442; FRL–9982–99—Region 1]

Air Plan Approval; New Hampshire; Single Source Orders and Revisions to Definitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of New Hampshire. The revisions incorporate a single source order into the New Hampshire SIP, remove a previously-approved order from the SIP, and approve various definitions used within New Hampshire's air pollution control regulations. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on October 9, 2018.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2017–0442. 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: Bob McConnell, Environmental Engineer, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05–02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109–3912; (617) 918–1046; *mcconnell.robert@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 July 6, 2018 (83 FR 31513), EPA published a Notice of Proposed Rulemaking (NPRM) for the State of New Hampshire. The NPRM proposed approval of revisions to New Hampshire's SIP consisting of an order establishing reasonably available control technology (RACT) requirements for the Diacom Corporation, removal from the SIP of a previously-approved RACT order for the Kalwall Corporation, and a request to revise a few definitions used within the State's air pollution control regulations. Other specific requirements of New Hampshire's RACT orders and revised definitions and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here.

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 substantive aspects of the proposed action. Consequently, these comments are not germane to this rulemaking and require no further response.

II. Final Action

EPA is approving an order establishing RACT for the Diacom Corporation, removal from the SIP of a previously-approved RACT order for the Kalwall Corporation, and a revision to eleven definitions used within the State's air pollution control regulations as revisions to the New Hampshire SIP.

III. 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 revisions located within New Hampshire's Env-A, Rules Governing the Control of Air

Pollution, Env-A 101, Definitions, and also incorporating by reference RACT Order RO–0002, dated June 28, 2017, issued to the Diacom Corporation, as 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]

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 November 6, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxide, Volatile organic compounds.

Dated: August 31, 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 EE—New Hampshire

■ 2. Amend § 52.1520 by:
■ a. In paragraph (c), amend the table by removing footnote 1 and adding ''Env-A 100; Definitions'' after the entry ''Env-A 100; Definition of ''Wood Waste Burner''''; and
■ b. In paragraph (d), amend the table by:
■ i. Removing footnote 2;
■ ii. Revising the entries ''VOC RACT for Kalwall Corporation, Manchester, NH'' and ''Kalwall Corporation''; and
■ iii. Adding an entry entitled ''Diacom Corporation'' at the end of the table.
■ c. In paragraph (e), remove footnote 3.

The revisions and additions read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

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

EPA-APPROVED NEW HAMPSHIRE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
* * * *			* * *	
Env-A 100	Definitions	3/24/1997	9/7/2018, [Insert **Federal Register** citation].	Revisions made affecting eleven definitions.
* * * *			* * *	

(d) * * *

EPA-APPROVED NEW HAMPSHIRE SOURCE SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Additional explanations/ § 52.1535 citation
* * * *			* * *	
VOC RACT for Kalwall Corporation, Manchester, NH.	Order ARD–95–010	9/10/1996	9/7/2018, [Insert **Federal Register** citation].	See § 52.1535(c)(51). Order superseded by Order ARD–99–001, effective date 11/20/2011.
* * * *			* * *	
Kalwall Corporation	ARD–99–001	11/20/2011	9/7/2018, [Insert **Federal Register** citation].	Order withdrawn from the New Hampshire SIP.
* * * *			* * *	
Diacom Corporation	RACT Order RO–0002	06/28/2017	9/7/2018, [Insert **Federal Register** citation].	VOC RACT Order.

* * * * *

[FR Doc. 2018–19290 Filed 9–6–18; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 83, No. 174
Friday, September 7, 2018

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2017–0181]

Identifying and Reporting Human Performance Incidents

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory issue summary; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing the draft regulatory issue summary (RIS), RIS 2017–XX, ''Identifying and Reporting Human Factor Incidents.'' This document is being withdrawn because after further consideration, the NRC determined that the RIS did not provide the clarification intended regarding licensees' required reporting of human performance incidents.

DATES: The withdrawal of draft RIS 2017–XX, ''Identifying and Reporting Human Factor Incidents'' is effective as of September 7, 2018.

ADDRESSES: Please refer to Docket ID NRC–2017–0181 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–2017–0181. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual(s) 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 draft RIS, ''Identifying and Reporting Human Factor Incidents'' is available in ADAMS under Accession No. ML16029A010.
- *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: Carmen Franklin, Office of Nuclear Regulatory Research, telephone: 301–415–2386, email: *Carmen.Franklin@nrc.gov* and Alexander Schwab, Office of Nuclear Reactor Regulation, telephone: 301–415–8539, email: *Alexander.Schwab@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: The NRC is withdrawing draft RIS 2017–XX, ''Identifying and Reporting Human Factor Incidents'' because after further consideration, the NRC determined that the RIS did not provide the clarification intended regarding licensees' required reporting of human performance incidents ''Licensee event report system'' under § 50.73 of title 10 of the *Code of Federal Regulations (CFR).*

Dated at Rockville, Maryland, this 31st day of August 2018.

For the Nuclear Regulatory Commission.

Bo Pham,

Branch Chief, ROP Support and Generic Communications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–19369 Filed 9–6–18; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0735; Product Identifier 2018–NE–26–AD]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all International Aero Engines (IAE) PW1133G–JM, PW1133GA–JM, PW1130G–JM, PW1127G–JM, PW1127GA–JM, PW1127G1–JM, PW1124G–JM, PW1124G1–JM, and PW1122G–JM turbofan engines with certain low-pressure turbine (LPT) 1st- and 3rd-stage disks installed. This proposed AD was prompted by a report of manufacturing defects found on delivered LPT 1st- and 3rd-stage disks. This proposed AD would require removing the LPT 1st- or 3rd-stage disk from service and replacing with a part eligible for installation. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 22, 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.

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–2018–0735; 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 listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington MA, 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0735; Product Identifier 2018–NE–26–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

We received a report that multiple LPT 1st- and 3rd-stage disks were delivered before the ingot lot was rejected due to material inclusion. The suspect LPT 1st- and 3rd-stage disks may include defects that may have not been discovered during inspections. This condition, if not addressed, could result in uncontained LPT 1st- or 3rd-stage disk release, damage to the engine, and damage to the airplane.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require removing from service and replacing the LPT 1st- or 3rd-stage disk with a part eligible for installation.

Costs of Compliance

We estimate that this proposed AD affects 0 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove and replace LPT 1st- or 3rd-stage disk.	0 work-hours × $85 per hour = $0	$210,000	$210,000	$0

Authority for This Rulemaking

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

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

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

International Aero Engines: Docket No. FAA–2018–0735; Product Identifier 2018–NE–26–AD.

(a) Comments Due Date

We must receive comments by October 22, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to International Aero Engines (IAE) PW1133G–JM, PW1133GA–JM, PW1130G–JM, PW1127G–JM, PW1127GA–JM, PW1127G1–JM, PW1124G–JM, PW1124G1–JM, and PW1122G–JM turbofan engines with a low-pressure turbine (LPT) 3rd-stage disk with a serial number (S/N) listed in Figure 1 to paragraph (g) of this AD or an LPT 1st-stage disk with an S/N listed in Figure 2 to paragraph (g) of this AD, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a report of manufacturing defects found on delivered

LPT 1st- and 3rd-stage disks. We are issuing this AD to prevent failure of the LPT 1st- or 3rd-stage disk. The unsafe condition, if not addressed, could result in uncontained LPT 1st- or 3rd-stage disk release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Remove from service the LPT 1st- or 3rd-stage disk within 30 days after the effective date of this AD, or as identified in paragraphs (g)(1) or (2) of this AD, whichever occurs later, and replace with a part eligible for installation:

(1) Remove the LPT 3rd-stage disk with an S/N listed in Figure 1 to paragraph (g) of this AD at the next shop visit, not to exceed 4,800 cycles since new.

Figure 1 to Paragraph (g) of this AD – S/Ns of LPT 3rd-stage disk

LLDLAJ4516
LLDLAJ4498
LLDLAJ4518
LLDLAJ4499
LLDLAJ4505
LLDLAJ4511
LLDLAJ4512
LLDLAJ4484
LLDLAJ4494
LLDLAJ4495
LLDLAJ4482
LLDLAJ4500

(2) Remove the LPT 1st-stage disk with an S/N listed in Figure 2 to paragraph (g) of this AD at next shop visit, not to exceed 2,240 cycles since new.

Figure 2 to Paragraph (g) of this AD – S/Ns of LPT 1st-stage disk

LLDLAJ6110
LLDLAJ6111
LLDLAJ6114
LLDLAJ6115

(h) Definitions

For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, except that the separation of engine flanges solely for the purposes of transportation of the engine without subsequent engine maintenance does not constitute an engine shop visit.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19,

send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov*.

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

(j) Related Information

For more information about this AD, contact Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@faa.gov.*

Issued in Burlington, Massachusetts, on August 29, 2018.

Karen M. Grant,

Acting Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2018–19174 Filed 9–6–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0767; Product Identifier 2018–NM–068–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 Mark 0070 and 0100 airplanes. This proposed AD was prompted by reports that debris from the parking brake shut off valve (PBSOV) could create a partial blockage of the restrictor check valve in the hydraulic return line of the PBSOV. This proposed AD would require replacing the restrictor check valve with an improved valve that has a filter screen. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 22, 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–2018–0767; 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–2018–0767; Product Identifier 2018–NM–068–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 2018–0077 dated April 6, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. The MCAI states:

> Service experience with Fokker 70 and Fokker 100 aeroplanes has shown that debris from the parking brake shut-off valve (PBSOV) can eventually block the restrictor check valve in the hydraulic return line of the PBSOV. Prompted by these findings, Fokker Services issued [Service Bulletin F100/70] SBF100–32–159 to introduce a new PBSOV and a one-time inspection for debris in the affected part of the hydraulic return system. EASA issued AD 2009–0220 [which corresponds to AD 2010–22–05 (75 FR 66649, October 29, 2010) (''AD 2010–22–05'')] to require those actions. In addition, Fokker Services issued SBF100–32–163 to introduce the option to install a restrictor check valve with a filter screen in the return line of the PBSOV. A recent review of in-service experience and the SBF100–32–159 inspection results revealed new occurrences of debris that obstructed (but did not completely block) the restrictor check valve.
>
> This condition, if not corrected, might prevent complete main landing gear extension, possibly resulting in damage to the aeroplane during landing, and consequent injury to occupants.
>
> To address this potential unsafe condition, Fokker Services issued Revision 1 of SBF100–32–163, providing instructions to replace the restrictor check valve with the improved valve incorporating a filter screen.
>
> For the reason described above, this [EASA] AD requires the replacement of the restrictor check valve in the return line of the PBSOV with the improved valve.

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–2018–0767.

Relationship Between Proposed AD and AD 2010–22–05

This NPRM does not propose to supersede AD 2010–22–05. Rather, we have determined that a stand-alone AD would be more appropriate to address the changes in the MCAI. This proposed AD would require replacing the restrictor check valve with an improved valve that has a filter screen. Accomplishment of the proposed

actions would then terminate all requirements of AD 2010–22–05.

Related Service Information Under 1 CFR Part 51

Fokker Services B.V. has issued Fokker Service Bulletin F100/70 SBF100–32–163, Revision 1, dated February 21, 2018. This service information describes procedures for removing the restrictor check valve in the hydraulic return line of the PBSOV and installing an improved restrictor check valve that has a filter screen. 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
2 work-hours × $85 per hour = $170	$1,282	$1,452	$5,808

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–2018–0767; Product Identifier 2018–NM–068–AD.

(a) Comments Due Date

We must receive comments by October 22, 2018.

(b) Affected ADs

This AD affects AD 2010–22–05, Amendment 39–16484 (75 FR 66649, October 29, 2010) (''AD 2010–22–05'').

(c) Applicability

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

(d) Subject

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

(e) Reason

This AD was prompted by service experience showing that debris from the parking brake shut off valve (PBSOV) could create a partial blockage of the restrictor check valve in the hydraulic return line of the PBSOV. We are issuing this AD to address this condition, which, if not corrected, may prevent complete main landing gear extension, possibly resulting 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) apply.

(1) An affected part is any hydraulic restrictor check valve having part number (P/N) D71293–003, P/N D71295–401, or P/N D71296–401.

(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 by replacing each affected part with a restrictor check valve that has a filter screen, P/N CKLX0517200B or P/N CKLX0520100B, as applicable, in accordance with the accomplishment instructions of Fokker Service Bulletin F100/70 SBF100–32–163, Revision 1, dated February 21, 2018.

(i) Parts Installation Prohibition

Do not install an affected part on any airplane, as required by 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) Terminating Actions for AD 2010–22–05

Accomplishing the actions required by paragraph (h) of this AD terminates all requirements of AD 2010–22–05.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA, 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.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2018–0077, 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–2018–0767.

(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 23, 2018.

James Cashdollar,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–19297 Filed 9–6–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0336; Product Identifier 2017–SW–130–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Airbus Helicopters Deutschland GmbH (Airbus Helicopters) Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3 helicopters. This proposed AD would require replacing the retaining ring and inspecting the hoist cable hook assembly (hook). This proposed AD is prompted by a report that a hook detached from the hoist cable. The actions of this proposed AD are intended to prevent an unsafe condition on these products.

DATES: We must receive comments on this proposed AD by November 6, 2018.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0336; 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 proposed AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received, and other information. The street address for Docket Operations (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: David Hatfield, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *david.hatfield@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments.

We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2017–0199, dated October 11, 2017, to correct an unsafe condition for Airbus Helicopters Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, EC135T3, EC635P2+, EC635P3, EC635T1, EC635T2+, and EC635T3 helicopters. EASA advises of a report of a hook separating from the hoist cable. According to EASA, an investigation determined that failure of the internal retaining ring combined with a permanent compression set of the elastomeric energy absorber caused the separation. EASA states that this condition, if not corrected, could lead to the detachment of an external load or person from the hoist, possibly resulting in personal injury or injury to persons on the ground.

The EASA AD consequently requires repetitive inspections of the hook assembly and replacement of the retaining ring. Depending on the findings of the inspection, the EASA AD also requires replacement of the elastomeric energy absorber. According to the manufacturer of the hook, the retaining ring can corrode in a salt-laden environment. Therefore, replacement of the retaining ring is required with each inspection. EASA considers its AD an interim measure and states that further AD action may follow.

FAA's Determination

These helicopters have been approved by the aviation authority of Germany and are approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

We reviewed Goodrich Service Bulletin No. 44301–10–17, Revision 4, dated July 26, 2017. The Goodrich Service Bulletin is attached as an appendix to Airbus Helicopters Alert Service Bulletin No. ASB EC135–85A–069, Revision 0, dated August 2, 2017. This service information specifies an initial and repetitive inspections of the hook assembly and replacement of the retaining ring. If the inspections of elastomeric energy absorber detect a permanent compression set, this service information also specifies replacing the elastomeric energy absorber.

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.

Proposed AD Requirements

This proposed AD would require, within 90 hours time-in-service (TIS) and thereafter at intervals not to exceed 180 hours TIS, replacing the retaining ring and inspecting the elastometric energy absorber for a permanent compression set, and if necessary, replacing the elastometric energy absorber before the next hoist operation.

Differences Between This Proposed AD and the EASA AD

The EASA AD requires corrective actions in terms of months in service. This proposed AD would require compliance within 90 hours TIS and thereafter at intervals not to exceed 180 hours TIS. The EASA AD applies to Airbus Helicopters Model EC635P2+, EC635P3, EC635T1, EC635T2+, and EC635T3 helicopters. This proposed AD would not because these model helicopters have no FAA type certificate.

Interim Action

We consider this proposed AD to be an interim action. The design approval holder is currently developing a modification that will address the unsafe condition identified in this proposed AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

Costs of Compliance

We estimate that this proposed AD would affect 278 helicopters of U.S. Registry and that labor costs average $85 per work-hour. Based on these estimates, we expect the following costs:

- Inspecting the hoist cable hook assembly and replacing the retaining ring would require 0.5 work-hour and parts would be minimal for a cost of $43 per helicopter and $11,954 for the U.S. fleet per inspection cycle.
- Replacing an elastomeric energy absorber would require 0.5 work-hour and parts would cost $2,152 for a cost of $2,195 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

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, 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 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 proposed 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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters Deutschland GmbH Helicopters: Docket No. FAA–2018–0336; Product Identifier 2017–SW–130–AD.

(a) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3 helicopters, certificated in any category, with an external mounted hoist (hoist) part number (P/N) and hook assembly (hook) P/N shown in Table 1 to paragraph (a) of this AD:

Hoist P/Ns	Hook P/Ns
44301-10-2	44301-420
44301-10-5	44301-420
44301-10-6	44301-420
44301-10-10	44301-423
44301-10-11	44301-423
44301-10-12	44301-423
44301-10-13	44301-423

Table 1 to Paragraph (a)

(b) Unsafe Condition

This AD defines the unsafe condition as detachment of a hook from a hoist cable resulting in in-flight failure of the hoist, which could result in injury to persons being lifted.

(c) Comments Due Date

We must receive comments by November 6, 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

Within 90 hours time-in-service (TIS) and thereafter at intervals not to exceed 180 hours TIS:

(1) Inspect the hook and determine whether the elastometric energy absorber has taken a permanent compression set by following the Accomplishment Instructions, paragraphs 2.A and 2.B, of Goodrich Service Bulletin No. 44301–10–17, Revision 4, dated July 26, 2017 (SB 44301–10–17). If the elastometric energy absorber has taken a permanent compression set, replace the elastometric energy absorber before the next hoist operation.

(2) Replace the retaining ring by following the Accomplishment Instructions, paragraphs 2.D through 2.K, of SB 44301–10–17.

(f) Special Flight Permits

Special flight permits may be permitted provided the hoist is not used.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: David Hatfield, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov*.

(2) 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.

(h) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2017–0199, dated October 11, 2017. You may view the EASA AD on the internet at *http://www.regulations.gov* in the AD Docket.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 2500, Cabin Equipment/Furnishings.

Issued in Fort Worth, Texas, on August 23, 2018.

Scott A. Horn,

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

[FR Doc. 2018–19430 Filed 9–6–18; 8:45 am]

BILLING CODE 4910–13–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Revisions to Procedural Rules Governing Practice Before the Occupational Safety and Health Review Commission

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document solicits recommendations for amendments to the Commission's rules of procedure.

DATES: Submit comments on or before October 9, 2018.

ADDRESSES: You may submit comments by any of the following methods:

• *Email: rbailey@oshrc.gov.* Include ''Advance notice of proposed rulemaking, 29 CFR part 2200'' in the subject line of the message.

• *Fax:* 202–606–5417.

• *Mail:* One Lafayette Centre, 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457.

• *Hand Delivery/Courier:* Same as mailing address.

Instructions: All submissions must include your name, return address, and email address, if applicable. Please clearly label submissions as ''Advance notice of proposed rulemaking, 29 CFR part 2200.''

FOR FURTHER INFORMATION CONTACT: Ron Bailey, via telephone at 202–606–5410, or via email at *rbailey@oshrc.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 29 U.S.C. 661(g), the Occupational Safety and Health Review Commission last implemented a comprehensive revision of its rules of procedure in 2005. Since that time, technological advances, including implementation of the E-filing system, as well as the evolution of practice before the Commission, have called for a careful reexamination of the Commission's rules of procedure, as set forth in 29 CFR part 2200. To assist in determining what revisions should be made, the agency is soliciting recommendations from the public. It is especially interested in hearing from those who practice before it on what rules their experience suggests would benefit from a revision. While recommended changes to any rule will be considered, the Commission is especially interested in whether: Rules on the computation of time should be simplified; electronic filing and service should be mandatory and, if so, what exceptions, if any, should be allowed; the definition of ''affected employee'' should be broadened; citing to Commission decisions as posted on the agency's website should be allowed; the rule on the staying of a final order is not needed and should be eliminated; the requirement for agency approval of settlements should be narrowed or eliminated; the grounds for obtaining Commission review of interlocutory orders issued by its administrative law judges should be revised; protection of sensitive personal information should be broadened; and whether the threshold amount for cases referred for mandatory settlement proceedings should be increased. Comments suggesting a rule change should include a brief discussion of the reasons for the change, why the change would facilitate improved practice before the Commission, and a reference to authority where necessary.

Dated: August 15, 2018.

Heather L. MacDougall,

Chairman.

[FR Doc. 2018–18050 Filed 9–6–18; 8:45 am]

BILLING CODE 7600–01–P

FEDERAL MARITIME COMMISSION

46 CFR Part 545

[Docket No. 18–06]

RIN 3072–AC71

Interpretive Rule, Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission (FMC or Commission) is seeking public comment on its interpretation of the scope of the Shipping Act prohibition against failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property. Specifically, the Commission is clarifying that the proper scope of that prohibition in the Shipping Act of 1984 and the conduct covered by it is guided by the Commission's interpretation and precedent articulated in several earlier Commission cases, which require that a regulated entity engage in a practice or regulation on a *normal, customary,* and *continuous* basis and that such practice or regulation is unjust or unreasonable in order to violate that section of the Shipping Act.

DATES: Submit comments on or before: October 10, 2018.

ADDRESSES: You may submit comments, identified by the Docket No. 18–06 by the following methods:

• *Email: secretary@fmc.gov.* Include in the subject line: ''Docket 18–06, Interpretive Rule Comments.'' Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.

• *Mail:* Rachel E. Dickon, Secretary, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573–0001.

• *Instructions:* For detailed instructions on submitting comments, including requesting confidential treatment of comments, and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to the Commission's website, unless the commenter has requested confidential treatment.

• *Docket:* For access to the docket to read background documents or comments received, go to the Commission's Electronic Reading Room at: *http://www.fmc.gov/18-06,* or to the Docket Activity Library at 800 North Capitol Street NW, Washington, DC 20573, 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays. Telephone: (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Rachel E. Dickon, Secretary; Phone: (202) 523–5725; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Federal Maritime Commission is issuing this notice to obtain public comments on clarification and guidance regarding the Commission's interpretation of the scope of 46 U.S.C. 41102(c) (section 10(d)(1) of the Shipping Act of 1984).[1] Section 41102(c) provides that regulated entities ''may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.'' [2]

Beginning with the *Houben* [3] decision in 2010 and presented in full in the Commission's 2013 decision in *Kobel* v. *Hapag-Lloyd,* the Commission has held in a line of recent cases that discrete conduct with respect to a particular shipment, if determined to be unjust or unreasonable, represents a violation of § 41102(c), regardless of whether that conduct represents a respondent's *practice* or *regulation.*[4] These decisions diverge from consistent Commission precedent dating back to 1935 and reaffirmed as recently as 2001 which required that a regulated entity must engage in a practice or regulation on a *normal, customary,* and *continuous* basis in order to be found to have violated § 41102(c) of the Shipping Act. In simple summary, discrete or

[1] Some authorities cited herein refer to § 41102(c) while others refer to section 10(d)(1). For ease of reading, we will generally refer to § 41102(c) in analyzing these authorities.

[2] 46 U.S.C. 41102(c).

[3] *Houben* v. *World Moving Services, Inc.,* 31 S.R.R. 1400 (FMC 2010).

[4] *Kobel* v. *Hapag-Lloyd A.G.,* 32 S.R.R. 1720, 1731 (2013) (''The allegation that a single failure to ''observe or enforce'' just and reasonable regulations or practices is not a failure does not comport with the language of section 10(d)(1), which mandates regulated entities not to 'fail to . . . observe and enforce' just and reasonable regulations and practices.'').

occasional actions by regulated entities not reflecting a *practice* or *regulation* would not constitute a violation of § 41102(c).

Specifically, the Commission is considering an interpretive rule consistent with Commission precedent articulated in cases including *Intercoastal Investigation,*[5] *Altieri,*[6] *Stockton Elevators,*[7] *European Trade,*[8] *A.N. Deringer,*[9] and *Kamara*[10] that would restore the scope of § 41102(c) to prohibiting unjust and unreasonable *practices* and *regulations.* These decisions require that a regulated entity engage in a practice or regulation on a *normal, customary,* and *continuous* basis and a finding that such practice or regulation is unjust or unreasonable to violate that section of the Shipping Act. The Commission believes that this represents the proper interpretation of the statutory language of the provision that, within the full context of the 1916 Act and the 1984 Act, is consistent with statutory and legislative history, judicial precedent and Commission case law embodied in cases such as *Stockton Elevators,* and comports with accepted rules of statutory construction.

This interpretation restores § 41102(c) to its proper function and purpose under the Shipping Act of 1984 and will return the Commission's focus and priorities to the activities of maritime regulated entities that negatively affect the broader shipping public—all as intended by Congress in its enactment of the 1916 Act and the 1984 Act. Recognizing that this interpretation would prune and pare back the types of recent claims that have been be filed with the Commission to those related to the purposes of the Shipping Act's § 41102(c), traditional legal venues will continue to be available to parties injured by discrete instances of unreasonable or unjust conduct consistent with long established maritime actions and other statutes specifically enacted by Congress, and long recognized common law remedies, all designed to address such circumstances.

We are seeking comment on this refocus of § 41102(c), how such an interpretation would affect regulated entities including ocean carriers, marine terminal operators (MTOs), and ocean transportation intermediaries (OTIs), as well as members of the shipping public, including cargo shippers and drayage truckers, and whether claims that would no longer fall under § 41102(c) under the contemplated interpretation would be adequately resolved before the Commission under other sections of the Act or in other legal dispute venues. The interpretation would take the form of an interpretive rule codified in 46 CFR part 545. The language of the proposed rule is set forth below.

II. Background

A. Statutory Language and Legislative History

Congress first used the statutory language addressing the legal duty of transportation common carriers to ''establish, observe, and enforce just and reasonable . . . regulations and practices . . . affecting [cargo] classification, rates, or tariffs . . . [and] the manner and method of presenting, marking, packing, and delivering property for transportation . . .'' in the 1910 Mann-Elkins Act amendment (Mann-Elkins)[11] to the Interstate Commerce Act (ICA).[12] The Mann-Elkins language clearly focused on the *operating and business practices* of railroads as commonly used and imposed upon passengers and cargo shippers. This fundamental *common carrier duty* is the foundational cornerstone of the ICA legislation, its statutory purpose, and its proper interpretation.

The provenance of the statutory language and its inclusion six years later in the Shipping Act of 1916 (1916 Act)[13] has been recognized by the courts. In *United States Navigation Co.* v. *Cunard S.S. Co. Ltd.* 284 U.S. 474 (1932), the U.S. Supreme Court tied a firm knot binding the ICA and the 1916 Act where the court gave a general review of various sections of the 1916 Act, including section 17[14] and held that, ''[t]hese and other provisions of the Shipping Act clearly exhibit the close parallelism between the act and its prototype, the ICA, and the applicability both of the principals of construction and administration.''[15]

As the enactment of the 1916 Act demonstrates, together with the use of identical language in other federal statutes,[16] Congress fully understood what it was doing in using the phrase ''establish, observe, and enforce just and reasonable regulations and practices''—and what those words meant.[17]

Section 41102(c) of the 1984 Act originates from section 17 of the 1916 Act. Section 17 was commonly divided into two parts and referred to as ''section 17, first paragraph'' and ''section 17, second paragraph.'' The first paragraph addressed unjustly discriminatory rates charged to shippers while the second paragraph addressed just and reasonable practices by carriers and other persons subject to the Act. The second paragraph of section 17 reads as follows:

> Every such carrier and every other person subject to this act shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the Board finds any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice.

Public Law 64–260 § 17 (1916) (emphasis added).[18]

As a part of the general transportation deregulatory reform trends in the 1970's through 1990's,[19] Congress eliminated the sentence regarding the Commission's authority to prescribe or order regulations or practices in the 1984 Act. Congress, however, reenacted the first sentence of section 17's second paragraph and placed that provision in section 10(d)(1), which, following the 2006 recodification of the 1984 Act, became 46 U.S.C. 41102(c). That language from section 17, second

[5] *Intercoastal Investigation, 1935,* 1 U.S.S.B.B. 400 (1935).

[6] *J.M. Altieri* v. *Puerto Rico Ports Authority,* 7 F.M.C. 416 (ALJ 1962).

[7] *Investigation of Certain Practices of Stockton Elevators,* 3 S.R.R. 605 (FMC 1964).

[8] *European Trade Specialists* v. *Prudential-Grace Lines,* 19 S.R.R. 59, 63 (FMC 1979).

[9] *A.N. Deringer, Inc.* v. *Marlin Marine Services, Inc.,* 25 S.R.R. 1273 (SO 1990).

[10] *Kamara* v. *Honesty Shipping Service,* 29 S.R.R. 321 (ALJ 2001).

[11] Mann-Elkins Act, 61st Congress, 2nd session, Ch. 309, 36 Stat. 539, enacted June 18, 1910.

[12] The Interstate Commerce Act of 1887, Ch. 104, 24 Stat 379 (1887).

[13] The Shipping Act of 1916, Sept. 7, 1916, Ch. 451, 39 Stat. 728.

[14] Section 17 is the origin of section 10(d)(1), as discussed *infra.*

[15] *Id.* at 484.

[16] For example, the Packers and Stockyards Act of 1921, which was enacted to maintain competition in the livestock industry. The Act bans discrimination, manipulation of price, weight, livestock or carcasses; commercial bribery; misrepresentation of source, condition, or quality of livestock; and other unfair or manipulative practices. Section 208 of the Packers and Stockyards Act of 1921 provides that, ''[i]t shall be the duty of every stockyard owner and market agency to establish, observe, and enforce just, reasonable and nondiscriminatory regulations and practices in respect to the furnishing of stockyard services.'' 7 U.S.C. 208.

[17] For a more detailed discussion of the legislative history of this statutory language, see *Gruenberg-Reisner* v. *Respondent Overseas Moving Specialist,* 34 S.R.R. 613, 638–644 (FMC 2016).

[18] The two separate provisions of section 17 of the Shipping Act are commonly referred to as ''section 17, first paragraph'' and ''section 17, second paragraph.''

[19] *See* the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94–210; Staggers Act of 1980, Public Law 96–448; Motor Carrier Act of 1990, Public Law 96–296; Airline Deregulation Act, Public Law 95–504; and the Interstate Commerce Commission Termination Act of 1995, Public Law 104–88.

paragraph, first sentence, requiring that no regulated entity may fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivery of property—is now found in § 41102(c) of the 1984 Act.

Having a long legislative provenance, Congress used the word ''practice'' and the full phrase, ''establish, observe, and enforce just and reasonable regulations and practices,'' in both the original 1916 Act and in section 10(d)(1) of the 1984 Act, now § 41102(c), in a particular way and in a context that was clear to the drafters, to the Commission, and to the reviewing courts.

B. Judicial Precedent

In *Baltimore & Ohio Railroad Company* v. *United States,* 277 U.S. 291 (1923), the U.S. Supreme Court considered the question of what constituted a ''practice'' within the contemplation of Congress in the Interstate Commerce Act:

> The word ''practice'', considered generally and without regard to context, is not capable of useful construction. If broadly used, it would cover everything carriers are accustomed to do. Its meaning varies so widely and depends so much upon the connection in which it is used that Congress will be deemed to have intended to confine its application to acts or things belonging to the same general class as those meant by the words associated with it.

Id. at 299–300 (citation omitted) (emphasis added).

The Interstate Commerce Commission (ICC), the United States Shipping Board (USSB) (the agency created by Congress in the 1916 Act), its successor agencies, and the currently constituted Commission,[20] together with state and federal courts have consistently ruled that ''practice'' means; (1) the acts/omissions of the regulated common carrier that were positively established by the regulated common carrier and imposed on the passenger/cargo interest, and (2) such act/omission was the normal,[21] customary, often repeated,[22] systematic,[23] uniform,[24] habitual,[25] and continuous manner [26] (hereinafter ''Normal, Customary & Continuous'') in which the regulated common carrier was conducting business.

The USSBB, a predecessor to the Commission, considered the term ''practice'' as used in the 1916 Act in *Intercoastal Investigation, 1935,* 1 FMC 400 (1935), an investigation that covered sixteen years of steam ship conference activities. The USSBB held:

> The provisions of the Shipping Act, 1916, also apply to these respondents. It is there provided . . . that carriers shall establish, observe, and enforce just and reasonable rates, charges, (cargo) classifications, and tariffs and just and reasonable regulations and practices related thereto . . .The terms ''rates'', ''charges'', ''tariffs'', and ''practices'' as used in transportation have received judicial interpretation . . . Owing to its wide and variable connotation, a practice, which unless restricted *ordinarily means an often repeated and customary action, is deemed to apply only to acts or things belonging to the class as those meant by the words of the law that are associated with it* . . . In section 18, the term ''practices'' is associated with various words, including ''rates'', ''charges'', and ''tariffs''.

Id. at 431–432 (emphasis added).[27]

Prior to the 1984 Act, Commission decisions analyzing situations that involved discrete conduct focused on the meaning of the word ''practice'' and determined that conduct that did not reflect a practice was outside the scope of the first sentence of the second paragraph of section 17. In *Altieri, Stockton Elevators,* and *European Trade Specialists, A.N. Deringer, Kamara,* and other cases [28] the Commission used the term ''practice'' in a consistent manner for all the places it appears in the Shipping Act.

In *Stockton Elevators,* which was later adopted by the Commission in its entirety, the FMC's Presiding Examiner found that a violation did not occur because of the infrequency of the relevant actions. According to that decision, a practice is something that, ''is habitually performed and implies continuity . . . not an occasional transaction such as here shown.'' [29] The Presiding Examiner found the respondent's actions to be occasional transactions and not a ''practice'' because they were not the ''usual course of conduct'' and so not a violation of section 17.[30]

Similarly, in *European Trade Specialists, Inc.* v. *Prudential-Grace Lines, Inc.,* the ALJ specifically noted, ''[a] 'practice' unless the term is in some way restricted by decision or statute, means ''an often repeated and customary action.'' [31] There, the ALJ was considering if an alleged failure to notify a shipper of a dispute on the applicable tariff rate violated section 17 of the 1916 Act. The ALJ found that in examining the record, the respondent's normal practice was to notify shippers

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[20] The United States Shipping Board (USSB) was succeeded in 1933 by the United States Shipping Board Bureau of the Department of Commerce (USSBB), Executive Order No. 6166 (1933). The USSBB was succeeded in 1936 by the United States Maritime Commission (USMC), 49 Stat. 1985. In 1950, the USMC was succeeded by the Federal Maritime Board (FMB), 64 Stat.1273. The FMC was established as an independent regulatory agency by Reorganization Plan No. 7, effective August 12, 1961. The U.S. Supreme Court treated the FMC and all predecessor agencies as the ''Commission'' for purposes of judicial review. *See Volkswagenwerk* v. *Federal Maritime Commission,* 390 U.S. 261, 269 (1968).

[21] *See European Trade Specialists* v. *Prudential-Grace Lines,* 19 S.R.R. 59, 63 (FMC 1979). (Unless its normal *practice* was not to so notify the shipper, such adverse treatment cannot be found to violate the section as a matter of law [emphasis in original].''

[22] *See Intercoastal Investigation,* 1935, 1 U.S.S.B.B. 400, 432. (''Owing to its wide and variable connotations, a practice which unless restricted ordinarily means an *often and customary action,* is deemed to acts or things belonging to the same class as those meant by the words of the law that are associated with it.'' [cites omitted] [emphasis added].

[23] *See Whitam* v. *Chicago, R.I. & P. Ry. Co.,* 66 F. Supp. 1014 (ND TX 1946) (''The word 'a practice' as used in the decision, or used anywhere properly, implies *systematic* doing of the acts complained of, and usually as applied to carriers and shippers generally.'' (emphasis added).''

[24] *See Stockton Elevators,* 3 S.R.R. 605, 618 (FMC 1964). (''It cannot be found that the Elevator engaged in a 'practice' within the meaning of Section 17. The essence of a practice is *uniformity.* It is something habitually performed and it implies continuity . . . the usual course of conduct. It is not an occasional transaction such as here shown. *Intercoastal Investigation, 1935,* 1 U.S.S.B.B. 400, 432; *B&O By. Co.* v. *United States* 277 U.S. 291, 300, *Francesconi & Co.* v. *B&O Ry. Co.,* 274 F. 687, 690; *Whitham* v. *Chicago R.I. & P. Ry. Co.,* 66 F. Supp. 1014; *Wells Lamont Corp.* v. *Bowles,* 149 F.2d 364 (emphasis added). *See also, McClure* v. *Blackshere,* F. Supp. 678, 682 (D. Md. 1964) (' 'Practice' ordinarily implied uniformity and continuity, and does not denote a few isolated acts, and *uniformity* and universality, general notoriety and acquiescence, must characterize the actions on which a practice is predicated.'' (citations omitted) (emphasis added)).

[25] *See Stockton Elevators,* 3 S.R.R. 605, 618 (FMC 1964). (''It cannot be found that the Elevator engaged in a 'practice' within the meaning of Section 17. . . . It is something *habitually* performed and it implies continuity . . . the usual course of conduct.'' (citations omitted) (emphasis added)).

[26] *See Stockton Elevators,* 3 S.R.R. 605, 618 (FMC 1964). (''It cannot be found that the Elevator engaged in a 'practice' within the meaning of Section 17. . . . It is something habitually performed and it *implies continuity* . . . .'' (citations omitted) (emphasis added)). *See also, McClure* v. *Blackshere,* F. Supp. 678, 682 (D. Md. 1964) (' 'Practice' ordinarily implied uniformity and continuity, and does not denote a few isolated acts, and *uniformity* and universality, general notoriety and acquiescence, must characterize the actions on which a practice is predicated.'' (citations omitted) (emphasis added)).

[27] *Intercoastal Investigations* cited two ICA railroad cases as authority. See *Baltimore & Ohio Railroad Company* v. *United States,* 277 U.S. 291 (1923) and *Missouri Pacific R. Co.* v. *Norwood,* 283 U.S. 249, 257 (1931).

[28] A series of cases alleging section 10(d)(1) violations has established that a complainant must demonstrate regulations and practices, as opposed to identifying what might be an isolated error or understandable misfortune. *See, e.g.,* Informal Docket No. 1745(I), *Mrs. Susanne Brunner* v. *OMS Moving Inc.,* slip decision served January 27, 1994, administratively final March 8, 1994.

[29] *Investigation of Certain Practices of Stockton Elevators,* 8 F.M.C. 187, 200–201 (Examiner 1964).

[30] *Id.*

[31] 17 S.R.R. 1351, 1361 (ALJ 1977).

of problems and this case involved the allegation of a single departure from that practice which was otherwise just and reasonable. Regardless of the unjustness or unreasonableness of the respondent's failure to notify the shipper, such action did not represent a practice and thus there could be no section 17 violation.

In *Kamara* v. *Honesty Shipping Service,* 29 S.R.R. 321 (ALJ 2001), the ALJ held that, ''It is not clear that a carrier's simple failure to remit payment to a subcontracting carrier constitutes a Shipping Act violation, although the shipper would certainly have a commercial contractual claim.

These cases addressing Section 10(d)(1) violations correctly hold that a complainant must demonstrate *regulations* and *practices* and articulates the correct scope and interpretation of § 41102(c). This precedent stands in stark contrast to recent Commission decisions that adopted a far more expansive interpretation of the conduct covered by § 41102(c) untethered to the language of the statute, the legislative history, Commission precedent, or, most importantly, the purpose of the Shipping Act to address common carrier duties.[32]

In the 2013 *Kobel* decision, the Commission charted a different course by disjoining the statute's conjunctive language of ''establish, observe, *and* enforce'' and specifically identified that § 41102(c) contains three discrete prohibitions: (1) A prohibition against failing to establish just and reasonable regulations and practices; (2) a prohibition against failing to observe just and reasonable regulations and practices; and (3) a prohibition against failing to enforce just and reasonable regulations.[33] Since *Kobel,* the Commission has interpreted section § 41102(c) to mean that a single failure to fulfill a single legal obligation of any description *itself* could constitute a violation of § 41102(c).'' [34]

The Commission looked to a single rule of construction, the surplusage cannon, to support its course change from prior Commission and court rulings. That rule provides that, ''If possible, every word and every provision is to be given effect.'' [35] However, the commentators offer two relevant notes of caution.

First, in discussing the Principle of Interrelating Canons, they advise, ''No canon of interpretation is absolute. Each may be overcome by the strength of differing principles that point in other directions . . . It is a rare case in which each side does *not* appeal to a different canon to suggest its desired outcome.'' [36] Second, in later discussion of the surplusage canon, they note, ''If a provision is susceptible of (1) a meaning that . . . deprives another provision of all independent effect, and (2) another meaning that leaves both provisions with some independent operation, the later should be preferred . . . So, like all other canons, this one must be applied with judgement and discretion, and with careful regard to *context.*'' [37]

The Commission has, in these recent cases, strained to give independent application of the elements, ''establish, observe, *or* enforce'' but, in so doing, has deprived any operation of a discussion or application of the alleged unjust or unreasonable *practice* or *regulation* being inflicted upon the general shipping public. The ''context'' of § 41102(c) itself within the Shipping Act and other factors discussed below demonstrate the flaws in the Commission's recent line of section 41102(c) decisions. Moreover, numerous other canons of construction ''point in other directions,'' [38] all as discussed below.

It is this line of recent cases determining that a discrete failure to observe and enforce an established just and reasonable regulation or practice that the Commission seeks to reform in this rulemaking so as to return the scope of § 41102(c) to its proper role and purpose within the Shipping Act. In the future, the Commission intends to follow the reasoning in *Intercoastal Investigation, Altieri, Stockton Elevators, European Trade Specialists, Deringer, and Kamara* which offer precedent as to what properly applies the full meaning and purpose of ''establish, observe, and enforce just and reasonable regulations and practices'' under the Shipping Act and a violation of § 41102(c).

C. Rules of Statutory Construction

The precedent in *Intercoastal Investigation, Altieri, Stockton Elevators, European Trade Specialists, Deringer, and Kamara* as to what constitutes ''regulations and practice'' under the Shipping Act is supported by and consistent with multiple accepted rules of statutory construction. Proper consideration and application of numerous canons of statutory construction demonstrates that Congress has spoken to the issue at hand.[39]

(1) The *Syntactic Canon* concerns grammar. Reviewing § 41102(c), the regulated entity is the subject of the sentence. The subject is directed—*i.e.* do not fail to—then comes the active verbs—''establish, observe, and enforce'' just and reasonable *regulations* and *practices.* The regulated entity is ordered to, first, initiate the creation, dissemination, and publication of such just and reasonable regulations and practices, and simultaneously, to observe and enforce those regulations and practices that were created by that regulated entity.[40]

(2) The *Ordinary Meaning Canon* requires that the words of a statute are to be taken in their natural and ordinary signification and import.[41] The judicial interpretation of the phrase ''practices'' by multiple courts applying the Mann-Elkins Act, the 1916 Act, and other statutes, all utilized the Ordinary Meaning Canon to find the meaning of the term ''practice'' as intended by Congress.[42] All came to a reasoned conclusion that confirms the Commission's proposed interpretation.[43]

(3) The *Prior-Construction Canon* requires that ''[w]hen administrative and judicial interpretations have *settled the meaning* of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and

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[32] See *Adair* v. *Penn-Nordic Lines, Inc.,* 26 S.R.R. 11 (ALJ 1991); *Tractors & Farm Equip. Ltd* v. *Cosmos Shipping Co.,* Inc., 26 S.R.R. 788 (ALJ 1992); *Houben* v. *World Moving Servs., Inc.,* 31 S.R.R. 1400 (FMC 2010).

[33] *Kobel,* 32 S.R.R. at 1735.

[34] *See, e.g., Bimsha Int'l* v. *Chief Cargo Servs.,* 32 S.R.R. 1861, 1865 (FMC 2013) (''NVOCCs violate [§ 41102(c)] when they fail to fulfill NVOCC obligations, through single or multiple actions or mistakes, and *therefore engage in an unjust and unreasonable practice*'' (emphasis added)).

[35] *Reading Law: The Interpretation of Legal Texts,* Scalia and Garner, 2012, pg. 174.

[36] *Id.* at 59, emphasis in the original.

[37] *Id.* at page 176, emphasis added.

[38] *Id.* at 59.

[39] *See Bell Atlantic Telephone Companies* v. *Federal Communications Commission,* 131 F.3d 1044, 1047 (D.C. Cir. 1997) (''Context serves an especially important role in textual analysis of a statute when Congress has not expressed itself as univocally as might be wished.'').

[40] For a fuller discussion of the *Syntactic Canon, see Gruenberg-Reisner* v. *Respondent Overseas Moving Specialist,* 34 S.R.R. 613, 641 (FMC 2016).

[41] *See, e.g.,* James Kent, *Commentaries on American Law* 432 (1826) (''The words of a statute are to be taken in their natural and ordinary signification and import; and if technical words are used, they are to be taken in a technical sense.'').

[42] *See Intercoastal Investigation, 1935,* 1 U.S.S.B.B. 400 (1935); *Whitam* v. *Chicago, R.I. & P. Ry. Co.,* 66 F. Supp. 1014 (N.D. Tex. 1946); *McClure* v. *Blackshere,* 231 F. Supp. 678 (D. Md. 1964); *Stockton Elevators,* 8 F.M.C. 187 (1964); and *European Trade Specialists*, 19 S.R.R. 59 (FMC 1979).

[43] For a fuller discussion of the *Ordinary Meaning Canon, see Gruenberg-Reisner* v. *Respondent Overseas Moving Specialist,* 34 S.R.R. 613, 641–642 (FMC 2016).

judicial interpretations as well.'' [44] Congress used the same 1916 Shipping Act language in the new 1984 Act. The Commission's holdings in *Intercoastal Investigation, 1935,* 1 U.S.S.B.B. 400 (1935), the case law, including ICA federal court cases, cited therein as supporting precedent,[45] *Altieri,* [46] *Stockton Elevators,*[47] the case law, including ICA federal court cases, cited therein as supporting precedent, and *European Trade* [48] was incorporated into the new statute as well.[49] Justice Felix Frankfurter expressed the maxim as ''if a word is obviously transplanted from a legal source, whether the common law or other legislation, it brings the old soil with it.'' [50]

(4) The *Associated Words Canon* of construction requires that associated words bear on one another's meaning. In *Intercoastal Investigation, 1935,* the United States Shipping Board considered the term ''practice'' as used in the 1916 Act and determined that, ''[o]wing to its wide and variable connotation, a practice which unless restricted *ordinarily means an often repeated and customary action, is deemed to apply only to acts or things belonging to the class as those meant by the words of the law that are associated with it.*'' 1 U.S.S.B.B. at 431–432 (emphasis added). The application of the term ''practices'' must be confined within the regulated transportation world of common carriage, its specialized lexicon and its association with various words including ''rates,'' ''charges,'' and ''tariffs.'' [51]

(5) In *Atlantic Cleaners & Dryers, Inc.* v. *United States,* 286 U.S. 427 (1932), the U.S. Supreme Court framed the *Presumption of Consistent Usage Canon* as follows, ''[t]here is a natural presumption that identical words used in different parts of the same act are *intended* to have the same meaning. *Id.* at 433 (emphasis added). In the 1984 Act, Congress used the term ''practice'' or ''practices'' eight times in three different sections of the new legislation: Section 5 (Agreements); section 8 (Tariffs); and section 10 (Prohibited Acts). These usages of ''practice'' are in complete harmony with the original 1910 Mann-Elkins Act and the original section 17 of the 1916 Act's usage of ''practices'' referenced above.[52]

(6) The *Whole-Text Canon* requires that the entire statutory structure, statutory scheme and analysis must be considered. In *K Mart Corp.* v. *Cartier, Inc.,* 486 U.S. 281 (1988), the U.S. Supreme Court expressed the Whole-Text Canon as follows, ''In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole.'' *Id.* at 291. The Congressional intent, overall context and statutory mandate of the 1984 Shipping Act makes clear that Congress wanted the Commission to focus its regulatory authority on ''establish[ing] a nondiscriminatory regulatory process for the common carriage of goods by water . . .'' [53] and on maritime activities that: Result in substantial reduction in competition and are detrimental to commerce. In the 1998 amendments, Congress injected additional competitive market-driven provisions into the Shipping Act of 1984.[54]

(7) The *Gruenberg-Reisner* decision, supra, also discusses the relevant application of the negative implication canon and the presumption against extraterritorial application canon. Last, *Gruenberg-Reisner* also discusses the duty of federal agencies to observe and adhere to the doctrine of stare decisis.[55]

D. Remedies

The Commission is aware that modifying the application of recent § 41102(c) cases may pare back complainants' ability in some factual circumstances to claim a Shipping Act violation and thus seek redress before the Commission when they are harmed by an act or omission of a regulated entity. However, § 41102(c) was not designed to be the universal *panacea* for each and every problem or grievance that arises in the maritime realm of receiving, handling, storing, or delivering property. To interpret the Shipping Act as duplicative of every other statutory and common law maritime remedy would frustrate Congressional intent in enacting different statutory schemes and undermine the purpose of the Shipping Act.

In *A.N. Deringer, Inc.* v. *Marlin Marine Services, Inc.,* 25 S.R.R. 1273, 1276, 1277 (SO 1990), a post 1984 case that followed the *Altieri, Intercoastal Investigation, Stockton Elevators, European Trade Specialists* line of precedent in a case considering what is now § 41102(c), the Settlement Officer addressed the effect of an overly broad interpretation of section 10(d)(1) on other maritime statutes, such as the Carriage of Goods by Sea Act (COGSA).[56] COGSA is the United States enactment of the international convention commonly referred to as the Hague Rules. This treaty was intended

[44] *Bragdon* v. *Abbott,* 524 U.S. 624, 645 (1998) (emphasis added).

[45] *Intercoastal* at 432.

[46] *J.M. Altieri* v. *Puerto Rico Ports Authority,* 7 F.M.C. 416 (ALJ 1962). ''If the action of respondent were one of a series of such occurrences, a *practice* might be spelled out that would invoke the coverage of section 17. *Hecht, Levis and Kahn, Inc.* v. *Isbrandtsen, Co., Inc.,* 3 F.M.B. 798 (1950). However, the action of the respondent is an isolated or 'one shot' occurrence. Complainant has alleged and proved only the one instance of such conduct. It cannot be found to be a 'practice' within the meaning of the last paragraph of section 17.'' *Id.* at 420 (emphasis in original).)

[47] 3 S.R.R. at 618 (''It cannot be found that the Elevators engaged in a 'practice' within the meaning of section 17. The essence of a practice is uniformity. It is something habitually performed and it implies continuity . . . the usual course of conduct. It is not an occasional transaction such as here shown. *Intercostal Investigation, 1935,* 1. USSBB 400, 432; *B&O Ry. Co.,* 274 F. 687, 690; *Whitham* v. *Chicago R.I. & P. Ry. Co.,* 66 F. Supp. 1014; *Wells Lamont Corp.* v. *Bowles,* 149 F.2d 364.'').

[48] 19 S.R.R. at 63. (''Even assuming, without deciding, that European was not notified of the classification and rating problem we cannot say that such conduct by Hipage amounts to a violation of Section 17. Unless its normal *practice* was not to so notify the shipper, such adverse treatment cannot be found to violate the section as a matter of law. *Investigation of Certain Practices of Stockton Elevators,* 8 F.M.C. 181, 200 [3 S.R.R. 605] (1964).'' (emphasis in original)).

[49] For a more detailed discussion of the *Prior-Construction Canon, see Gruenberg-Reisner* v. *Respondent Overseas Moving Specialist,* 34 S.R.R. 613, 647–649 (FMC 2016).

[50] Felix Frankfurter, Some Reflections on the Reading of Statutes, 47 Colum. L. Rev. 527, 537 (1947).

[51] For a more detailed discussion of the *Associated Word Canon, see Gruenberg-Reisner* v. *Respondent Overseas Moving Specialist,* 34 S.R.R. 613, 645 (FMC 2016).

[52] For a more detailed discussion of the *Presumption of Consistent Usage Canon, see Gruenberg-Reisner* v. *Respondent Overseas Moving Specialist,* 34 S.R.R. 613, 642–643 (FMC 2016).

[53] *See* 46 U.S.C. 40101.

[54] For a more detailed discussion of the *Whole Text Canon, see Gruenberg-Reisner* v. *Respondent Overseas Moving Specialist,* 34 S.R.R. 613, 644 (FMC 2016).

[55] *See Motor Vehicle Mfrs. Ass'n* v. *State Farm Insurance,* 463 U.S. 29 (1983). ''[A]n agency changing its course . . . is obligated to supply a reasoned analysis for the change . . . .'' *Id.* at 42. The Commission's case law affirmed this obligation in *Harrington & Co.* v. *Georgia Ports Authority,* 23 S.R.R. 753 (ALJ 1986), where the Commission held, ''the decision to depart from precedent is not taken lightly and requires compelling reasons . . . the courts are emphatic in requiring agencies to follow their precedents or explain with good reason why they choose not to do so.'' *Id.* at 766.

[56] 46 U.S.C. 3070, Public Law 109–304, 6(c), 120 Stat. 1516 (2006).

[57] *See* Gilmore and Black, *The Law of Admiralty,* (2d ed. 1975). ''This compromise was so well thought of that when, between 1921 and 1924, representatives of the shipping world and of the maritime nations sought by conference to arrive at terms suitable for uniform worldwide treatment of the shipper carrier relation under ocean bills of lading, the ''Hague Rules'' which they adopted, first as a set of clauses for voluntary inclusion in bills of lading and then as a Convention to which the adherence of maritime nations was invited, embodied the Harter Act compromise in the main outline. In 1936, the United States adhered to the Convention, and Congress passed in implementation the Carriage of Goods By Sea Act, which with minor differences follows verbatim the Hague Rules.'' *Id.* at 144–145.

to achieve a common set of international rules for the handling of cargo damage and loss claims.[57] The Commission ALJ acknowledged the status of COGSA with the following Commission ruling:

> It is clear that COGSA was enacted to clarify the responsibilities as well as the rights and immunities of carriers and ships with respect to loss and damage claims. Consequently, the use of the Shipping Act of 1984 to circumvent COGSA provisions would constitute a wholly unwarranted frustration of Congressional intent. Furthermore, some of the logical conclusions of such a step would be absurd. For example, COGSA provides a one-year period for the filing of suit; after that period, a claim is time barred. To accept Deringer's premise, one would have to conclude that a one-year period exists during which a claimant may file suit, but two additional years exist in which to file with the FMC. Inasmuch as COGSA stipulates that the carrier and ship, in the absence of a suit, are discharged from liability after one year, such a conclusion is unacceptable.

Id. at 1277 (footnotes omitted).[58]

As a further note on the discordant conflict between COGSA and the Commission's current usage of section 10(d)(1) of the Shipping Act, consider that COGSA provides for a limitation of liability scheme, including a cargo valuation cap of $500 per customary freight unit unless the shipper declares a higher cargo value. As the *A.N. Deringer* decision noted, a claimant could wait for 366 days and then file its claim at the Commission under section 10(d)(1) and thereby avoid any COGSA limitations on the value of its cargo loss.

This proffer of a conflict between section 10(d)(1) and COGSA is not speculation or a mere hypothetical. In the Commission's *Kobel* decision, *supra,* Respondent Hapag-Lloyd, the ocean vessel common carrier, was found to have violated section 10(d)(1) by virtue of damaging the Claimant's container during the loading process and then subsequently placing that damaged container on a later Hapag-Lloyd ship. The Commission then held that Hapag-Lloyd was; however, not liable for reparations because the damage to the container was not the proximate cause of the losses to the cargo. If the damaged container *had* allowed for water inundation with resulting cargo damage, then all legal elements would have been presented for an award to Claimants by virtue of the section 10(d)(1) violation.

As a last observation concerning the comity between COGSA and the Shipping Act, consider section 2 of the Shipping Act's Declaration of Policy where Congress stated:

> The purposes of this Act are . . . (2) to provide an efficient and economic transportation system in the ocean commerce of the United States that is, insofar as possible, *in harmony with,* and responsive to, *international shipping practices* . . .[59]

As the Commission looks for guidance on Congressional intent concerning the scope, applicability, and proper interpretation of section 10(d)(1) and its relationship to the COGSA/Hague Rules, we find here a clear affirmative Congressional statement that directs the Commission to harmonize the Shipping Act with international shipping practices. The Hague Rules, as adopted by Congress, provide for a single internationally accepted set of rules for the treatment of the shipper-carrier relation under ocean bills of lading. An interpretation of the Shipping Act's section 10(d)(1) that provides for an alternative legal remedy for a cargo claim in the United States would create diametrical discord to this area of law.

Returning the Commission's interpretation to its proper statutory purpose and scope will not leave claimants without remedy. Claimants would have full and adequate remedies under numerous legal proscriptions including common law, state statutes, admiralty law, and other federal statutes. Such claims should be presented to proper courts of common pleas. The Commission notes that other provisions or regulations of the Shipping Act could also provide remedy.[60] The Commission also notes that bringing actions in traditional venues, such as state and federal courts, may be appropriate. Matters that may now be brought under § 41102(c) could also potentially be adjudicated as matters of contract law, agency law, or admiralty law. In cases prior to *Kobel,* it has been noted that remedy could have been sought in other venues. In *Adair* v. *Penn-Nordic Lines, Inc.,* 26 S.R.R. 11 (ALJ 1991), the ALJ noted that the relevant conduct ''would undoubtedly have contravened other standards of law under principles of contract and common carrier law applicable in courts of law and quite possibly Mr. Adair could have obtained relief . . . in a court of law or perhaps admiralty rather than before this Commission.'' [61] The Commission is seeking public comment on whether alternative avenues for redress would be available should the Commission choose to reinterpret § 41102(c).

IV. Conclusion

The Commission believes that the interpretation and application of § 41102(c) should be properly aligned with the broader common carriage foundation and purposes of the Act. The interpretive rule is consistent with the purposes of the Shipping Act and focuses Commission activities on regulated entities who abuse the maritime shipping public by imposing unjust and unreasonable business methods, and who do so on a normal, customary, and continuous basis, and thereby negatively impact maritime transportation competition or inflict detrimental effect upon the commerce of the United States. This interpretation reflects the clear intent of Congress and reflects Commission precedent articulated in *Intercoastal Investigation, Altieri, Stockton Elevators, European Trade,* and *Deringer.* Though the Commission is aware that the interpretive rule may redirect some claims in certain fact situations from being brought under the Shipping Act, the Commission believes that existing alternative avenues of redress are fully sufficient to address those cases. The Commission is therefore seeking comment on the proposed interpretation.

V. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your comments.

You may submit your comments via email to the email address listed above under **ADDRESSES**. Please include the docket number associated with this notice and the subject matter in the subject line of the email. Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.

You may also submit comments by mail to the address listed above under **ADDRESSES**.

[58] In addition, with any COGSA litigation, the parties pay their own legal fees. Under a recent amendment to the 1984 Act in Title IV of the Howard Coble Coast Guard and Maritime Transportation Act of 2014, Public Law 113–281 enacted on December 18, 2014, the prevailing party in Shipping Act claims wins full reparation and may be awarded attorney fees.

[59] 46 U.S.C. 40101(2) (emphasis added).

[60] *See Total Fitness Equipment, Inc. d/b/a/ Professional Gym* v. *Worldlink Logistics, Inc.,* 28 S.R.R. 45 (ID 1997); *Brewer* v. *Maralan,* 29 S.R.R. 6 (FMC 2001).

[61] *Adair,* 26 S.R.R. at 20–21.

How do I submit confidential business information?

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If your comments contain confidential information, you must submit the following by mail to the address listed above under **ADDRESSES**:

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comments, consisting of the complete filing with a cover page marked ''Confidential-Restricted,'' and the confidential material clearly marked on each page. You should submit the confidential copy to the Commission by mail.
- A public version of your comments with the confidential information excluded. The public version must state ''Public Version—confidential materials excluded'' on the cover page and on each affected page, and must clearly indicate any information withheld. You may submit the public version to the Commission by email or mail.

Will the Commission consider late comments?

The Commission will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date.

How can I read comments submitted by other people?

You may read the comments received by the Commission at the Commission's Electronic Reading Room or the Docket Activity Library at the addresses listed above under **ADDRESSES**.

VI. Rulemaking Analyses

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency is required to publish a notice of proposed rulemaking under the Administrative Procedure Act (APA) (5 U.S.C. 553), the agency must prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the impact of the proposed rule on small entities. 5 U.S.C. 603. An agency is not required to publish an IRFA, however, for the following types of rules, which are excluded from the APA's notice-and-comment requirement: Interpretative rules; general statements of policy; rules of agency organization, procedure, or practice; and rules for which the agency for good cause finds that notice and comment is impracticable, unnecessary, or contrary to public interest. *See* 5 U.S.C. 553(b).

Although the Commission has elected to seek public comment on this proposed rule, the rule is an interpretative rule. Therefore, the APA does not require publication of a notice of proposed rulemaking in this instance, and the Commission is not required to prepare an IRFA.

National Environmental Policy Act

The Commission's regulations categorically exclude certain rulemakings from any requirement to prepare an environmental assessment or an environmental impact statement because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. 46 CFR 504.4. The proposed rule describes the Commission's proposed interpretation of the scope of 46 U.S.C. 41102(c) and the elements necessary for a successful claim for reparations under that section. This rulemaking thus falls within the categorical exclusion for matters related solely to the issue of Commission jurisdiction and the exclusion for investigatory and adjudicatory proceedings to ascertain past violations of the Shipping Act. *See* 46 CFR 504.4(a)(20), (22). Therefore, no environmental assessment or environmental impact statement is required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11. This proposed rule does not contain any collections of information as defined by 44. U.S.C. 3502(3) and 5 CFR 1320.3(c).

Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards in E.O. 12988 titled, ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at *http://www.reginfo.gov/public/do/eAgendaMain.*

List of Subjects in 46 CFR Part 545

Antitrust, Exports, Freight forwarders, Maritime carriers, Non-vessel-operating common carriers, Ocean transportation intermediaries, Licensing requirements, Financial responsibility requirements, Reporting and recordkeeping requirements.

For the reasons set forth above, the Federal Maritime Commission proposes to amend 46 CFR part 545 as follows:

PART 545—INTERPRETATIONS AND STATEMENTS OF POLICY

■ 1. The authority citation for part 545 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40307, 40501–40503, 41101–41106, and 40901–40904; 46 CFR 515.23.

■ 2. Add § 545.4 to read as follows:

§ 545.4 Interpretation of Shipping Act of 1984–Unjust and unreasonable practices.

46 U.S.C. 41102(c) is interpreted to require the following elements in order to establish a successful claim for reparations:

(a) The respondent is an ocean common carrier, marine terminal operator, or ocean transportation intermediary;

(b) The claimed acts or omissions of the regulated entity are occurring on a normal, customary, and continuous basis;

(c) The practice or regulation relates to or is connected with receiving, handling, storing, or delivering property;

(d) The practice or regulation is unjust or unreasonable; and

(e) The practice or regulation is the proximate cause of the claimed loss.

By the Commission.

Rachel Dickon,

Secretary.

[FR Doc. 2018–19328 Filed 9–6–18; 8:45 am]

BILLING CODE 6731–AA–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 801, 815, 816, 837, 849, 852, and 871

RIN 2900–AQ20

VA Acquisition Regulation: Contracting by Negotiation; Service Contracting

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend and update its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, we will publish them in the **Federal Register**. VA will combine related topics, as appropriate. In particular, this rulemaking revises VAAR concerning Contracting by Negotiation and Service Contracting, as well as affected parts covering the Department of Veterans Affairs Acquisition Regulation System, Types of Contracts, Termination of Contracts, Solicitation Provisions and Contract Clauses, and Loan Guaranty and Vocational Rehabilitation and Employment Programs.

DATES: Comments must be received on or before November 6, 2018 to be considered in the formulation of the final rule.

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 Avenue NW, Room 1063B, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to ''RIN 2900–AQ20—VA Acquisition Regulation: Contracting by Negotiation; Service Contracting.'' 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, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Ricky L. Clark, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street NW, Washington, DC 20001, (202) 632–5276. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is issued under the authority of the Office of Federal Procurement Policy (OFPP) Act which provides the authority for an agency head to issue agency acquisition regulations that implement or supplement the FAR.

VA is proposing to revise the VAAR to add new policy or regulatory requirements and to remove any redundant guidance and guidance that is applicable only to VA's internal operating processes or procedures. Codified acquisition regulations may be amended and revised only through rulemaking. All amendments, revisions, and removals have been reviewed and concurred with by an Integrated Product Team of agency stakeholders.

The VAAR uses the regulatory structure and arrangement of the FAR and headings and subject areas are consistent with the FAR content. The VAAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, and sections.

The Office of Federal Procurement Policy Act, as codified in 41 U.S.C.1707, provides the authority for the Federal Acquisition Regulation and for the issuance of agency acquisition regulations consistent with the FAR.

When Federal agencies acquire supplies and services using appropriated funds, the purchase is governed by the FAR, set forth at title 48 Code of Federal Regulations (CFR), chapter 1, parts 1 through 53, and the agency regulations that implement and supplement the FAR. The VAAR is set forth at title 48 CFR, chapter 8, parts 801 to 873.

Discussion and Analysis

The VA proposes to make the following changes to the VAAR in this phase of its revision and streamlining initiative. For procedural guidance cited below that is proposed to be deleted from the VAAR, each section cited for removal has been considered for inclusion in VA's internal agency operating procedures in accordance with FAR 1.301(a)(2). Similarly, delegations of authorities that are removed from the VAAR will be included in VA Acquisition Manual (VAAM) as internal agency guidance.

VAAR Part 801—Department of Veterans Affairs Acquisition Regulation System

In the table in 801.106, we propose to amend the clause number 852.237–7 to 852.237–70 to conform to the FAR numbering system for agency regulations.

VAAR Part 815—Contracting by Negotiation

We propose to add 41 U.S.C. 1702 as an authority for part 815, which addresses the acquisition planning and management responsibilities of Chief Acquisition Officers and Senior Procurement Executives, to include implementation of unique procurement policies, regulations and standards of the executive agency.

We also propose to add 41 U.S.C. 1121(c)(3) which is from Title 41, Public Contracts, Positive Law codification that speaks to the authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement that are subject to the authority conferred in the cited section, as well as other sections of Title 41 as shown therein.

In subpart 815.3, Source Selection, we propose to remove 815.303, Responsibilities, to the VAAM since it contains procedural guidance that is internal to the VA and will be updated and moved to the VA Acquisition Manual (VAAM).

We propose to remove 815.304, Evaluation factors and significant subfactors, and move it to the VAAM as it contains procedural guidance that is internal to the VA and will be updated and moved to the VAAM.

We propose to amend section 815.304–70, Evaluation factor commitments, by deleting paragraph (a)(4). This paragraph was removed because the VA Mentor-Protégé Program is no longer current. We propose to revise the section by removing paragraph (b) and moving it to the VAAM as it contains procedural information. We also propose to renumber the paragraphs of the section accordingly.

We propose to amend section 815.304–71, Solicitation provision and clause, to make a correction to add in the words ''Small Business'' that are

missing in the current version of the VAAR.

In subpart 815.3, Source Selection, we propose to add a new section, 815.370, Only one offer. This is a newly developed section for VA. The inclusion of this policy gives the contracting officer the ability to re-solicit for an action if they only receive one offer and if the solicitation gave offerors less than 30 days to submit a proposal. The following sections have been added to this section and provide additional guidance pertaining to this new policy: 815.370–1, Policy; 815.370–2, Promote competition; 815.370–3, Fair and reasonable price, 815.370–4, Exceptions and 815.370–5, Solicitation provision. These subsections under section 815.370 explain that it is VA policy, if only one offer is received in response to a competitive solicitation, to take action to promote competition and ensure that the price is fair and reasonable. It describes the necessary steps to meet these requirements. Section 815.370–4, Exceptions, cites the exceptions to the policy and 815.370–5, Solicitation provision, prescribes the inclusion of 852.215–72, Notice of Intent to Re-solicit, in competitive solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items that will be solicited for fewer than 30 days, unless an exception at 815.370–4 applies.

We propose to remove subpart 815.4, Contract Pricing, as it contains procedural guidance that is internal to the VA and will therefore be moved to the VAAM.

We propose to remove subpart 815.6, Unsolicited Proposals, as it contains procedural guidance that is internal to the VA and will therefore be moved to the VAAM.

VAAR Part 816—Types of Contracts

The authority citation for part 816 is revised to correct the citation for 41 U.S.C. 1121 by adding reference to paragraph (c)(3).

In subpart 816.5, we propose to add section 816.506–70, Requirements—supplement for mortuary services, prescribing clause 852.216–76, Requirements—Supplement for Mortuary Services, for all contracts for mortuary services.

VAAR Part 837—Service Contracting

We propose to amend the authority citation for part 837 to add reference to the Crime Control Act of 1990 and the Pro-Children Act of 2001 which provide the authority for new clauses that address protection of children under contracts providing child care services. We also propose to add 41 U.S.C. 1121(c)(3) which is from Title 41, Public Contracts, Positive Law codification that speaks to the authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement that are subject to the authority conferred in the cited section, as well as other sections of Title 41 as shown therein.

We also propose to revise the part 837 authorities to replace the 38 U.S.C. 501 citation with 41 U.S.C. 1702 which addresses the acquisition planning and management responsibilities of Chief Acquisition Officers and Senior Procurement Executives, to include implementation of unique procurement policies, regulations and standards of the executive agency. 38 U.S.C. 501 is a more general authority for the Secretary to utilize to prescribe all rules and regulations. The title 41 authority is more appropriate to cite when publishing the VAAR.

We propose to remove section 837.103, Contracting officer responsibility, and to address the subject of documenting personal versus non-personal services determinations in the VAAM.

We propose to remove the title and text at section 837.110, Solicitation provisions and contract clauses, since FAR 52.237–2 Protection of Government Buildings, Equipment and Vegetation and 852.228–71, Indemnification and Insurance, outline contractor liabilities and required insurance levels.

We propose to amend section 837.110–70, Services provided to eligible beneficiaries, to retitle it ''VA solicitation provisions and contract clauses,'' to remove the prescription for the clause, 852.271–70, Nondiscrimination in services provided to beneficiaries, and to add the prescriptions for the new clauses 852.237–74, Nondiscrimination in Service Delivery, and 852.237–75, Key Personnel.

In subpart 837.2, Advisory and Assistance Services, and section 837.203, Policy, we propose to remove the entire subpart since it duplicates coverage in FAR.

In subpart 837.4, Nonpersonal Health Care Services, section 837.403, Contract clause, we propose to amend the section to redesignate it as section 837.403–70, VA contract clauses; to renumber clause 852.237–7, Indemnification and Medical Liability Insurance, as 852.237–70 to conform to the FAR guidance for numbering of clauses; to insert in the clause a five day notice requirement for evidence of coverage and of any change in insurance providers during the term of the contract; and to add prescriptions for three new clauses that address protection of children under contracts providing child care services as required by FAR 37.103(d): 852.237–71, Nonsmoking Policy for Children Services; 852.237–72, Crime Control Act—Reporting of Child Abuse; and 852.237–73, Crime Control Act—Requirement for Background Checks.

We propose the following revisions to subpart 837.70, Mortuary Services, to remove internal and outdated guidance and to address only acquisition policy affecting mortuary services:

We propose to add section 837.7000, Scope, and to cite the statutory basis for the mortuary service benefits covered.

We propose to remove the existing section 837.7001, General, and add a new section 837.7001, Solicitation provisions and contract clauses, to prescribe one new provision, 852.237–76, Award to Single Offeror; and four new clauses specific to the coverage of mortuary services: 852.237–77, Area of Performance, which describes the contractor's responsibilities both within and outside of the contract designated area of performance and the basis for payment of any transportation fees for pick-up from or delivery points outside that area; 852.237–78, Performance and Delivery, which requires the contractor's response to requests for services within 36 hours and allows the Government to require that the remains be held for up to 72 hours from completion of services; 852.237–79, Subcontracting, which stipulates that the Contractor shall not subcontract any work under this contract without the contracting officer's written approval and states the clause does not apply to contracts of employment between the Contractor and its personnel; and 852.237–80, Health Department and Transport Permits, which requires to contractor to meet all State and local licensing requirements and obtain and furnish all necessary health department and shipping permits at no additional cost to the Government. We also propose to add a cross-reference to the availability of clauses prescribed in 816.506–70 and 849.504–70.

We propose to remove sections 837.7002, List of qualified funeral directors; 837.7003, Funeral authorization; 837.7004, Administrative necessity; and 837.7005, Unclaimed remains—all other cases, because this material is based on internal VA guidance that has been rescinded.

VAAR Part 849—Termination of Contracts

We propose to revise the authority citation for part 849 to add 41 U.S.C. 1121(c)(3) which is from Title 41, Public Contracts, Positive Law codification that

speaks to the authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement that are subject to the authority conferred in the cited section, as well as other sections of Title 41 as shown therein.

We also propose to revise the part 849 authorities to add 41 U.S.C. 1702 which addresses the acquisition planning and management responsibilities of Chief Acquisition Officers and Senior Procurement Executives, to include implementation of unique procurement policies, regulations and standards of the executive agency.

In part 849, we propose to add subpart 849.5, Contract Termination Clauses, section 849.504, Termination of fixed-price contracts for default, which contains no text but implements FAR 49.504, and section 849.504–70, Termination of mortuary services, to prescribe a new clause 852.249–70, Termination for Default—Supplement for Mortuary Services.

VAAR Part 852—Solicitation Provisions and Contract Clauses

We propose to amend the authority citation for part 852 to add reference to the 20 U.S.C. 7181–7183 (Pro-children Act of 2001), and Public Law 101–647, (Crime Control Act of 1990) which provided the authority for new clauses that address protection of children under contracts providing child care services. We also propose to add as an authority 41 U.S.C. 1303, which is an updated positive law codification to reflect additional authority of the VA as an executive agency to issue regulations that are essential to implement Governmentwide policies and procedures in the agency, as well as to issue additional policies and procedures required to satisfy the specific needs of the VA.

In subpart 852.2, we propose to amend 852.215–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors. This was revised to change it from a clause to a provision and language was added to comply with the statute that requires that any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years.

We propose to amend 852.215–71, Evaluation Factor Commitments. This was revised to add language to comply with the statute that requires that any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years.

We propose to add clause 852.215–72, Notice of Intent to Re-Solicit, which informs offerors that in the event that only one offer is received in response to a solicitation that allows offerors fewer than 30 days to submit their proposal, the Contracting Officer may cancel the solicitation and re-solicit for an additional period of at least 30 days in accordance with 815.370–2.

We propose to add clause 852.216–76, Requirements—Supplement for Mortuary Services, for all requirements contracts for mortuary services.

We are providing the final publication and effective dates of March 2018 for the following clauses published in final under rule AP82: 852.216–71, 852.216–72, 852.216–73, 852.216–74, 852.216–75, 852.228–71, and 852.228–73.

We propose to remove the title and text of clause 852.237–70, Contractor Responsibilities, which is determined to be unnecessary since FAR clause 52.237–2, Protection of Government Buildings, Equipment and Vegetation, and VAAR clause 852.228–71, Indemnification and Insurance, both outline contractor liabilities and required insurance levels.

We propose to revise clause 852.237–7, Indemnification and Medical Liability Insurance, to renumber it 852.237–70, and to make minor revisions to require the contracting officer to insert the dollar amount values of standard coverages prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the contracting officer deems necessary to protect the Government's interests; and to insert a requirement for the contractor to notify the contracting officer within 5 days of becoming aware of a change in insurance providers during the performance period of the contract for all health-care providers performing under it; and to furnish to the contracting officer evidence of insurance at least five days before commencement of work.

We propose to add the following clauses to address protection of children under contracts providing child care services as required by 20 U.S.C. 7181–7183 (Pro-Children Act of 2001), and Public Law 101–647, (Crime Control Act of 1990): 852.237–71, Nonsmoking Policy for Children's Services, prohibiting smoking in facilities where certain federally funded children's services are provided; 852.237–72, Crime Control Act—Reporting of Child Abuse, which imposes responsibilities on certain individuals who, while engaged in a professional capacity or activity, as defined in the Act, on Federal land or in a federally-operated (or contracted) facility, learn of facts that give the individual reason to suspect that a child has suffered an incident of child abuse; and 852.237–73, Crime Control Act—Requirement for Background Checks, which requires the contractor's compliance with the Act requiring that all individuals involved with the provision of child care services, as defined in the act, to children under the age of 18 undergo a criminal background check.

We propose to add new clause 852.237–75, Key Personnel, requiring the written consent of the Contracting Officer to changes in key personnel, and new clauses specific to the coverage of mortuary services: 852.237–76, Award to Single Offeror, to stipulate that awards will be made to a single offeror rather than to multiple offerors; 852.237–77, Area of Performance, to clarify Contractor's responsibilities for its designated area of service; 852.237–78, Performance and Delivery, to specify the required time frame for completion of services and the Government's right to require a hold on services; 852.237–79, Subcontracting, to require the Contracting Officer's written approval to subcontract any work; and 852.237–80, Health Department and Transport Permits, to stipulate the contractor's responsibility to obtain all transport permits required under the contract at no additional cost to the Government.

We propose to add the clause 852.249–70, Termination for Default—Supplement for Mortuary Services, for use in contracts for mortuary services. This clause expressly identifies actions, such as soliciting families of decedents to provide additional services, subcontracting services without Government consent, or refusing to perform services for any particular remains.

We propose to redesignate and retitle clause 852.271–70, Non-discrimination in Services Provided to Beneficiaries, as 852.237–74, Non-discrimination in Service Delivery, and prescribed the clause at under VAAR section 837.110–70(a) to conform to FAR structure. This clause states that it is the policy of the Department of Veterans Affairs that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of VA programs and services based on non-merit factors such as race, color, national origin, religion, sex, gender identity, sexual orientation, or disability (physical or mental). This clause also stipulates that by acceptance of this contract, the contractor agrees to comply

with this policy in supporting the program and in performing the services called for under this contract. The clause is revised to clarify the language and the contractor's obligation to ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with this policy.

VAAR Part 871—Loan Guaranty and Vocational Rehabilitation and Employment Programs

In the authority citation for part 871, we propose to add 41 U.S.C. 1121(c)(3) which is from Title 41, Public Contracts, Positive Law codification that speaks to the authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement that are subject to the authority conferred in the cited section, as well as other sections of Title 41 as shown therein.

We also propose to revise the part 871 authorities to replace the 38 U.S.C. 501 citation with 41 U.S.C. 1702 which addresses the acquisition planning and management responsibilities of Chief Acquisition Officers and Senior Procurement Executives, to include implementation of unique procurement policies, regulations and standards of the executive agency. 38 U.S.C. 501 is a more general authority for the Secretary to utilize to prescribe all rules and regulations. The title 41 authority is more appropriate to cite when publishing the VAAR. In section 871.212, we propose to revise this section to redesignate the first paragraph as (a); to remove the prescription of clause 852.271–70, Nondiscrimination In Services Provided To Beneficiaries; to renumber the remaining paragraphs as (1) through (4); and to add new paragraph (b) to refer the contracting officer to section 837.110–70(a) for the prescription of the new clause 852.237–74, Non-discrimination In Service Delivery.

Effect of Rulemaking

Title 48, Federal Acquisition Regulations System, Chapter 8, Department of Veterans Affairs, of the Code of Federal Regulations, as proposed to be revised by this rulemaking, would represent VA's implementation of its legal authority and publication of the VAAR for the cited applicable parts. Other than future amendments to this rule or governing statutes for the cited applicable parts, or as otherwise authorized by approved deviations or waivers in accordance with FAR subpart 1.4, Deviations from the FAR, and as implemented by VAAR subpart 801.4, Deviations from the FAR or VAAR, no contrary guidance or procedures would be authorized. All existing or subsequent VA guidance would be read to conform with the rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking as pertains to the cited applicable VAAR parts.

Executive Orders 12866, 13563 and 13771

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 12866, Regulatory Planning and Review defines ''significant regulatory action'' to mean 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.'' VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and it has been determined this rule is not a significant regulatory action under E.O. 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 E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. See also 5 CFR 1320.8(b)(3)(vi). This proposed rule will impose one new and one amended information collection requirement. Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action OMB for its review. Notice of OMB approval for the new information collection and the information collection amendment will be published in a future **Federal Register** document.

Under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), a current collection of information, OMB No. 2900–0590, contained in part 837 at proposed section 837.403–70 (currently numbered 837.403) and in part 852 at proposed section 852.237–70 (currently numbered 852.237–7), is being revised as set forth in the **SUPPLEMENTARY INFORMATION** portion of this proposed rule. The clause number that appears in the table at 801.106 is also proposed to be revised accordingly.

Summary of collection of information: This action contains provisions constituting an existing information collection at 48 CFR 837.403 and 852.237–7, under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) and has been assigned OMB control number 2900–0590. This action proposes revisions to 837.403 to renumber it as 837.403–70, to retitle it as ''VA contract clauses,'' and to renumber the clause as 852.237–70 while retaining the title, ''Indemnification and Medical Liability Insurance.''

Clause 852.237–70 is used in lieu of FAR clause 52.237–7, Indemnification and Medical Liability Insurance, in solicitations and contracts for the acquisition of non-personal health care services. It requires the apparent successful bidder/offeror, upon the request of the contracting officer, prior to contract award, to furnish evidence of insurability of the offeror and/or all health-care providers who will perform under the contract. In addition, the clause requires the contractor, prior to commencement of services under the contract, to provide Certificates of Insurance or insurance policies evidencing that the firm possesses the types and amounts of insurance

required by the solicitation. We propose to modify the collection to require the contractor to notify the contracting officer within five days of becoming aware of a change in insurance providers during the performance period of this contract for all health-care providers performing under this contract, and to provide to the contracting officer evidence of such insurance for any subcontractor at least five days before commencement of work by that subcontractor.

Description of need for information and proposed use of information: The information is required in order to protect VA by ensuring that the firm to which award may be made and the individuals who may provide health care services under the contract are insurable and that, following award, the contractor and its employees will continue to possess the types and amounts of insurance required by the solicitation. It helps ensure that VA will not be held liable for any negligent acts of the contractor or its employees and ensures that VA and VA beneficiaries will be protected by adequate insurance coverage. The clause number is changed to 852.237–70 to conform to the FAR guidance for numbering of clauses. The burden imposed by this collection remains unchanged as follows:

Estimated number of respondents annually: 1,500.

Estimated frequency of responses: One response for each contract to be awarded.

Estimated average burden per collection: 30 minutes.

Estimate of the total annual hour burden of the collection of information: 750 hours.

Annual cost to all respondents: $15,000 (at $20 per hour, based on our belief that the majority of the labor effort would be clerical similar to GS–5).

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), a new collection of information is proposed, under OMB No. 2900–AQ20, that is contained in Part 837 at proposed section 837.403–70 and Part 852 at proposed clause 852.237–73, as set forth in the **SUPPLEMENTARY INFORMATION** portion of this proposed rule. The clause number and the OMB clearance number would be added to the table at 801.106.

Summary of collection of information: Under the Crime Control Act of 1990 (42 U.S.C. 13041), each agency of the Federal Government, and every facility operated by the Federal Government, or operated under contract with the Federal Government, that hires, or contracts for hire, individuals involved with the provision of child care services to children under the age of 18 shall assure that all existing and newly-hired employees undergo a criminal history background check.

New VAAR clause 852.237–73, Crime Control Act—Requirement for Background Checks, is required in all solicitations, contracts, and orders that involve providing child care services to children under the age of 18, including social services, health and mental health care, child-(day) care, education (whether or not directly involved in teaching), and rehabilitative programs covered under the statute.

Description of need for information and proposed use of information: The contract clause would require the contractor to perform the background checks on behalf of VA to assure the safety of children under the age of 18 that are recipients of services under a VA program. It is intended to assure their safety by avoiding hiring individuals with a history of criminal acts and especially acts of child abuse.

Estimated number of respondents annually: 500.

Estimated frequency of responses: 20 per contract awarded.

Estimated average burden per collection: 1 hour.

Estimate of the total annual hour burden of the collection of information: 10,000 hours.

Annual cost to all respondents: $550,000 ($55 rate including fringe benefits and assuming senior level (GS–13) technical specialist).

This clause would enable the VA to be in compliance with the Crime Control Act of 1990 and to protect children that are within its health care systems.

Interested persons have 60 days in which to provide comment on the information collection. The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Comments on the collection of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1068, Washington, DC 20420; fax to (202) 273–9026, email to *www.Regulations.gov*. Comments should indicate they are submitted in response to ''RIN 2900–AQ20.''

Individuals are not required to respond to a collection of information unless it displays a currently valid OMB control number.

OMB is required to make a decision concerning the proposed collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Regulatory Flexibility Act

This proposed 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 proposed rule will generally be small business neutral. The overall impact of the proposed rule will be of benefit to small businesses owned by Veterans or Service-Disabled Veterans as the VAAR is being updated to remove extraneous procedural information that applies only to VA's internal operating procedures. VA estimates no cost impact to individual business would result from these rule updates. On this basis, the adoption of this proposed 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. Therefore, under 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

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 proposed rule will have no such effect on State, local, and tribal Governments or on the private sector.

List of Subjects

48 CFR Part 801

Administrative practice and procedure.

48 CFR Parts 815, 816, 837, and 849

Government procurement.

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 871

Government procurement, Loan programs—social programs, Loan programs—veterans, Reporting and recordkeeping requirements, Vocational rehabilitation.

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 20, 2018, for publication.

Dated: August 21, 2018.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 48 CFR parts 801, 815, 816, 837, 849, 852 and 871 as follows:

PART 801—DEPARTMENT OF VETERANS AFFAIRS ACQUISITION REGULATION SYSTEM

■ 1. The authority citation for part 801 continues to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

Subpart 801.1—Purpose, Authority, Issuance

801.106 [Amended]

■ 2. Amend the table in section 801.106 by removing clause number 852.237–7 and adding in its place clause number 852.237–70.

PART 815—CONTRACTING BY NEGOTIATION

■ 3. The authority citation for part 815 is revised to read as follows:

Authority: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702 and 48 CFR 1.301–1.304.

Subpart 815.3—Source Selection

815.303 [Removed]

■ 4. Section 815.303 is removed.

815.304 [Removed]

■ 5. Section 815.304 is removed.

■ 6. Section 815.304–70 is revised to read as follows:

815.304–70 Evaluation factor commitments.

VA contracting officers shall—

(a) Include the provision at 852.215–70, Service-Disabled Veteran Owned Small Business (SDVOSB) and Veteran Owned Small Business (VOSB) Evaluation Factors, in negotiated solicitations giving preference to offers received from VOSBs and additional preference to offers received from SDVOSBs;

(b) Use past performance in meeting SDVOSB subcontracting goals as a non-price evaluation factor in making award determination; and

(c) Use the proposed inclusion of SDVOSBs or VOSBs as subcontractors as an evaluation factor when competitively negotiating the award of contracts or task or delivery orders.

■ 7. Section 815.340–71 is revised to read as follows:

815.304–71 Solicitation provision and clause.

(a) The contracting officer shall insert the provision at 852.215–70, Service-Disabled Veteran-Owned Small Business (SDVOSB) and Veteran-Owned Small Business (VOSB) Evaluation Factors, in competitively negotiated solicitations that are not set aside for SDVOSBs or VOSBs.

(b) The contracting officer shall insert the clause at 852.215–71, Evaluation Factor Commitments, in solicitations and contracts that include VAAR provision 852.215–70, Service-Disabled Veteran-Owned Small Business (SDVOSB) and Veteran-Owned Small Business (VOSB) Evaluation Factors.

■ 8. Section 815.370 is added to read as follows:

815.370 Only one offer.

■ 9. Section 815.370–1 is added to read as follows:

815.370–1 Policy.

It is VA policy, if only one offer is received in response to a competitive solicitation, to—

(a) Take action to promote competition (see 815.370–2); and

(b) Ensure that the price is fair and reasonable (see 815.370–3) and to comply with the statutory requirement for certified cost or pricing data (see FAR 15.403–4).

■ 10. Section 815.370–2 is added to read as follows:

815.370–2 Promote competition.

Except as provided in 815.370–4, if only one offer is received when competitive procedures were used and the solicitation allowed fewer than 30 days for receipt of proposals, the contracting officer should—

(a) Consult with the requiring activity as to whether the requirements document should be revised in order to promote more competition (see FAR 6.502(b) and 11.002); and

(b) Consider re-soliciting, allowing an additional period of at least 30 days for receipt of proposals.

■ 11. Section 815.370–3 is added to read as follows:

815.370–3 Fair and reasonable price.

(a) If there was ''reasonable expectation that two or more offerors, competing independently, would submit priced offers'' but only one offer is received, this circumstance does not constitute adequate price competition unless an official at a level above the contracting officer approves the determination that the price is reasonable (see FAR 15.403–1(c)(1)(ii)).

(b) Except as provided in 815.370–4(a), if only one offer is received when competitive procedures were used and the solicitation allowed at least 30 days for receipt of proposals (unless the 30-day requirement is not applicable in accordance with 815.370–4(a)(3), the contracting officer shall—

(1) Determine through cost or price analysis that the offered price is fair and reasonable and that adequate price competition exists (with approval of the determination at a level above the contracting officer) or another exception to the requirement for certified cost or pricing data applies (see FAR 15.403–1(c) and 15.403–4). In these circumstances, no further cost or pricing data is required; or

(2)(i) Obtain from the offeror cost or pricing data necessary to determine a fair and reasonable price and comply with the requirement for certified cost or pricing data at FAR 15.403–4. For acquisitions that exceed the cost or pricing data threshold, if no exception

at FAR 15.403–1(b) applies, the cost or pricing data shall be certified; and

(ii) Enter into negotiations with the offeror as necessary to establish a fair and reasonable price. The negotiated price should not exceed the offered price.

■ 12. Section 815.370–4 is added to read as follows:

815.370–4 Exceptions.

(a) The requirements at 815.370–2 do not apply to—

(1) Acquisitions at or below the simplified acquisition threshold;

(2) Acquisitions in support of emergency, humanitarian or peacekeeping operations, or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack;

(3) Small business set-asides under FAR subpart 19.5, set asides offered and accepted into the 8(a) Program under FAR subpart 19.8, or set-asides under the HUBZone Program (see FAR 19.1305(c)), the VA Small Business Program (see VAAR 819), or the Women-Owned Small Business Program (see FAR 19.1505(d));

(4) Acquisitions of basic or applied research or development, as specified in FAR 35.016(a), that use a broad agency announcement; or

(5) Acquisitions of architect-engineer services (see FAR 36.601–2).

(b) The applicability of an exception in paragraph (a) of this section does not eliminate the need for the contracting officer to seek maximum practicable competition and to ensure that the price is fair and reasonable.

■ 13. Section 815.370–5 is added to read as follows:

815.370–5 Solicitation provision.

Use the provision at 852.215–72, Notice of intent to re-solicit, in competitive solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items that will be solicited for fewer than 30 days, unless an exception at 815.370–4 applies.

Subpart 815.4—[Removed and Reserved]

■ 14. Subpart 815.4 is removed and reserved.

Subpart 815.6—[Removed and Reserved]

■ 15. Subpart 815.6 is removed and reserved.

PART 816—TYPES OF CONTRACTS

■ 16. The authority citation for part 816 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

Subpart 816.5—Indefinite-Delivery Contracts

■ 17. Section 816.506–70 is added to read as follows:

816.506–70 Requirements—supplement for mortuary services.

Insert the clause 852.216–76, Requirements—Supplement for Mortuary Services, in contracts for mortuary services containing FAR clause 52.216–21, Requirements. The contracting officer shall insert activities authorized to place orders in paragraph (e) of the clause.

PART 837—SERVICE CONTRACTING

■ 18. The authority citation for part 837 is revised to read as follows:

Authority: Public Law 101–647; 20 U.S.C. 7181–7183; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

Subpart 837.1—Service Contracts—General

837.103 [Removed]

■ 19. Section 837.103 is removed.

837.110 [Removed]

■ 20. Section 837.110 is removed.

■ 21. Section 837.110–70 is revised to read as follows:

837.110–70 VA solicitation provisions and contract clauses.

(a) Contracting officers shall include the clause at 852.237–74, Nondiscrimination in Service Delivery, in all solicitations and contracts covering services provided to eligible beneficiaries.

(b) The contracting officer shall insert the clause at 852.237–75, Key Personnel, in solicitations and contracts when the contracting officer will require the contractor to designate contractor key personnel.

Subpart 837.2—[Removed and Reserved]

■ 22. Subpart 837.2 is removed and reserved.

837.203 [Removed]

■ 23. Section 837.203 is removed.

Subpart 837.4—Nonpersonal Health Care Services

■ 24. Section 837.403 is revised to read as follows:

837.403–70 VA contract clauses.

(a) The contracting officer shall insert the clause at 852.237–70, Indemnification and Medical Liability Insurance, in lieu of FAR clause 52.237–7, in solicitations and contracts for nonpersonal health-care services, including contracts awarded under the authority of 38 U.S.C. 7409, 38 U.S.C. 8151–8153, and part 873. The contracting officer may include the clause in bilateral purchase orders for nonpersonal health-care services awarded under the procedures in FAR part 13 and part 813.

(b) The contracting officer shall insert the clause at 852.237–71, Nonsmoking Policy for Children's Services, in solicitations, contracts, and orders that involve health or daycare services that are provided to children under the age of 18 on a routine or regular basis pursuant to the Nonsmoking Policy for Children's Services (20 U.S.C. 6081–6084).

(c) The contracting officer shall insert the clause at 852.237–72, Crime Control Act—Reporting of Child Abuse, in solicitations, contracts, and orders that require performance on Federal land or in a federally operated (or contracted) facility and involve the professions/activities performed by persons specified in the Crime Control Act of 1990 (42 U.S.C. 13031) including, but not limited to, teachers, social workers, physicians, nurses, dentists, health care practitioners, optometrists, psychologists, emergency medical technicians, alcohol or drug treatment personnel, child care workers and administrators, emergency medical technicians and ambulance drivers.

(d) The contracting officer shall insert the clause at 852.237–73, Crime Control Act—Requirement for Background Checks, in solicitations, contracts, and orders that involve providing child care services to children under the age of 18, including social services, health and mental health care, child- (day) care, education (whether or not directly involved in teaching), and rehabilitative programs covered under the Crime Control Act of 1990 (42 U.S.C. 13041).

Subpart 837.70—Mortuary Services

■ 25. Section 837.7000 is added to read as follows:

837.7000 Scope.

This subpart applies to mortuary (funeral and burial) services for beneficiaries of VA as provided in 38 U.S.C. 2302, 2303, and 2308 when it is determined that a contract would be the most efficient and effective method. Contract payment terms for use of the purchase card as a method of payment should also be considered.

■ 26. Section 837.7001 is revised to read as follows:

837.7001 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the basic or the alternate of the provision at 852.237–76, Award to Single Offeror, in solicitations and contracts for mortuary services as follows:

(1) Insert the provision in all sealed bid solicitations for mortuary services; and

(2) Insert the basic provision with its alternate I in all negotiated solicitations for mortuary services.

(b) The contracting officer shall insert in addition to FAR 52.216–21 Requirements, ALT VI, the following VA clauses in all mortuary service solicitations and contracts:

(1) 852.237–77, Area of Performance.

(2) 852.237–78, Performance and Delivery.

(3) 852.237–79, Subcontracting.

(4) 852.237–80, Health Department and Transport Permits.

(c) See also 816.506–70 and 849.504–70 for additional clauses for use in contracts for mortuary services.

837.7002 [Removed]

■ 27. Section 837.7002 is removed.

837.7003 [Removed]

■ 28. Section 837.7003 is removed.

837.7004 [Removed]

■ 29. Section 837.7004 is removed.

837.7005 [Removed]

■ 30. Section 837.7005 is removed.

PART 849—TERMINATION OF CONTRACTS

■ 31. The authority citation for part 849 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

■ 32. Subpart 849.5 is added to read as follows:

Subpart 849.5—Contract Termination Clauses

849.504 Termination of fixed-price contracts for default.

849.504–70 Termination of mortuary services.

Use the clause at 852.249–70, Termination for Default—Supplement for Mortuary Services, in all solicitations and contracts for mortuary services. This clause is to be used with FAR clause 52.249–8, Default (Fixed-Price Supply and Service).

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 33. The authority citation for part 852 is revised to read as follows:

Authority: Public Law 101–647; 20 U.S.C. 7181–7183; 38 U.S.C. 8127–8128, and 8151–8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1303; 41 U.S.C 1702; and 48 CFR 1.301–1.304.

Subpart 852.2—Texts of Provisions and Clauses

■ 34. Section 852.215–70 is revised to read as follows:

852.215–70 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.

As prescribed in 815.304–71(a), insert the following provision:

Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors (Date)

(a) In an effort to achieve socioeconomic small business goals, VA shall evaluate offerors based on their service-disabled veteran-owned or veteran-owned small business status and their proposed use of eligible service-disabled veteran-owned small businesses and veteran-owned small businesses as subcontractors.

(b) Eligible service-disabled veteran-owned offerors will receive full credit, and offerors qualifying as veteran-owned small businesses will receive partial credit for the Service-Disabled Veteran-Owned and Veteran-owned Small Business Status evaluation factor. To receive credit, an offeror must be registered and verified in Vendor Information Pages (VIP) database.

(c) Non-veteran offerors proposing to use service-disabled veteran-owned small businesses or veteran-owned small businesses as subcontractors will receive some consideration under this evaluation factor. Offerors must state in their proposals the names of the SDVOSBs and VOSBs with whom they intend to subcontract and provide a brief description of the proposed subcontracts and the approximate dollar values of the proposed subcontracts. In addition, the proposed subcontractors must be registered and verified in the VIP database.

(d) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(End of provision)

■ 35. Section 85.215–71 is revised to read as follows:

852.215–71 Evaluation Factor Commitments.

As prescribed in 815.304–71(b), insert the following clause:

Evaluation Factor Commitments (Date)

(a) The offeror agrees, if awarded a contract, to use the service-disabled veteran-owned small businesses or veteran-owned small businesses proposed as subcontractors in accordance with 852.215–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors, or to substitute one or more service-disabled veteran-owned small businesses or veteran-owned small businesses for subcontract work of the same or similar value.

(b) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(End of clause)

■ 36. Section 852.215–72 is added to read as follows:

852.215–72 Notice of Intent to Re-Solicit.

As prescribed at 815.370–5, use the following provision:

Notice of Intent To Re-Solicit (Date)

This solicitation provides offerors fewer than 30 days to submit proposals. In the event that only one offer is received in response to this solicitation, the Contracting Officer may cancel the solicitation and re-solicit for an additional period of at least 30 days in accordance with 815.370–2.

(End of provision)

■ 37. Section 852.216–71 is amended by revising the section heading and clause heading to read as follows:

852.216–71 Economic Price Adjustment of Contract Price(s) Based on a Price Index.

* * * * *

Economic Price Adjustment of Contract Price(s) Based on a Price Index (Mar 2018)

* * * * *

■ 38. Section 852.216–72 is amended by revising the section heading and clause heading to read as follows:

852.216–72 Proportional Economic Price Adjustment of Contract Price(s) Based on a Price Index.

* * * * *

Proportional Economic Price Adjustment of Contract Price(s) Based on a Price Index (Mar 2018)

* * * * *

■ 39. Section 852.216–73 is amended by revising the section heading and clause heading to read as follows:

852.216–73 Economic Price Adjustment—State Nursing Home Care for Veterans.

* * * * *

Economic Price Adjustment—State Nursing Home Care for Veterans (Mar 2018)

* * * * *

■ 40. Section 852.216–74 is amended by revising the section heading and clause heading to read as follows:

852.216–74 Economic Price Adjustment—Medicaid Labor Rates.

* * * * *

Economic Price Adjustment—Medicaid Labor Rates (Mar 2018)

* * * * *

■ 41. Section 852.216–75 is amended by revising the section heading and clause heading to read as follows:

852.216–75 Economic Price Adjustment—Fuel Surcharge.

* * * * *

Economic Price Adjustment—Fuel Surcharge (Mar 2018)

* * * * *

■ 42. Section 852.216–76 is added to read as follows:

852.216–76 Requirements—Supplement for Mortuary Services.

As prescribed in 816.506–70, insert the following clause:

Requirements—Supplement for Mortuary Services (Date)

(a) Except as provided in paragraphs (c) and (d) of this clause, the Government will order from the Contractor all of its requirements in the area of performance for the supplies and services listed in the schedule of this contract.

(b) Each order will be issued as a delivery order and will list—

(1) The supplies or services being ordered;

(2) The quantities to be furnished;

(3) Delivery or performance dates;

(4) Place of delivery or performance;

(5) Packing and shipping instructions;

(6) The address to send invoices; and

(7) The funds from which payment will be made.

(c) The Government may elect not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other reason.

(d) In an epidemic or other emergency, the contracting activity may obtain services beyond the capacity of the Contractor's facilities from other sources.

(e) Contracting Officers of the following activities may order services and supplies under this contract—

_____

_____

(End of clause)

■ 43. Section 852.228–71 is amended by revising the section heading and clause heading to read as follows:

852.228–71 Indemnification and Insurance.

* * * * *

Indemnification and Insurance (Mar 2018)

* * * * *

■ 44. Section 852.228–73 is amended by revising the section heading and clause heading to read as follows:

852.228–73 Indemnification of Contractor—Hazardous Research Projects.

* * * * *

Indemnification of Contractor—Hazardous Research Projects (Mar 2018)

* * * * *

852.237–70 [Removed]

■ 45. Section 852.237–70 is removed.

852.237–7 [Redesignated as 852.237–70 and Amended]

■ 46. Section 852.237–7 is redesignated as section 852.237–70 and the newly redesignated section is revised to read as follows:

852.237–70 Indemnification and Medical Liability Insurance.

As prescribed in 837.403–70(a), insert the following clause:

Indemnification and Medical Liability Insurance (Date)

(a) It is expressly agreed and understood that this is a non-personal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional services rendered by the Contractor or its health-care providers are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided but retains no control over professional aspects of the services rendered including, by example, the Contractor's or its health-care providers' professional medical judgment, diagnosis, or specific medical treatments. The Contractor and its health-care providers shall be liable for their liability-producing acts or omissions. The Contractor shall maintain or require all health-care providers performing under this contract to maintain, during the term of this contract, professional liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: [*Contracting Officer's Note: Insert the dollar amount value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests.*] However, if the Contractor is an entity or a subdivision of a State that either provides for self-insurance or limits the liability or the amount of insurance purchased by State entities, then the insurance requirement of this contract shall be fulfilled by incorporating the provisions of the applicable State law.

(b) An apparently successful offeror, upon request of the Contracting Officer, shall, prior to contract award, furnish evidence of the insurability of the offeror and/or of all health-care providers who will perform under this contract. The submission shall provide evidence of insurability concerning the medical liability insurance required by paragraph (a) of this clause or the provisions of State law as to self-insurance, or limitations on liability or insurance.

(c) The Contractor shall, prior to commencement of services under the contract, provide to the Contracting Officer Certificates of Insurance or insurance policies evidencing the required insurance coverage and an endorsement stating that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. Certificates or policies shall be provided for the Contractor and/or each health-care provider who will perform under this contract.

(d) The Contractor shall notify the Contracting Officer within 5 days of becoming aware of a change in insurance providers during the performance period of this contract for all health-care providers performing under this contract. The notification shall provide evidence that the Contractor and/or health-care providers will meet all the requirements of this clause, including those concerning liability insurance and endorsements. These requirements may be met either under the new policy, or a combination of old and new policies, if applicable.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for health-care services under this contract. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraph (a) of this clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.

(End of clause)

■ 47. Section 852.237–71 is added to read as follows:

852.237–71 Nonsmoking Policy for Children's Services.

As prescribed in 837.403–70(b), insert the following clause:

Nonsmoking Policy for Children's Services (Date)

(a) Smoking in facilities where certain federally funded children's services are provided shall be prohibited. The Pro-Children Act of 2001 (20 U.S.C. 7181–7183) prohibits smoking within any indoor facility (or portion thereof), whether owned, leased, or contracted for, that is used for the routine or regular provision of health or day care services that are provided to children under the age of 18. The statutory prohibition also applies to indoor facilities that are constructed, operated, or maintained with Federal funds.

(b) By acceptance of this contract or order, the Contractor agrees to comply with the requirements of the Act. The Act also applies to all subcontracts awarded under this contract for the specified children's services. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act. Failure to comply with the Act may result in the imposition of a civil monetary penalty in an amount not to exceed $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. Each day a violation continues constitutes a separate violation.

(End of clause)

■ 48. Section 852.237–72 is added to read as follows:

852.237–72 Crime Control Act—Reporting of Child Abuse.

As prescribed in 837.403–70(c), insert the following clause:

Crime Control Act—Reporting of Child Abuse (Date)

(a) Public Law 101–647, also known as the Crime Control Act of 1990 (Act), imposes responsibilities on certain individuals who, while engaged in a professional capacity or activity, as defined in the Act, on Federal land or in a federally-operated (or contracted) facility, learn of facts that give the individual reason to suspect that a child has suffered an incident of child abuse.

(b) The Contractor shall comply with the requirements of the Act. The Act also applies to all applicable subcontracts awarded under this contract. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act.

(End of clause)

■ 49. Section 852.237–73 is added to read as follows:

852.237–73 Crime Control Act—Requirement for Background Checks.

As prescribed in 837.403–70(d), insert the following clause:

Crime Control Act of 1990—Requirement for Background Checks (Date)

(a) Public Law 101–647, also known as the Crime Control Act of 1990 (Act), requires that all individuals involved with the provision of child care services, as defined in the Act, to children under the age of 18 undergo a criminal background check.

(b) The Contracting Officer will provide the necessary information to the Contractor regarding the process for obtaining the background check. The Contractor may hire a staff person provisionally prior to the completion of a background check, if at all times prior to the receipt of the background check during which children are in the care of the newly-hired person, the person is within the sight and under the supervision of a previously investigated staff person.

(c) The Contractor shall comply with the requirements of the Act. The Act also applies to all applicable subcontracts awarded under the contract. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act.

(End of clause)

■ 50. Section 852.237–74 is added to read as follows:

852.237–74 Non-Discrimination in Service Delivery.

As prescribed in 837.110–70(a), the Contracting Officer shall insert the following clause in solicitations and contracts:

Non-Discrimination in Service Delivery (Date)

It is the policy of the Department of Veterans Affairs that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of VA programs and services based on non-merit factors such as race, color, national origin, religion, sex, gender identity, sexual orientation, or disability (physical or mental). By acceptance of this contract, the contractor agrees to comply with this policy in supporting the program and in performing the services called for under this contract. The contractor shall include this clause in all sub-contracts awarded under this contract for supporting or performing the specified program and services. Accordingly, the contractor shall ensure that each of its employees, and any sub-contractor staff, is made aware of, understands, and complies with this policy.

(End of clause)

■ 51. Section 852.237–75 is added to read as follows:

852.237–75 Key Personnel.

As prescribed in 837.110–70(b), insert the following clause:

Key Personnel (Date)

The key personnel specified in this contract are considered to be essential to work performance. At least 30 days prior to the contractor voluntarily diverting any of the specified individuals to other programs or contracts the Contractor shall notify the Contracting Officer and shall submit a justification for the diversion or replacement and a request to replace the individual. The request must identify the proposed replacement and provide an explanation of how the replacement's skills, experience, and credentials meet or exceed the requirements of the contract. If the employee of the contractor is terminated for cause or separates from the contractor voluntarily with less than thirty days notice, the Contractor shall provide the maximum notice practicable under the circumstances. The Contractor shall not divert, replace, or announce any such change to key personnel without the written consent of the Contracting Officer. The contract will be modified to add or delete key personnel as necessary to reflect the agreement of the parties.

(End of clause)

■ 52. Section 852.237–76 is added to read as follows:

852.237–76 Award to Single Offeror.

As prescribed in 837.7001(a)(1), insert the following provision:

Award to Single Offeror (Date)

(a) Award shall be made to a single offeror.

(b) Offerors shall include unit prices for each item. Failure to include unit prices for each item will be cause for rejection of the entire offer.

(c) The Government will evaluate offers on the basis of the estimated quantities shown.

(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is the lowest price to the Government.

(End of provision)

Alternate I (DATE). As prescribed in 837.7001(a)(2), insert the following paragraph (d) in lieu of paragraph (d) of the basic provision:

(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is in the best interest of the Government.

■ 53. Section 852.237–77 is added to read as follows:

852.237–77 Area of Performance.

As prescribed in 837.7001(b)(1), insert the following clause:

Area of Performance (Date)

(a) The area of performance is as specified in the contract.

(b) The Contractor shall take possession of the remains at the place where they are located, transport them to the Contractor's place of preparation, and later transport them to a place designated by the Contracting Officer.

(c) The Contractor will not be reimbursed for transportation when both the place where the remains were located and the delivery point are within the area of performance.

(d) If remains are located outside the area of performance, the Contracting Officer may place an order with the Contractor under this contract or may obtain the services elsewhere. If the Contracting Officer requires the Contractor to transport the remains into the area of performance, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the point where located to the boundary of the area of performance.

(e) The Contracting Officer may require the Contractor to deliver remains to any point within 100 miles of the area of performance. In this case, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the boundary of the area of performance to the delivery point.

(End of clause)

■ 54. Section 852.237–78 is added to read as follows:

852.237–78 Performance and Delivery.

As prescribed in 837.7001(b)(2), insert the following clause:

Performance and Delivery (Date)

(a) The Contractor shall furnish the material ordered and perform the services specified as promptly as possible, but not later than 36 hours after receiving notification to remove the remains, excluding the time necessary for the Government to inspect and check results of preparation.

(b) The Government may, at no additional charge, require the Contractor to hold the remains for an additional period not to exceed 72 hours from the time the remains are casketed and final inspection is completed.

(End of clause)

■ 55. Section 852.237–79 is added to read as follows:

852.237–79 Subcontracting.

As prescribed in 837.7001(b)(3), insert the following clause:

Subcontracting (Date)

The Contractor shall not subcontract any work under this contract without the Contracting Officer's written approval. This clause does not apply to contracts of employment between the Contractor and its personnel.

(End of clause)

■ 56. Section 852.237–80 is added to read as follows:

852.237–80 Health Department and Transport Permits.

As prescribed in 837.7001(b)(4), insert the following clause:

Health Department and Transport Permits (Date)

The Contractor shall meet all State and local licensing requirements and obtain and furnish all necessary health department and shipping permits at no additional cost to the Government. The Contractor shall ensure that all necessary health department permits are in order for disposition of the remains.

(End of clause)

■ 57. Section 852.249–70 is added to read as follows:

852.249–70 Termination for Default—Supplement for Mortuary Services.

As prescribed in 849.504–70, insert the following clause:

Termination for Default—Supplement for Mortuary Services (Date)

The clause entitled ''Default'' in FAR 52.249–8, is supplemented as follows:

The Contracting Officer may terminate this contract for default by written notice without the ten-day notice required by paragraph (a)(2) of the Default clause if—

(a) The Contractor, through circumstances reasonably within its control or that of its employees, performs any act under or in connection with this contract, or fails in the performance of any service under this contract and the act or failures may reasonably be considered to reflect discredit upon the Department of Veteran Affairs in fulfilling its responsibility for proper care of remains;

(b) The Contractor, or its employees, solicits relatives or friends of the deceased to purchase supplies or services not under this contract. (The Contractor may furnish supplies or arrange for services not under this contract, only if representatives of the deceased voluntarily request, select, and pay for them.);

(c) The services or any part of the services are performed by anyone other than the Contractor or the Contractor's employees without the written authorization of the Contracting Officer;

(d) The Contractor refuses to perform the services required for any particular remains; or

(e) The Contractor mentions or otherwise uses this contract in its advertising in any way.

(End of clause)

852.271–70 [Removed and Reserved]

■ 58. Section 852.271–70 is removed and reserved.

PART 871—LOAN GUARANTY AND VOCATIONAL REHABILITATION AND EMPLOYMENT PROGRAMS

■ 59. The authority citation for part 871 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

Subpart 871.2—Vocational Rehabilitation and Employment Service

■ 60. Section 871.212 is revised to read as follows:

871.212 Contract clauses.

(a) Contracting officers shall use the following clauses, as appropriate, in solicitations and contracts for vocational rehabilitation and employment services as they pertain to training and rehabilitation services and contracts for counseling services:

(1) 852.271–72 Time Spent by Counselee in Counseling Process.

(2) 852.271–73 Use and Publication of Counseling Results.

(3) 852.271–74 Inspection.

(4) 852.271–75 Extension of Contract Period.

(b) See 837.110–70(a) for clause 852.237–74 Non-discrimination in Service Delivery.

[FR Doc. 2018–18310 Filed 9–6–18; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 801, 825, 836, 842, 846, 852 and 853

RIN 2900–AQ18

VA Acquisition Regulation: Construction and Architect-Engineer Contracts

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend and update its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, will publish them in the **Federal Register**. VA will combine related topics, as appropriate. In particular, this rulemaking revises VAAR concerning Construction and Architect-Engineer Contracts, as well as affected parts covering the Department of Veterans Affairs Acquisition Regulations System, Foreign Acquisition, Contract Administration and Audit Services, Quality Assurance, Solicitation Provisions and Contract Clauses, and Forms.

DATES: Comments must be received on or before November 6, 2018 to be considered in the formulation of the final rule.

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 Avenue NW, Room 1063B, Washington, DC 20420; or by fax to (202) 273–9026 (this is not a toll-free number). Comments should indicate that they are

submitted in response to ''RIN 2900–AQ18—VA Acquisition Regulation: Construction and Architect-Engineer Contracts.'' 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, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Ricky Clark, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street NW, Washington, DC 20001, (202) 632–5276. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is issued under the authority of the Office of Federal Procurement Policy (OFPP) Act which provides the authority for an agency head to issue agency acquisition regulations that implement or supplement the FAR.

VA is proposing to revise the VAAR to add new policy or regulatory requirements and to remove any redundant guidance and guidance that is applicable only to VA's internal operating processes or procedures. Codified acquisition regulations may be amended and revised only through rulemaking. All amendments, revisions, and removals have been reviewed and concurred with by VA's Integrated Product Team of agency stakeholders.

The VAAR uses the regulatory structure and arrangement of the FAR and headings and subject areas are consistent with the FAR content. The VAAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, and sections.

The Office of Federal Procurement Policy Act, as codified in 41 U.S.C. 1707, provides the authority for the Federal Acquisition Regulation and for the issuance of agency acquisition regulations consistent with the FAR.

When Federal agencies acquire supplies and services using appropriated funds, the purchase is governed by the FAR, set forth at title 48 Code of Federal Regulations (CFR), chapter 1, parts 1 through 53, and the agency regulations that implement and supplement the FAR. The VAAR is set forth at title 48 CFR, chapter 8, parts 801 to 873.

Discussion and Analysis

VA proposes to make the following changes to the VAAR in this phase of its revision and streamlining initiative. For procedural guidance cited below that is proposed to be deleted from the VAAR, each section cited for removal has been considered for inclusion in VA's internal agency operating procedures in accordance with FAR 1.301(a)(2). Similarly, delegations of authorities that are removed from the VAAR will be included in the VAAM as internal agency guidance. The VAAM is being created in parallel with these revisions to the VAAR and is not subject to the rulemaking process as they are internal VA procedures and guidance. Therefore, the VAAM will not be finalized until corresponding VAAR parts are finalized, and the VAAM is not yet available on line.

VAAR Part 801—Department of Veterans Affairs Acquisition Regulation System

This proposed rule contains existing information collection requirements. The proposed rule results in multiple actions affecting these information collections, including outright removal of the information collection.

In 801.106, OMB approval under the Paperwork Reduction Act, we propose to amend 801.106 table columns titled ''48 CFR part or section where identified and described,'' and ''Current OMB control number.'' We propose to remove the reference to 852.236–84, Schedule of Work Progress, and discontinue the associated corresponding OMB Control Number 2900–0422 as the information is adequately covered in agency specifications and its use in a clause is not required or appropriate. For access to agency specifications where such information is adequately covered, see the VA Technical Information Library (TIL), VA's source for Electronic Design and Construction Information, at *https://www.cfm.va.gov/TIL/,* including Master Specification Division 01, General Requirements: 01 32 16.01, Architectural and Engineering CPM Schedules; 01 32 16.13, Network Analysis Schedules; 01 16.15, Project Schedules (Small Projects—Design/Bid/Build); 01 32 16.16, Network Analysis Schedules (Design-Build Only); and, 01 32 16.17, Project Schedules (Small Projects—Design/Build).

In 801.106, in reference to table described, we propose to remove the reference to 852.236–89, Buy American Act, and discontinue the associated corresponding OMB Control Number 2900–0622 as the clause is being removed as set forth in the preamble when describing actions under VAAR part 852 as it duplicates FAR clauses and is unnecessary.

In 801.106, in reference to the table described, we propose to remove the reference to 852.236–91, Special Notes, and discontinue the associated corresponding OMB Control Number 2900–0623. Paragraph (a) of the clause is already covered via required System for Award Management (SAM) representations and certifications. Paragraphs (b), (c) and (d) are addressed in Section 01 00 00, General Requirements, contained in all construction contract specifications (reference the VA Office of Construction and Facilities Management, Technical Information Library (TIL), VA Numbered Standards for Construction, PG–18–1, Master Construction Specifications, Division 01—General Requirements). Paragraph (e), which references claims by the contractor for delay attributed to unusually severe weather under FAR 52.249–14, Excusable Delays, is governed by the Network Analysis System specifications—Section 01 32 16.13, Network Analysis Schedules—Major Projects; 01 32 16.15, Project Schedules (Small Projects Design-Bid-Build); 01 32 16.16, (Network Analysis System (Design-Build Only); or 01 32 16.17, Project Schedule (Small Projects Design-Build), as applicable, which provide details of the requirements the contractor must follow to justify time extensions. VA internal procedures related to how contracting officers and Government Resident Engineers or technical reviewers should analyze contractor data and which records to review to support such claims for time extensions due to unusually severe weather, not having a significant effect beyond the internal operating procedures of the VA, would be moved to the VAAM.

VAAR Part 825—Foreign Acquisition

We propose to revise the authority citations under part 825 to include a reference to 41 U.S.C. 1702 which addresses the acquisition planning and management responsibilities of Chief Acquisition Officers and Senior Procurement Executives, to include implementation of unique procurement policies, regulations and standards of the executive agency.

We propose to remove subpart 825.2, Buy American Act—Construction Materials, and the associated prescribed clauses under subpart 825.11, Solicitation Provisions and Contract Clauses, as it is duplicative of the FAR. Clause 852.236–89, Buy American Act, along with its Alternate I and II, is

proposed for removal as set forth in VAAR part 852 of the preamble. The clause and its alternates are referenced in a table in 825.1102, Acquisition of construction. As the clause is proposed for removal, this table which prescribes the use of the clause is also proposed for removal. In accordance with FAR drafting standards and the requirement in FAR 1.304(b)(1) that agency acquisition regulations shall not unnecessarily repeat, paraphrase, or otherwise restate material contained in the FAR, these subparts are therefore proposed for removal.

VAAR Part 836—Construction and Architect-Engineer Contracts

We propose to revise the authority citations under part 836 to include a reference to 41 U.S.C. 1121(c)(3) and 1303(a)(2), which is from Title 41, Public Contracts, and speaks to the authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement that are subject to the authority conferred in the cited section, as well as other sections of Title 41 as shown therein. 41 U.S.C. 1303(a)(2) is added to reflect VA's authority as an executive agency to issue regulations that are essential to implement Governmentwide policies and procedures in the agency, as well as to issue additional policies and procedures required to satisfy the specific needs of the VA.

We propose to revise the authority citations under part 836 to include a reference to 41 U.S.C. 1702 which addresses the acquisition planning and management responsibilities of Chief Acquisition Officers and Senior Procurement Executives, to include implementation of unique procurement policies, regulations and standards of the executive agency.

In 836.202, Specifications, we propose to remove paragraphs (a) and (b) as internal procedural guidance, and to redesignate and renumber it to 836.202–70 to indicate that it is a VA supplement to FAR 36.202. The title would be revised from ''Specifications'' to ''Specifications—use of equal products'' to reflect the topic that fits intelligibly under this section of the FAR. The existing paragraph (c) would be revised to reflect that use of clause 852.236–90, Restriction on Submission and Use of Equal Products, in solicitations and contracts requires approval of the justification documentation required by FAR 11.105, Items peculiar to one manufacturer. The paragraph reference to (c) under this section would be removed as the VAAR is being supplemented and only one paragraph will be reflected which would be unnumbered and unlettered. The existing VAAR language which is proposed for revision with this rule is necessary as the FAR speaks to ''brand name or equal'' and the purpose of the VA's clause is to be clear that when the VA enters products for items peculiar to one manufacturer (brand name), ''or equal'' products are not permissible substitutes.

In 836.203, Government estimate of construction costs, we propose to renumber and retitle the section to 836.203–70, Protection of the independent government estimate—sealed bid, and would revise it to more specifically clarify VA procedures to protect the independent government estimate in sealed bid acquisitions when bid openings are held. This would also provide policy regarding marking the Independent Government Estimate (IGE) as ''For Official Use Only (FOUO)'' as well as procedures for filing the document and later removing the protective marking after a public bid opening.

In 836.204, Disclosure of the magnitude of construction projects, we propose to revise the estimated price ranges to provide a better measure for contractors to gauge estimated construction costs for projects of the National Cemetery Administration and the Office of Construction and Facilities Management.

In 836.206, Liquidated damages, we propose to remove the entire section since the subject matter is adequately covered in the FAR.

In 836.209, Construction contracts with architect-engineer firms, we propose to remove the entire section as internal procedures of VA not having a significant effect beyond the internal operating procedures of the VA (see FAR 1.301(b)), and which would be moved to the VAAM.

In 836.213, Special procedures for sealed bidding in construction contracting, we propose to remove the section title as the underlying subsections are proposed for removal.

We propose to remove 836.213–4, Notice of award, as internal procedures of VA not having a significant effect beyond the internal operating procedures of the VA (see FAR 1.301(b)), and which would be moved to the VAAM.

We propose to remove 836.213–70, Notice to proceed, as procedural information internal to VA which would be moved to the VAAM.

We propose to revise 836.500, Scope of subpart, to remove paragraphs (b) and (c) which duplicate the authority to use other clauses and provisions as already provided for in FAR 36.500. We propose to redesignate paragraph (a) as an unnumbered paragraph in keeping with FAR Drafting Guidelines and formatting style.

We propose to revise 836.501, Performance of work by the contractor, to make minor edits and to add a reference to VAAR subpart 819.70, which implements the Veterans First Contracting Program.

In 836.513, Accident prevention, we propose to remove the entire section since the prescribed clause is duplicative of coverage in FAR clause 52.236–1, Accident Prevention.

We propose to revise 836.521, Specifications and drawings for construction, only to make minor edits for capitalization.

We propose to remove 836.570, Correspondence, as the clause it prescribes 852.236–76, Correspondence, is proposed for removal. The subject matter will be addressed more appropriately in a ''Notice to Proceed'' letter to the contractor from the contracting officer. Therefore, the clause and its prescription are unnecessary.

We propose to remove 836.571, Reference to ''standards,'' since the clause it prescribes 852.236–77, Reference to ''Standards'', is proposed for removal. The subject matter is addressed in the VA Master Specifications (located at: *https://www.cfm.va.gov/til/*), and the clause and therefore its prescription is unnecessary.

In 836.572, Government supervision, we propose to remove the entire section and redesignate the numbering and placement to the more appropriate VAAR part 842, Contract Administration and Audit Services, by adding a new section 842.204, Contract clause for Government construction contract administration. The clause would be therefore renumbered and revised accordingly.

In 836.573, Daily report of workers and materials, we propose to amend the title of the section and report to ''Contractor production report,'' and would prescribe a revised clause 852.236–79, Contractor Production Report.

We propose to revise 836.574, Subcontracts and work coordination, only to make minor edits for capitalization.

We propose to remove 836.575, Schedule of work progress, since the subject matter of the prescribed clause 852.236–84, Schedule of Work Progress, is addressed in the VA Master Specifications, Division 01, General Requirements: 01 32 16.01, Architectural and Engineering CPM

Schedules; 01 32 16.13, Network Analysis Schedules; 01 16.15, Project Schedules (Small Projects—Design/Bid/Build); 01 32 16.16, Network Analysis Schedules (Design-Build Only); and, 01 32 16.17, Project Schedules (Small Projects—Design/Build). The clause is proposed for removal and therefore its prescription would be unnecessary.

We propose to remove 836.576, Supplementary labor standards provisions, since the subject matter of the prescribed clause 852.236–85, Supplementary Labor Standards Provisions, is addressed in FAR clauses 52.222–6, Construction Wage Rate Requirements (formerly known as Davis-Bacon Act) and 52.222–8, Payrolls and Basic Records. The clause is proposed for removal and therefore its prescription would be unnecessary.

We propose to remove 836.577, Workers' compensation, which prescribes clause 852.236–86, Workers' Compensation. The clause is unnecessary since it merely cites a Public Law regarding applicability of States' workers' compensation laws. The VAAR is not required to cite individual States' workers' compensation laws to make them applicable to companies performing work in individual states. The clause is proposed for removal and therefore its prescription would be unnecessary.

We propose to remove 836.579, Special Notes, which prescribes the clause at 852.236–91, Special Notes. As stated under VAAR part 801 in the preamble of this proposed rule, the clause's paragraph (a) is already covered via required System for Award Management (SAM) representations and certifications. Paragraphs (b), (c) and (d) are addressed in Section 01 00 00, General Requirements, contained in all construction contract specifications (reference the VA Office of Construction and Facilities Management, Technical Information Library (TIL), VA Numbered Standards for Construction, PG–18–1, Master Construction Specifications, Division 01—General Requirements). And, paragraph (e), which references claims by the contractor for delay attributed to unusually severe weather under FAR 52.249–14, Excusable Delays, is governed by the Network Analysis System specifications—Section 01 32 16.13, Network Analysis System; 01 32 16.13, Project Schedules (Small Projects Design-Bid-Build); 01 32 16.16, (Network Analysis System (Design-Build Only); or 01 32 16.17, Project Schedule (Small Projects Design-Build), as applicable, which provide details of the requirements the contractor must follow to justify time extensions. VA internal procedures related to how contracting officers and Government Resident Engineers or technical reviewers should analyze contractor data and which records to review to support such claims for time extensions due to unusually severe weather, not having a significant effect beyond the internal operating procedures of the VA, would be moved to the VAAM. The clause is proposed for removal and therefore its prescription as contained in this section would be unnecessary.

We propose to add 836.580, Notice to bidders—additive or deductive bid line items, and a prescription requiring the contracting officer to insert the provision 852.236–92, Notice to Bidders—Additive or Deductive Bid Line Items, in invitations for bids when the contracting officer determines that funds may not be available for all the desired construction features at contract award.

We propose to remove 836.602, Selection of firms for architect-engineer contracts. Previously there was no text under this heading/title. As all sections under this are now proposed for removal, no heading/title would be required.

We propose to remove 836.602–1, Selection criteria, as internal procedural information which will be revised and moved to the VA Acquisition Manual.

We propose to remove 836.602–2, Evaluation boards; 836.602–4, Selection authority; and 836.602–5, Short selection process for contracts not to exceed the simplified acquisition threshold, as internal procedural information which will be revised and moved to the VA Acquisition Manual.

We propose to revise 836.603, Collecting data on and appraising firms' qualifications. The title would be revised to correct a typo and the text would be revised to include a Veterans Benefits Administration point of contact for filing and maintaining Standard Form (SF) 330 Files as required by the FAR.

In 836.606, Negotiations, we propose to revise the section in its entirety to remove internal agency procedural guidance in section 836.606–70, General, as unnecessary, and to remove the title, ''General,'' by redesignating section 836.606–71, Architect-Engineer's proposal, to 836.606–70, and retitling it to read ''Architect-Engineer firms' proposal.'' We propose to revise the text which requires use of the VA Form 6298, Architect-Engineer Fee Proposal, which has been updated with the new form number and updating FAR citation references and thresholds. This form is used for the submission of a contractor's proposal and supporting cost data from the selected firm during negotiation of an A–E contract for design services estimated at $50,000 or more. And, we propose to change the word ''must'' to ''shall'' when requiring the use of the form as prescribed in this section.

In 836.606–72, Contract price, we propose to remove the section in its entirety and move it to the companion VA Acquisition Manual as internal operating procedures of the VA.

We propose to redesignate and revise 836.606–73, Application of 6 percent architect-engineer fee limitation, to section 836.606–71, and retain the same title, ''Application of 6 percent architect-engineer fee limitation,'' to place all text now under section 836.606 in sequential subsections. 836.606–71, Application of 6 percent architect-engineer fee limitation, would provide policy explaining when the limitation applies, what costs the 6 percent fee limitation does and does not cover, and delete use of VA Form 10–1193, Application for Health Care Facility Program, and VA Form 10–6238, EMIS Construction Program Estimate Worksheet. The forms proposed for deletion are not required for use in this instance.

We propose to add subpart 836.70—Unique Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements, and the sections falling under that subpart—836.7000, Scope of subpart; and 836.7001, Unique construction and architect-engineer services forms. This would prescribe forms contracting officers may use for construction, architect-engineer services or dismantling, demolition or removal of improvements.

In 836.7000, Scope of subpart, it sets forth the requirements for use of VA unique forms.

In the new proposed 836.7001, Unique construction and architect-engineer services forms, we propose to add the following forms as prescribed elsewhere in the VAAR or as reflected in the individual prescriptions—

In paragraph (a) we propose to add information referencing VA Form 6298, Architect-Engineer Fee Proposal (see 853.236–70), and pointing information to the prescription. VA Form 6298, Architect-Engineer Fee Proposal, shall be used as prescribed in 836.606–71.

In paragraph (b) we propose to add the prescription for VA Form 2138, Order for Supplies or Services (Including Task Orders for Construction or A–E Services) (see 853.236–71). VA Form 2138, Order for Supplies or Services (Including Task Orders for

Construction or A–E Services), may be used for ordering supplies or services, including task orders for Construction or A–E services, to include dismantling, demolition, or removal of improvements.

In paragraph (c) we propose to add information referencing VA Form 10101, Contractor Production Report (see 853.236–72), and pointing information to the prescription. Contractors may use VA Form 10101, Contractor Production Report, or a contractor generated form containing the same type of information contained in the form, as required by 836.573 which prescribes the clause at 852.236–79, Contractor Production Report.

VAAR Part 842—Contract Administration and Audit Services

We propose to revise the authority citations under part 842 to include a reference to 41 U.S.C. 1702 which addresses the acquisition planning and management responsibilities of Chief Acquisition Officers and Senior Procurement Executives, to include implementation of unique procurement policies, regulations and standards of the executive agency.

We propose to add coverage under VAAR subpart 842.2, Contract Administration Services, and 842.271, Contract clause for Government construction contract administration, to prescribe clause 852.242–70, Government Construction Contract Administration, that would describe contract administration functions to be delegated under construction contracts that exceed the micro-purchase threshold for construction. It would describe the role of the designated contracting officer performing contract administration, as well as certain functions that are delegated to VA resident engineers, if assigned. It also contains some language found under the previous clause, 852.236–78, Government Supervision. The information more properly falls under FAR part 42 and the VAAR supplement, so the new clause number more properly follows FAR drafting conventions, to include placing the prescription in the same part where the clause itself is located.

VAAR Part 846—Quality Assurance

We propose to revise the part 846 authorities to replace the 38 U.S.C. 501 citation with 41 U.S.C. 1702 which addresses the acquisition planning and management responsibilities of Chief Acquisition Officers and Senior Procurement Executives, to include implementation of unique procurement policies, regulations and standards of the executive agency. We also propose to add 41 U.S.C. 1121(c)(3) which is from Title 41, Public Contracts, Positive Law codification that speaks to the authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement that are subject to the authority conferred in the cited section, as well as other sections of Title 41 as shown therein.

In 846.312, Construction contracts, which prescribes clause 852.236–74, Inspection of construction, we propose to remove the entire section since VA Master Specifications provide the requirements for performing inspections. The clause is proposed for removal and therefore its prescription would be unnecessary.

VAAR Part 852—Solicitation Provisions and Contract Clauses

In 852.236–71, Specifications and Drawings for Construction, we propose to amend the clause to place with the contractor the responsibility for checking all drawings furnished immediately upon receipt, and comparing them and verifying figures before laying out the work. It would also require the prompt notification of the contracting officer of any discrepancies. It would hold the contractor responsible for any errors that might have been avoided by complying with these requirements, for identifying errors or omissions that are necessary to carry out the intent of the drawings and specifications, and for performing such work as if fully and correctly set forth.

In 852.236–72, Performance of Work by the Contractor, we propose to amend the clause and Alternate 1 to make the text gender-neutral, to update terminology and to clarify language.

In 852.236–74, Inspection of Construction, we propose to remove and reserve the clause in its entirety since VA Master Specifications provide the requirements for performing inspections.

In 852.236–76, Correspondence, we propose to remove and reserve the clause since it is administrative guidance covered in the Notice to Proceed letter.

In 852.236–77, Reference to ''Standards,'' we propose to remove and reserve the clause as unnecessary since VA Master Specifications are used in VA contracts.

In 852.236–78, Government Supervision, we propose to remove and reserve the clause and would propose to include a revised version at 852.242–70, Government Construction Contract Administration.

In 852.236–79, Daily Report of Workers and Materials, we propose to amend the title of the clause to ''Contractor Production Report'' and would revise the clause to reflect use of VA Form 10101 which is based on industry reporting standards.

In 852.236–80, Subcontracts and Work Coordination, we propose to make minor capitalization corrections for Contractor and Contracting Officer, and to clarify in paragraph (d) that the Government reserves the right to refuse to permit employment on the work, or require dismissal from the work, of any subcontractor or subcontractor employee, who, by reason of previous unsatisfactory work on Department of Veterans Affairs projects or for any other reason, is considered by the contracting officer to be incompetent, careless, or otherwise objectionable. The words ''or subcontractor employee'' and ''careless'' would be added that were previously missing from the text.

In 852.236–84, Schedule of Work Progress, we propose to remove the clause in its entirety and reserve it since the subject is already covered in the Network Analysis Schedules section of the VA Master Specifications.

In 852.236–85, Supplementary Labor Standards Provisions, we propose to remove the clause in its entirety and reserve it since it is procedural and is addressed in FAR clauses 52.222–6, Construction Wage Rate Requirements, and 52.222–8, Payrolls and Basic Records.

In 852.236–86, Workers' Compensation, we propose to remove the clause in its entirety and reserve it since it merely cites a Public Law regarding applicability of States' workers' compensation laws. The VAAR is not required to cite individual States' workers' compensation laws to make them applicable to companies performing work in individual states.

In 852.236–87, Accident Prevention, we propose to remove the clause in its entirety and reserve it since the subject is already covered in the Accident Prevention Plan section of the VA Master Specifications.

In 852.236–89, Buy American Act, along with its Alternate I and II, we propose to remove and reserve the clause as it is redundant to the FAR and is unnecessary.

In 852.236–90, Restriction on Submission and Use of Equal Products, we propose to revise the clause to clarify the language to reinforce that the submission of ''equal'' products is not permitted; and to reformat the clause to standard FAR drafting convention and specify that notwithstanding any other clause or provision, only brand name

products for the items listed in the fill-in clause will be authorized for use on the contract. The prescription for this clause would require compliance with the documentation and authorizations required by FAR 11.105 when it is determined that only one product will meet the Government's minimum needs.

In 852.236–91, Special Notes, we propose to remove the clause in its entirety and reserve it since the material addressed is covered by the certification under the System for Award Management or under the Shop Drawings, Product Data & Submittals section of the VA Master Specifications.

We propose to add a new clause 852.236–92, Notice to Bidders—Additive or Deductive Bid Line Items, to provide guidance on how such bid items will be evaluated to determine the low bidder.

We propose to add a new clause 852.242–70, Government Construction Contract Administration, to enumerate the responsibilities being delegated.

VAAR Part 853—Forms

We propose to amend the authority if part 853 to add 41 U.S.C. 1121(c)(3) which is from Title 41, Public Contracts, that speaks to the authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement that are subject to the authority conferred in the cited section, as well as other sections of Title 41 as shown therein. We also propose to replace the 38 U.S.C. 501 citation with 41 U.S.C. 1702 which addresses the acquisition planning and management responsibilities of Chief Acquisition Officers and Senior Procurement Executives, to include implementation of unique procurement policies, regulations and standards of the executive agency.

In subpart 853.1—General, in 853.107, Obtaining forms, we propose to revise the text to provide the current website address where VA forms are obtained now: *https://www.va.gov/vaforms/.* The outdated address for an old VA office would be removed, as well as the outdated practice of requesting forms in hard copy directly from the agency policy office. All forms will be available online.

In subpart 853.2—Prescription of Forms, we propose to revise the list of forms applicable to VAAR part 836 that are used between VA and its contractors, potential offerors or bidders, or the general public.

In 853.236, Construction and architect-engineer contracts, in section 853.236–70, VA Form 6298, Architect-Engineer Fee Proposal, we are revising the number of the form and changing the location of the prescription reference from 836.606–71 to 836.7001(a).

In 853.236 we also propose to add the following sections identifying forms applicable to part 836:

853.236–71, VA Form 2138, Order for Supplies or Services (Including Task Orders for Construction or A–E Services) which provides the prescription reference for use of the form for ordering supplies or services, including task orders for Construction or A–E services, to include dismantling, demolition, or removal of improvements.

853.236–72, VA Form 10101, Contractor Production Report, which provides the prescription reference for use of the form or a contractor generated form containing the same type of information contained in the form.

Effect of Rulemaking

Title 48, Federal Acquisition Regulations System, Chapter 8, Department of Veterans Affairs, of the Code of Federal Regulations, as proposed to be revised by this rulemaking, would represent VA's implementation of its legal authority and publication of the VAAR for the cited applicable parts. Other than future amendments to this rule or governing statutes for the cited applicable parts, or as otherwise authorized by approved deviations or waivers in accordance with FAR subpart 1.4, Deviations from the FAR, and as implemented by VAAR subpart 801.4, Deviations from the FAR or VAAR, no contrary guidance or procedures would be authorized. All existing or subsequent VA guidance would be read to conform with the rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking as pertains to the cited applicable VAAR parts.

Executive Orders 12866, 13563 and 13771

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 12866, Regulatory Planning and Review, defines ''significant regulatory action'' to mean 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.''

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and it has been determined this rule is not a significant regulatory action under E.O. 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 proposed rule is expected to be an E.O. 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's economic analysis.

Paperwork Reduction Act

This proposed rule impacts eight existing information collection requirements associated with four Office of Management and Budget (OMB) control number approvals. The proposed actions in this rule result in multiple actions affecting some of these information collections, such as: The proposed outright removal of the information collection; no change in information collection burdens although titles and number of the information collection would be slightly revised; or no change to the existing OMB control number and associated burden.

The Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. See also 5 CFR 1320.8(b)(3)(vi).

This proposed rule contains one provision constituting a collection of information at 48 CFR 836.606–71, Architect-engineer's proposal, concerning use of and prescription for VA Form 10–6298, Architect-Engineer Fee Proposal, which is proposed to be revised with updated thresholds and FAR citations, as well as an updated number to remove the ''10–'' currently part of the form number. Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), no new collection of information is associated with this provision as a part of this proposed rule. The information collection requirement for 836.606–71 is currently approved by OMB and has been assigned OMB control number 2900–0208. The burden of this information collection would remain unchanged. There would be no change in the information collection burden that is associated with this proposed request. However, we are proposing to amend the information collection requirement to renumber the form currently numbered and titled as VA Form 10–6298, Architect-Engineer Fee Proposal, to now read: VA Form 6298, Architect-Engineer Fee Proposal. Additionally, older dollar thresholds and FAR citations in the form would be updated to current levels and correct citations. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), OMB has approved the reporting or recordkeeping provisions that are included in the text and form under 836.606–71 cited above against the assigned OMB control number. For the requested administrative amendments to the form, as required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA has submitted this information collection amendment to OMB for its review. Notice of OMB approval for this information collection will be published in a future **Federal Register** document. Further proposed revision to the associated OMB control number relating to other provisions of this proposed rule are identified separately in this submittal.

This proposed rule also contains two provisions constituting a collection of information at 48 CFR 852.236–72, Performance of Work by the Contractor; and 48 CFR 852.236–88, Contract Changes—Supplement, that would remain unchanged. Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), no new or proposed revised collection of information is associated with these provisions as a part of this proposed rule. The information collection requirements for 852.236–72 and 852.236–88 are currently approved by OMB and have been assigned OMB control number 2900–0422. The burden of these information collections would remain unchanged. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), OMB has approved the reporting or recordkeeping provisions that are included in the clause at 852.236–72 and 852.236–88 cited above and against the assigned OMB control number. Further proposed revision to the associated OMB control number relating to other information collections and provisions of this proposed rule are identified separately in this submittal.

This proposed rule would impose the following amended information collection requirements to one of the four existing information collection approval numbers associated with this proposed rule. Although this action contains the following provision constituting a collection of information at 48 CFR 852.236–79, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), no new proposed collection of information is associated with this provision as a part of this proposed rule. The information collection requirement for 852.236–79 is currently approved by OMB and has been assigned OMB control number 2900–0208. There would be no change in the information collection burden that is associated with this proposed request. However, we are proposing to amend the information collection requirement to revise the title and to renumber the form currently numbered and titled as VA Form 10–6131, Daily Log (Contract Progress Report—Formal Contract) to replace this form, along with replacing the number and title of VA Form 10–6001a, Supplement Contract Progress Report with one new number, title and format—VA Form 10101, Contractor Production Report. As required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA has submitted this information collection amendment to OMB for its review. Notice of OMB approval for this information collection will be published in a future **Federal Register** document. The currently approved burden remains unchanged.

This action also contains a provision constituting a collection of information at 48 CFR 852.236–80, however, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), no new proposed collection of information is associated with this provision as a part of this proposed rule. The information collection requirement for 852.236–80 is currently approved by OMB and has been assigned OMB control number 2900–0422. The currently approved burden associated with this clause would remain unchanged. However, this information collection has been submitted to OMB to amend the information collection requirement to make a minor correction to the title of the clause, as stated in paragraph 1 of the Supporting Statement, to reflect the full name of the clause—''Subcontracts and Work Coordination'' in lieu of an abbreviated title reflected on the Supporting Statement—''Work Coordination.'' The clause was otherwise referenced correctly in the remainder of the supporting statement. As required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA has submitted this information collection amendment to OMB for its review to revise the title in paragraph 1 of the submitted statement. Notice of OMB approval for this information collection will be published in a future **Federal Register** document.

This proposed rule would remove one of the existing information collection requirements associated with this action at 48 CFR 852.236–84, Schedule of Work Progress. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), while the actual OMB control number will remain in existence due to other information collections on the same OMB control number that are approved and active, it discontinues the inclusion of 852.236–84 under the associated corresponding approved OMB control number, 2900–0422. As a result of this proposed rule, there would be a removal in the information collection burden that is associated with it. For 48 CFR 852.236–84, Schedule of Work Progress, as now included on OMB control number 2900–0422, this would result in a removal of 1828.5 estimated annual burden hours and an annual cost savings of $70,800. As required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA has submitted this information collection amendment to OMB for its review. Notice of OMB approval for this information collection will be published in a future **Federal Register** document.

This proposed rule would remove two of the existing information collection requirements associated with this action at 48 CFR 852.236–89, Buy American Act; and 852.236–91, Special Notes. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), it discontinues the associated corresponding approved OMB control numbers, 2900–0622 and 2900–0623, respectively. As a result of this proposed rule, there would be a removal

in the information collection burden that is associated with it. For 48 CFR 852.236–89, Buy American Act, and its corresponding OMB control number 2900–0622, this would result in a removal of 22 estimated annual burden hours and an annual cost savings to respondents of $852. For 48 CFR 852.236–91, Special Notes, and its corresponding OMB control number 2900–0623, this would result in a removal of 778 estimated annual burden hours and an annual cost savings of $30,122. As required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA has submitted these information collection amendments to OMB for its review. Notice of OMB approval for this information collection will be published in a future **Federal Register** document.

Regulatory Flexibility Act

This proposed rule would 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. The overall impact of the proposed rule would be of benefit to small businesses owned by Veterans or service-disabled Veterans as the VAAR is being updated to remove extraneous procedural information that applies only to VA's internal operating processes or procedures. VA estimates no cost impact to individual business would result from these rule updates. This rulemaking clarifies VA's policy regarding the contracting order of priority for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) and Veteran-Owned Small Businesses (VOSBs) as a result of VA's implementation of 38 U.S.C. 8127–8128 as a result of the U.S. Supreme Court's decision in *Kingdomware Technologies, Inc.* vs. *the United States,* July 25, 2018, only as it pertains to the application of the VA Rule of Two to contracts for construction and architect-engineer contracts in accordance with Public Law 109–461 as codified at 38 U.S.C. 8127–8128. It does not have an economic impact to individual businesses, and there are no increased or decreased costs to small business entities. On this basis, this proposed rule would 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. Therefore, under 5 U.S.C. 605(b), this regulatory action is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

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 proposed rule would have no such effect on State, local, and tribal Governments or on the private sector.

List of Subjects

48 CFR Part 801

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 825

Customs duties and inspection, Foreign currencies, Foreign trade, Government procurement.

48 CFR Parts 836 and 852

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 842

Accounting, Government procurement.

48 CFR Parts 846 and 853

Government procurement.

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 20, 2018, for publication.

Dated: August 21, 2018.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 48 CFR parts 801, 825, 836, 842, 846, 852, and 853 as follows:

PART 801—DEPARTMENT OF VETERANS AFFAIRS ACQUISITION REGULATION SYSTEM

■ 1. The authority citation for part 801 continues to read as follows:

Authority: 38 U.S.C. 8123; 38 U.S.C. 8153; 38 U.S.C. 8303; 40 U.S.C. 121(c); 41 U.S.C. 1702; 41 U.S.C. 1707; and 48 CFR 1.301–1.304.

Subpart 801.1—Purpose, Authority, Issuance

801.106 [Amended]

■ 2. In section 801.106, under the table columns titled ''48 CFR part or section where identified and described'' and ''Current OMB control number'':

■ a. Remove the reference to 852.236–84 and add in its place 852.236–83.

■ b. Remove the reference to 852.236–89 and the corresponding OMB Control Number 2900–0622.

■ c. Remove the reference to 852.236–91 and the corresponding OMB Control Number 2900–0623.

PART 825—FOREIGN ACQUISITION

■ 3. The authority citation for part 825 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

Subpart 825.2 [Removed and Reserved]

■ 4. Subpart 825.2 is removed and reserved.

Subpart 825.11 [Removed and Reserved]

■ 5. Subpart 825.11 is removed and reserved.

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 6. The authority citation for part 836 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3), 1303(a)(2) and 1702; and 48 CFR 1.301–1.304.

Subpart 836.2—Special Aspects of Contracting for Construction

■ 7. Section 836.202 is revised to read as follows:

836.202 Specifications.

■ 8. Section 836.202–70 is added to read as follows:

836.202–70 Specifications—use of equal products.

Upon approval of the justification documentation required by FAR 11.105, Items peculiar to one manufacturer, the contracting officer shall include the clause found at 852.236–90, Restriction on Submission and Use of Equal Products, in solicitations and contracts. The contracting officer shall complete the clause by inserting the items which have been approved for restriction to a brand name. This clause also places offerors or bidders on notice that the ''brand name'' provisions of any clause or provision that may authorize the

submission of an ''equal'' product, shall not apply to the specific items listed in clause 852.236–90.

■ 9. Section 836.203 is revised to read as follows:

836.203 Government estimate of construction costs.

■ 10. Section 836.203–70 is added to read as follows:

836.203–70 Protection of the independent government estimate—sealed bid.

For sealed bid acquisitions the contracting officer or bid custodian is not authorized to release the basis for calculating the estimate at any time. The person preparing the independent government estimate (IGE) shall—

(a) Designate the IGE as ''For Official Use Only (FOUO)'';

(b) The contracting officer or bid custodian shall file a sealed copy of the IGE with the bids. (In the case of two-step acquisitions, the contracting officer or bid custodian accomplishes this during the second step);

(c) After the bids are read and recorded during a Public Bid Opening, remove the ''For Official Use Only (FOUO)'' designation then read and record the estimate as if it were a bid, in the same detail as the bids; and

(d) In instances where only one bid has been received, the government estimate shall not be read by the contracting officer as it may be needed to conduct negotiations with the offeror.

■ 11. Section 836.204 is revised to read as follows:

836.204 Disclosure of the magnitude of construction projects.

The contracting officer shall utilize the estimated price ranges defined in FAR 36.204 as further supplemented below when identifying the magnitude of a VA project in advance notices and solicitations:

(f) For estimated price ranges between $1,000,000 and $5,000,000, the contracting officer shall identify the magnitude of a VA project in advance notices and solicitations in terms of the following price ranges:

(1) Between $1,000,000 and $2,000,000.

(2) Between $2,000,000 and $5,000,000.

(g) Between $5,000,000 and $10,000,000.

(h) For estimated price ranges greater than $10,000,000, the contracting officer shall identify the magnitude of a VA project in advance notices and solicitations in terms of one of the following price ranges:

(1) Between $10,000,000 and $20,000,000.

(2) Between $20,000,000 and $50,000,000.

(3) Between $50,000,000 and $100,000,000.

(4) Between $100,000,000 and $150,000,000.

(5) Between $150,000,000 and $200,000,000.

(6) Between $200,000,000 and $250,000,000.

(7) More than $250,000,000.

836.206 [Removed]

■ 12. Section 836.206 is removed.

836.209 [Removed]

■ 13. Section 836.209 is removed.

836.213, 836.213–4, and 836.213–70 [Removed]

■ 14. Sections 836.213, 836.213–4, and 836.213–70 are removed.

Subpart 836.5—Contract Clauses

■ 15. Section 836.500 is revised to read as follows:

836.500 Scope of subpart.

The clauses and provisions prescribed in this subpart are set forth for use in fixed-price construction contracts in addition to those in FAR subpart 36.5.

■ 16. Section 836.501 is revised to read as follows:

836.501 Performance of work by the contractor.

The contracting officer shall insert the clause at 852.236–72, Performance of Work by the Contractor, in solicitations and contracts for construction that contain the FAR clause at 52.236–1, Performance of Work by the Contractor, except those awarded pursuant to subpart 819.70. When the solicitations or contracts include a section entitled ''Network Analysis System (NAS),'' the contracting officer shall use the clause with its Alternate I.

836.513 [Removed]

■ 17. Section 836.513 is removed.

■ 18. Section 836.521 is revised to read as follows:

836.521 Specifications and drawings for construction.

The contracting officer shall insert the clause at 852.236–71, Specifications and Drawings for Construction, in solicitations and contracts for construction that include the FAR clause at 52.236–21, Specifications and Drawings for Construction.

836.570 [Removed]

■ 19. Section 836.570 is removed.

836.571 [Removed]

■ 20. Section 836.571 is removed.

836.572 [Removed]

■ 21. Section 836.572 is removed.

■ 22. Section 836.573 is revised to read as follows:

836.573 Contractor production report.

The contracting officer shall insert the clause at 852.236–79, Contractor Production Report, in solicitations and contracts for construction expected to exceed the simplified acquisition threshold. The contracting officer may, when in the best interest of the Government, insert the clause in solicitations and contracts for construction when the contract amount is expected to be at or below the simplified acquisition threshold.

■ 23. Section 836.574 is revised to read as follows:

836.574 Subcontracts and work coordination.

The contracting officer shall insert the clause at 852.236–80, Subcontracts and Work Coordination, in invitations for bids and contracts for construction expected to exceed the micro-purchase threshold for construction. When the solicitations or contracts are for new construction work with complex mechanical-electrical work, the contracting officer may use the clause with its Alternate I.

836.575 [Removed]

■ 24. Section 836.575 is removed.

836.576 [Removed]

■ 25. Section 836.576 is removed.

836.577 [Removed]

■ 26. Section 836.577 is removed.

836.579 [Removed]

■ 27. Section 836.579 is removed.

■ 28. Section 836.580 is added to read as follows:

836.580 Notice to bidders—additive or deductive bid line items.

The contracting officer may include the provision 852.236–92, Notice to Bidders—Additive or Deductive Bid Line Items, in invitations for bids when the contracting officer determines that funds may not be available for all the desired construction features at contract award.

Subpart 836.6—Architect-Engineer Services

836.602, 836.602–1, 836.602–2, 836.602–4, and 836.602–5 [Removed]

■ 29. Sections 836.602, 836.602–1, 836.602–2, 836.602–4, and 836.602–5 are removed.

■ 30. Section 836.603 is revised to read as follows:

836.603 Collecting data on and appraising firms' qualifications.

The Associate Executive Director, Office of Facilities Engineering, for Central Office; the Director, Office of Construction Management, for National Cemetery Administration; the Senior Executive Service for Administration and Facilities for Veterans Benefits Administration; and the Chief, Engineering Service, for field facilities, are responsible for collecting Standard Forms 330 and maintaining a data file on architect-engineer qualifications.

■ 31. Sections 836.606, 836.606–70, and 836.606–71 are revised to read as follows:

836.606 Negotiations.

836.606–70 Architect-engineer firms' proposal.

(a) When the contract price is estimated to be $50,000 or more, the contracting officer shall use VA Form 6298, Architect-Engineer Fee Proposal, to obtain the proposal and supporting cost data from the proposed contractor and subcontractor in the negotiation of an A–E contract for design services.

(b) In obtaining A–E services for research study, seismic study, master planning study, construction management and other related services contracts, the contracting officer shall use VA Form 6298, supplemented or modified as needed for the particular project type.

836.606–71 Application of 6 percent architect-engineer fee limitation.

(a) The production and delivery of designs, plans, drawings, and specifications shall not exceed 6 percent of the estimated cost of construction. Other A–E fees are not included in this 6 percent. Such fees are delineated in paragraph (c) of this section.

(b) The 6 percent limit also applies to contract modifications, including modifications involving:

(1) *Work not initially included in the contract.* Apply the 6 percent limit to the revised total estimated construction cost.

(2) *Redesign.* Apply the 6 percent limit as follows—

(i) Add the estimated construction cost of the redesign features to the original estimated construction cost;

(ii) Add the contract cost for the original design to the contract cost for redesign; and,

(iii) Divide the total contract design cost by the total estimated construction cost. The resulting percentage may not exceed the 6 percent statutory limitation.

(c) The 6 percent fee limitation does not apply to the following architect or engineer services:

(1) Investigative services including but not limited to—

(i) Determination of program requirements, including schematic or preliminary plans and estimates;

(ii) Determination of feasibility of proposed project;

(iii) Preparation of measured drawings of existing facility;

(iv) Subsurface investigation;

(v) Structural, electrical, and mechanical investigation of existing facility;

(vi) Surveys: topographic, boundary, utilities, etc.;

(vii) Environmental services;

(viii) Geo-Tech studies; and

(ix) Feasibility studies.

(2) Special consultant services that are not normally available in organizations of architects or engineers and that are not specifically applied to the actual preparation of working drawings or specifications of the project for which the service are required.

(3) Other—

(i) Reproduction of approved designs through models, color renderings, photographs, or other presentation media;

(ii) Travel and per diem allowances other than those required for the development and review of working drawings and specifications;

(iii) Supervision or inspection of construction, review of shop drawings or samples, and other services performed during the construction phase;

(iv) All other services that are not an integral part of the production and delivery of plans, designs, and specifications; and,

(v) The cost of reproducing drawings and specifications for bidding and their distribution to prospective bidders and plan file rooms.

836.606–72 and 836.606–73 [Removed]

■ 32. Sections 836.606–72 and 836.606–73 are removed.

■ 33. Subpart 836.70 is added to read as follows:

Subpart 836.70—Unique Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

836.7000 Scope of subpart.

This subpart sets forth requirements for the use of VA unique forms, as prescribed in this part, for contracting for construction, architect-engineer services, or dismantling, demolition, or removal of improvements. See part 853.

836.7001 Unique construction and architect-engineer services forms.

Contracting officers may use the following forms, as prescribed in this part or subpart, for construction, architect-engineer services or dismantling, demolition, or removal of improvements contracts as set forth below and in the referenced prescriptions:

(a) VA Form 6298, Architect-Engineer Fee Proposal (see 853.236–70).

VA Form 6298, Architect-Engineer Fee Proposal, shall be used as prescribed in 836.606–70.

(b) VA Form 2138, Order for Supplies or Services (Including Task Orders for Construction or A–E Services) (see 853.236–71). VA Form 2138, Order for Supplies or Services (Including Task Orders for Construction or A–E Services), may be used for ordering supplies or services, including task orders for Construction or A–E services, to include dismantling, demolition, or removal of improvements.

(c) VA Form 10101, Contractor Production Report (see 853.236–72). Contractors may use VA Form 10101, Contractor Production Report or a contractor generated form containing the same type of information contained in the form, as required by 836.573 which prescribes the clause at 852.236–79, Contractor Production Report.

PART 842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 34. The authority citation for part 842 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

■ 35. Subpart 842.2 is added to read as follows:

Subpart 842.2—Contract Administration Services

842.271 Contract clause for Government construction contract administration.

The contracting officer shall insert the clause at 852.242–70, Government Construction Contract Administration, in solicitations and contracts for construction expected to exceed the micro-purchase threshold for construction.

PART 846—QUALITY ASSURANCE

■ 36. The authority citation for part 846 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

846.312 [Removed]

■ 37. Section 846.312 is removed.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 38. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 8127–8128, and 8151–8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

■ 39. Section 852.236–71 is revised to read as follows:

852.236–71 Specifications and Drawings for Construction.

As prescribed in 836.521, insert the following clause:

Specifications and Drawings for Construction (Date)

The clause entitled ''Specifications and Drawings for Construction'' in FAR 52.236–21 is supplemented as follows:

(a) The Contracting Officer's interpretation of the drawings and specifications will be final, subject to the Disputes clause.

(b) The Contractor shall—

(1) Check all drawings and specifications furnished immediately upon receipt;

(2) Compare all drawings and the specifications, and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies;

(4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and

(5) Reproduce and print contract drawings and specifications as needed.

(c) In general—

(1) Drawings of greater detail shall govern over drawings of lesser detail unless specifically noted otherwise; and

(2) Figures and numerical quantities noted on drawings govern over scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title File Drawing No.

(End of clause)

■ 40. Section 852.236–72 is revised to read as follows:

852.236–72 Performance of Work by the Contractor.

As prescribed in 836.501, insert the following clause:

Performance of Work by the Contractor (Date)

(a) In accordance with FAR 52.236–1, the contract work accomplished on the site by laborers, mechanics, and foreman/superintendent on the contractor's payroll and under their direct supervision shall be used in establishing the percent of work to be performed by the Contractor. Cost of material and equipment installed by such labor may be included. The work by the contractor's executive, administrative and clerical forces shall be excluded in establishing compliance with the requirements of this clause.

(b) The Contractor shall submit, simultaneously with the schedule of costs required by the Payments under Fixed-Price Construction Contracts clause of the contract, a statement designating the portions of contract work to be performed with the contractor's own forces. The approved schedule of costs will be used in determining the value of a work activity/event, or portions thereof, of the work for the purpose of this article.

(c) Changes to established activity/event identifiers or responsibility codes for Contractor activities shall not be made without approval from the Contracting Officer.

(d) In the event the Contractor fails to comply with FAR 52.236–1, Performance of Work by the Contractor, the Contracting Officer will withhold retention in the amount of 15% of the value of any work activity/element being invoiced that was not authorized by the Contracting Officer to be performed by someone other than the prime contractor's own workforce.

(End of clause)

Alternate I (DATE). For requirements which include a Network Analysis System (NAS), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Contractor shall submit, simultaneously with the cost per activity of the construction schedule required by Section 01310 or 01311, NETWORK ANALYSIS SYSTEM, a responsibility code for all activities of the network for which the contractor's forces will perform the work. The cost of these activities will be used in determining the portions of the total contract work to be executed by the contractor's forces for the purpose of this article.

852.236–74 [Removed and Reserved]

■ 41. Section 852.236–74 is removed and reserved.

852.236–76 [Removed and Reserved]

■ 42. Section 852.236–76 is removed and reserved.

852.236–77 [Removed and Reserved]

■ 43. Section 852.236–77 is removed and reserved.

852.236–78 [Removed and Reserved]

■ 44. Section 852.236–78 is removed and reserved.

■ 45. Section 852.236–79 is revised to read as follows:

852.236–79 Contractor Production Report.

As prescribed in 836.573, insert the following clause:

Contractor Production Report (Date)

(a) The Contractor shall furnish to the resident engineer, for each workday, a consolidated report for the preceding workday. Reporting shall begin from date of mobilization until the date of final acceptance except for authorized holidays. VA Form 10101, Contractor Production Report, or a Contractor generated form containing the same type of information shall be signed, dated and submitted by the Contractor superintendent.

(b) Each report shall include and specifically identify at least one safety topic germane to the jobsite that day.

(End of clause)

■ 46. Section 852.236–80 is revised to read as follows:

852.236–80 Subcontracts and Work Coordination.

As prescribed in 836.574, insert the following clause:

Subcontracts and Work Coordination (Date)

(a) Nothing contained in this contract shall be construed as creating any contractual relationship between any subcontractor and the Government. Divisions or sections of specifications are not intended to control the Contractor in dividing work among subcontractors, or to limit work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of his/her own employees, and of the subcontractors and their employees. The Contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers.

(c) The Government or its representatives will not undertake to settle any differences between the Contractor and subcontractors or between subcontractors.

(d) The Government reserves the right to refuse to permit employment on the work, or require dismissal from the work, of any subcontractor or subcontractor employee who, by reason of previous unsatisfactory work on Department of Veterans Affairs projects or for any other reason, is considered by the Contracting Officer to be incompetent, careless, or otherwise objectionable.

(End of clause)

Alternate I (DATE). For new construction work with complex mechanical-electrical work, the following paragraph relating to work coordination may be substituted for paragraph (b) of the basic clause:

(b) The Contractor shall be responsible to the Government for acts and omissions of his/her own employees, and subcontractors and their employees. The Contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers. The Contractor shall, in advance of the work, prepare coordination drawings showing the location of openings

through slabs, the pipe sleeves and hanger inserts, as well as the location and elevation of utility lines, including, but not limited to, conveyor systems, pneumatic tubes, ducts, and conduits and pipes 2 inches and larger in diameter. These drawings, including plans, elevations, and sections as appropriate, shall clearly show the manner in which the utilities fit into the available space and relate to each other and to existing building elements. Drawings shall be of appropriate scale to satisfy the previously stated purposes, but not smaller than $^{3}2044;_{8}$ -inch scale. Drawings may be composite (with distinctive colors for the various trades) or may be separate but fully coordinated drawings (such as sepias or photographic paper reproducibles) of the same scale. Separate drawings shall depict identical building areas or sections and shall be capable of being overlaid in any combination. The submitted drawings for a given area of the project shall show the work of all trades that will be involved in that particular area. Six complete composite drawings or six complete sets of separate reproducible drawings shall be received by the Government not less than 20 days prior to the scheduled start of the work in the area illustrated by the drawings, for the purpose of showing the Contractor's planned methods of installation. The objectives of such drawings are to promote carefully planned work sequence and proper trade coordination, in order to assure the expeditious solutions of problems and the installation of lines and equipment as contemplated by the contract documents while avoiding or minimizing additional costs to the Contractor and to the Government. In the event the Contractor, in coordinating the various installations and in planning the method of installation, finds a conflict in location or elevation of any of the utilities with themselves, with structural items or with other construction items, he/she shall bring this conflict to the attention of the Contracting Officer immediately. In doing so, the Contractor shall explain the proposed method of solving the problem or shall request instructions as to how to proceed if adjustments beyond those of usual trades' coordination are necessary. Utilities installation work will not proceed in any area prior to the submission and completion of the Government review of the coordinated drawings for that area, nor in any area in which conflicts are disclosed by the coordination drawings, until the conflicts have been corrected to the satisfaction of the Contracting Officer. It is the responsibility of the Contractor to submit the required drawings in a timely manner consistent with the requirements to complete the work covered by this contract within the prescribed contract time.

852.236–84 [Removed and Reserved]

■ 47. Section 852.236–84 is removed and reserved.

852.236–85 [Removed and Reserved]

■ 48. Section 852.236–85 is removed and reserved.

852.236–86 [Removed and Reserved]

■ 49. Section 852.236–86 is removed and reserved.

852.236–87 [Removed and Reserved]

■ 50. Section 852.236–87 is removed and reserved.

852.236–89 [Removed and Reserved]

■ 51. Section 852.236–89 is removed and reserved.

■ 52. Section 852.236–90 is revised to read as follows:

852.236–90 Restriction on Submission and Use of Equal Products.

As prescribed in 836.202–70, insert the following clause in solicitations and contracts when it is determined that only one product will meet the Government's minimum needs and the submission of ''equal'' products is not permitted:

Restriction on Submission and Use of Equal Products (Date)

(a) This clause applies to the following items: [*Contracting Officer fill-in*]

_____

_____

_____

(b) Notwithstanding the ''Material and Workmanship'' clause of this contract, FAR 52.236–5(a), nor any other clause or provision, only brand name products for the items listed above will be authorized for use on this contract.

(End of clause)

852.236–91 [Removed and Reserved]

■ 53. Section 852.236–91 is removed and reserved.

■ 54. Section 852.236–92 is added to read as follows:

852.236–92 Notice to Bidders—Additive or Deductive Bid Line Items.

As prescribed in 836.580, insert the following provision:

Notice to Bidders—Additive or Deductive Bid Line Items (Date)

(a) Additive or deductive line items in the Schedule shall be evaluated to determine the low offeror and the items to be awarded. The evaluation shall be made as follows—

(1) Prior to the opening of bids, the Government will determine the amount of funds available for the project.

(2) The low bid shall be the Bidder that—

(i) Is otherwise eligible for award; and

(ii) Offers the lowest aggregate amount for the first or base line item, plus or minus (in the order stated in the list of priorities in the bid schedule) those additive or deductive line items that provide the most features within the funds determined available.

(3) All bids shall be evaluated on the basis of the same additive or deductive line items.

(i) If adding another item from the bid schedule list of priorities would make the award exceed the available funds for all offerors, the Contracting Officer will skip that item and go to the next item from the bid schedule of priorities; and

(ii) Add that next item if an award may be made that includes that line item and is within the available funds.

(b) The Contracting Officer will use the list of priorities in the bid Schedule only to determine the low offeror. After determining the low offeror, an award may be made on any combination of items if—

(1) It is in the best interest of the Government;

(2) Funds are available at the time of award; and

(3) The low offeror's price for the combination to be awarded is less than the price offered by any other responsive, responsible offeror.

(c) *Example.* ''The amount available is $100,000. Offeror A's base bid and four additives (in the order stated in the list of priorities in the bid Schedule) are $85,000, $10,000, $8,000, $6,000, and $4,000. Offeror B's base bid and four additives are $80,000, $16,000, $9,000, $7,000, and $4,000. Offeror A is the low offeror. The aggregate amount of offeror A's bid for purposes of award would be $99,000, which includes a base bid plus the first and fourth additives. The second and third additives were skipped because each of them would cause the aggregate bid to exceed $100,000.''

(End of provision)

■ 55. Section 852.242–70 is added as follows:

852.242–70 Government Construction Contract Administration.

As prescribed in 842.271, insert the following clause. This is a fill-in clause.

Government Construction Contract Administration (Date)

(a) Contract administration functions set forth in FAR 42.302 are hereby delegated to:

[*Insert name and office address of Contracting Officer*]

(b) The work will be under the direction of a Department of Veterans Affairs Contracting Officer, who may designate another VA employee to act as resident engineer at the construction site.

(c) Except as provided below, the resident engineer's directions will not conflict with or change contract requirements. Within the limits of any specific authority delegated by the Contracting Officer, the resident engineer may, by written direction, make changes in the work. The Contractor shall be advised of the extent of such authority prior to execution of any work under the contract.

(d) The Contracting Officer identified in paragraph (a) of this clause may further delegate the responsibilities below to the following warranted personnel on site:

[*Insert name and office address of individual with limited authority*]

(1) Conduct post-award orientation conferences.

(2) Issue administrative changes, correcting errors or omissions in typing, Contractor address, facility or activity code, remittance

address, computations which do not required additional contract funds, and other such changes (see FAR 43.101).

(3) For actions not to exceed $ (insert dollar amount) negotiate and execute supplemental agreements incorporating Contractor proposals resulting from change orders issued under the Changes clause.

(4) Negotiate and execute supplemental agreements changing contract delivery schedules where the time extension does not exceed (insert number) calendar days.

(End of clause)

PART 853—FORMS

■ 56. The authority citation for part 853 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

Subpart 853.1—General

■ 57. Section 853.107 is revised to read as follows:

853.107 Obtaining forms.

VA forms may be obtained online at *https://www.va.gov/vaforms/* or upon request from any VA contracting office.

Subpart 853.2—Prescription of Forms

■ 58. Sections 853.236 and 853.236–70 are revised to read as follows:

853.236 Construction and architect-engineer contracts.

853.236–70 VA Form 6298, Architect-Engineer Fee Proposal (see 836.7001(a)).

■ 59. Sections 853.236–71 and 853.236.72 are added to read as follows:

853.236–71 VA Form 2138, Order for Supplies or Services (Including Task Orders for Construction or A–E Services) (see 836.7001(b)).

853.236–72 VA Form 10101, Contractor Production Report (see 836.7001(c)).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 180207141–8783–01]

RIN 0648–BH74

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Groundfish Bottom Trawl and Midwater Trawl Gear in the Trawl Rationalization Program

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes revising Federal regulations that restrict the use and configuration of bottom and midwater trawl gear for vessels fishing under the Pacific Coast Groundfish Fishery's Trawl Rationalization Program. The gear restrictions were originally implemented to limit discarding and protect overfished rockfish species. These restrictions are no longer necessary because of changes to the fishery, including implementation of the Trawl Rationalization Program in 2011, and improved status of a number of overfished rockfish stocks. By eliminating these regulations, the proposed action could increase flexibility in how vessels can use and configure gear to increase access to target stocks and efficiency of fishing practices, while still limiting the catch of target and non-target discards to meet the conservation objectives of the Trawl Rationalization Program.

DATES: Comments on this proposed rule must be received on or before October 9, 2018.

ADDRESSES: Submit your comments, identified by NOAA–NMFS–2018–0081, by any of the following methods:

- *Online Submission:* Go to the Federal e-Rulemaking Portal at *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0081,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Barry Thom, Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and NMFS will post the comments for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of supporting documents referenced in this proposed rule, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Regulatory Flexibility Analysis (RFA), are available from *www.regulations.gov* or from the NMFS West Coast Region Groundfish Fisheries website at *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html.*

FOR FURTHER INFORMATION CONTACT: Karen Palmigiano, Fishery Management Specialist, 206–526–4491, or *karen.palmigiano@noaa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

Prior to 2011, the Pacific Coast Groundfish fishery was primarily managed with trip and landing limits and area closures and monitoring was limited (*e.g.,* less than 25 percent of groundfish bottom and midwater trawl trip landings were subject to at-sea observer coverage). During that time, NMFS implemented trawl gear restrictions to both reduce groundfish and non-groundfish bycatch and discards, as well as limit access to overfished rockfish habitat. Restrictions included: (1) Minimum mesh size requirements; (2) requirements for chafing gear and cod-ends; (3) the trawl Rockfish Conservation Areas (RCA), which prohibits the use of groundfish bottom trawl gear between certain

fathom lines defined in regulation at §§ 660.71 through 660.74; and, (4) a requirement that vessels use selective flatfish trawl, a type of small footrope trawl gear, shoreward of the trawl RCA and north of 40°10′ North (N) latitude.

In 2011, NMFS implemented Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan (PCGFMP), which established the Trawl Rationalization Program. The Trawl Rationalization Program, a type of catch share program, replaced trip and landing limits with fixed allocations for limited entry trawl participants, through an individual fishing quota (IFQ) management system. To allow managers to accurately account for catch against IFQ, the program increased at-sea and shoreside monitoring to 100 percent of trips and landings for groundfish bottom and midwater trawl vessels. This management system, which increased individual vessel accountability, successfully reduced bycatch of target and non-target rockfish in the trawl fishery. Since implementation of the Trawl Rationalization Program, five of the seven previously overfished rockfish species are now rebuilt.

Building on the successes of the Trawl Rationalization Program at reducing discards, NMFS and the Pacific Fishery Management Council (Council) began working with industry members on several fishery management actions, known as Program Improvements or Enhancements (PIE) trailing actions. The PIE trailing actions included identifying regulations that limit the use and configuration of groundfish bottom and midwater trawl gears, and may no longer be necessary because the Trawl Rationalization Program effectively limits target and non-target species bycatch.

In March 2011, groundfish industry members, through the Council's Groundfish Advisory Sub-Panel (GAP), requested that the Council eliminate and revise various regulations related to mesh size and requirements to use four-seam trawl shoreward of the trawl RCA. To address the GAP's recommendations, the Council formed an ad hoc committee to identify specific regulations that, if revised or eliminated, would allow fishermen to increase the efficiency of their fishing strategy as the Council had intended when they recommended implementation of the Trawl Rationalization Program. The Council authorized the appointment of the new ad hoc committee, the Trawl Rationalization Regulatory Evaluation Committee (TRREC), at its April 2011 meeting.

The TRREC held a meeting during the summer of 2011. At the Council's November meeting that year, the TRREC recommended the Council consider, as part of the PIE trailing actions, revising regulations to: (1) Allow multiple gear (trawl gears and fixed gear) use and possession seaward and shoreward of the trawl RCA; (2) remove restrictions on chafing gear for midwater trawl gear; and, (3) eliminate codend, mesh size, and selective flatfish trawl gear requirements and restrictions. The TRREC prioritized these three measures over others, but also recommended the Council consider revising additional regulations they felt were unnecessary and costly, including the prohibition on fishing more than one individual fishing quota (IFQ) management area and the definitions of large and small footropes.

In March 2012, the Council adopted preliminary preferred alternatives for most of the gear measures under the PIE trailing actions; adopted its preferred alternative for chafing gear requirements for midwater trawl gear and put this action on a fast track for implementation; and, authorized a one-day public workshop of the Council's Enforcement Consultants (EC), GAP, and Groundfish Management Team (GMT) to discuss and make recommendations on the remaining gear related measures. Further discussion on gear measures were delayed until results of the gear workshop were presented to the Council.

The purpose of the gear workshop, which took place August 29–30, 2012, in Portland, Oregon, included scoping of various gear restriction measures that had been recommended to the Council by the TRREC and providing recommendations for how the Council can move forward. The gear workshop report was presented to the Council at its November 2012 meeting and made similar recommendations to those in the TRREC report, including (1) allowing the use of multiple gears (trawl and fixed gear) on the same trip; (2) a reduction in the minimum mesh size for groundfish bottom trawl gear; (3) eliminating the selective flatfish trawl gear requirement; and (4) allowing vessels in the IFQ Program to move fixed gear across management lines. Additionally, the report included a recommendation to allow year-round use of midwater gear within and outside the trawl RCA north of 40°10′ North (N) latitude.

The Council next took action on these measures in September 2015. At the time, the Council adopted the purpose and need statement, a rulemaking schedule, and the range of alternatives, along with some additional alternatives and measures suggested by the GAP. These new measures included changing how mesh size is defined so that regulations would allow for the enforcement of both knotted and knotless webbing; allowing vessels fishing under the Shorebased IFQ Program to fish across IFQ management lines; allowing whiting fishing with any type of trawl gear; allowing a tow to be brought onboard before previous catch is stowed; and, the option to further review and revise additional requirements in regulations at § 660.130 which provides trawl gear requirements and restrictions. After Council and NMFS staff reviewed that section of the regulations, further measures were added to the list of potential gear changes, including eliminating codend restrictions. Several other possible measures were not forwarded at the time due to potential for delays in implementation. The Council scheduled final action on the suite of measures for March 2016.

On March 3, 2016 (81 FR 11189), NMFS published a notice of intent (NOI) to prepare an environmental impact statement (EIS) to consider revisions to the regulations for groundfish bottom and midwater trawl gear used by vessels under the Trawl Rationalization Program. The Council conducted an additional scoping during its March 2016 meeting to gather public comments on the proposed regulations. Based on discussions at the meetings and public comments on the NOI, the Council selected their final preferred alternatives for all of the proposed measures at its March 2016 meeting, except the restriction on fishing across IFQ management lines. The Council delayed its decision on management lines, and selected its final preferred alternative at the June 2016 Council meeting. Detailed information, including the supporting documentation the Council considered at each meeting, is available at the Council's website, *www.pcouncil.org*.

After the Council selected final recommendations on the proposed measures in March and June 2016, NMFS completed extensive analyses on the measures, including an Endangered Species Act section 7 consultation on the impacts of the PCGFMP on listed salmon stocks. These analyses supported NMFS' determination that the impacts of implementing the proposed measures would likely not be significant and, therefore, there was no need to complete an EIS. Instead NMFS completed an integrated analysis that included an EA. On June 8, 2018, NMFS published a notice to withdraw preparation of the EIS (83 FR 26640). A

copy of the draft EA and supporting documents are available from NMFS (see **ADDRESSES**).

II. Summary of the Proposed Regulations

If implemented, the proposed regulations would provide flexibility to groundfish bottom and midwater trawl vessels fishing under the Trawl Rationalization Program in how they may use and configure their gear, and operate on fishing trips. This flexibility is expected to foster innovation and allow for more optimal harvest operations for the groundfish fleet.

The Council deemed the proposed regulations consistent with and necessary to implement this action in an August 14, 2018, letter from Council Executive Director, Chuck Tracy, to Regional Administrator Barry Thom. Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS is required to publish proposed rules for comment after preliminarily determining whether they are consistent with applicable law. We are seeking comment on the proposed regulations in this action and whether they are consistent with the PCGFMP, the Magnuson-Stevens Act and its National Standards, and other applicable law.

The discussion in this proposed rule and in the EA/RIR/RFA (See **ADDRESSES**) groups several related measures to reduce redundancy and to consider the collective impacts of similar proposed regulations. Through this action, the Council proposes to:

- Adjust a suite of restrictions related to how nets are configured, including eliminating minimum mesh size restrictions, changing the definition of mesh size, removing chafing gear placement restrictions, and removing restrictions on using double-walled codends from groundfish bottom and midwater trawl vessels fishing under the Trawl Rationalization Program;
- Remove the requirement to use selective flatfish trawl gear north of 40° 10′ N lat. and shoreward of the trawl RCA;
- Adjust a number of provisions related to vessel operations on a single fishing trip, including allowing vessels that fish in the Shorebased IFQ Program under the Trawl Rationalization Program to carry and fish groundfish bottom and midwater trawl gears on the same trip, fish across IFQ management lines, and bring a new haul on deck before the catch from a previous haul is stowed.

A. Proposed Regulations for Net Configurations

This section discusses the proposed regulations that would remove some minimum mesh size restrictions, revise the definition of mesh size, remove chafing gear placement restrictions, and remove the prohibition on using double-walled codends for groundfish bottom and midwater trawl vessels fishing under the Trawl Rationalization Program. These measures all relate to net configuration, and all affect the mesh size for trawl nets. Because changing any of these restrictions could result in similar impacts, the analysis supporting this proposed rule considers both the individual and collective impacts of all of the measures. Below is a short description of each of the proposed regulations followed by a summary of the potential impacts of each of these measures combined.

1. Eliminate Minimum Mesh Size Restriction

Mesh size is the opening between opposing knots in a fishing net, and minimum mesh size is the smallest distance allowed from the inside of one knot to the inside of the opposing knot. Currently, vessels fishing with groundfish trawl gear, including chafing gear, must use nets with a minimum mesh size greater than or equal to 4.5 inches (11.4 cm) for bottom trawl, and greater than or equal to 3.0 inches (7.6 cm) for midwater trawl gears. These regulations were first implemented in the 1990s to reduce fishing mortality for smaller fish, thus increasing survival to maturity. Increasing size selectivity through minimum mesh size restrictions was also expected to reduce bycatch of non-target species.

Midwater trawl gear must be constructed so that the first 20 feet (6.51 m) immediately behind the footrope or head-rope is constructed with bare ropes or mesh with a minimum size of 16 inches (40.64 cm). Also implemented in the 1990s, this restriction makes midwater trawl gear impractical or ineffective at capturing fish when in contact with the seafloor, which ensures that vessels do not make bottom contact with midwater trawl gear.

This action would remove both the 4.5 in (11.4 cm) minimum mesh size requirement for groundfish bottom trawl gear and the 3.0 in (7.6 cm) minimum mesh size requirement for midwater trawl. The Council did not recommend revising the current restriction on the minimum mesh size restriction for the first 20 feet (6.51 m) behind the footrope or head-rope for midwater trawl gears. This requirement is essential to the definition of midwater trawl gear.

Under the proposed regulations, it is not anticipated that groundfish bottom or midwater trawl vessel operators would significantly reduce their mesh size, throughout their codend, intermediate, and/or body of the trawl to create less selective fishing gear because this may increase the catch of undersized IFQ species or other unwanted species, decrease the efficiency of the trawl, and increase fuel consumption. Some groundfish bottom trawlers may use smaller meshes closer to the 3.0 in (7.6 cm) minimum allowed for midwater trawl to reduce gilling of species like widow rockfish and yellowtail rockfish. But there does not currently appear to be a need for midwater trawl vessel operators to reduce their minimum mesh size through their trawl gear lower than the requirement, even though they would be allowed to do so under the proposed regulatory changes, because the current 3.0 in (7.6 cm) minimum mesh size requirement is sufficient for preventing excessive gilling of midwater species (*e.g.,* widow and yellowtail rockfish) while maintaining high catch rates.

The proposed regulations would likely provide vessel operators with the flexibility to configure their gear to enable efficient catch of target species, including the strategic use of smaller mesh sizes to facilitate the use or construction of excluder devices (*e.g.,* flexible grates), the use of smaller meshes to herd or guide fish through the net and reduce gilling, and to reinforce the net where the excluder or guiding panels are attached to reduce wear on the net meshes.

2. Revise the Definition of Mesh Size

In addition to revising minimum mesh size restrictions for bottom and midwater trawl gear, this action updates the definition for measuring minimum mesh size to include knotless nets, as well as redefining the approach for measuring mesh size as the opening between opposing corners. These changes to the definition for mesh size are necessary because most vessels today use knotless trawl gear. Revising the definition of mesh size would allow NMFS Office of Law Enforcement (OLE) to enforce current mesh size requirements for nets that do not have knots. Additionally, removing the minimum mesh size requirements would reduce minor enforcement violations that occur when net shrinkage reduces mesh size below legal limits.

Even if the minimum mesh size requirement is eliminated, as discussed

under Section A.1. above, this revision to the definition of mesh size would still be necessary because vessels using midwater trawl nets will still be required to adhere to minimum mesh size requirements for the first 20 feet (6.51 m) behind the footrope or headrope.

3. Eliminate the Prohibition on Double-Walled Codends

The current groundfish regulations prohibit double-walled codends on any trawl gear, and prohibits vessel operators from outfitting nets with chafing gear to effectively create a double-walled codend. Double-walled codend is defined in regulation as a codend constructed of two walls or layers of webbing. The prohibition was originally implemented in 1992 to prevent vessel operators from using double-walled codends to effectively reduce their mesh size below the minimum size requirements, which would have prevented undersized species from escaping the net, and resulted in more discards.

The Council recommended and NMFS proposes eliminating the restrictions that prohibit groundfish bottom and midwater trawl vessels from using double-walled codends. This proposed regulations could provide flexibility necessary to reinforce webbing in certain areas of the trawl net that could facilitate escapement of fish through escape panels (*e.g.,* reinforced webbing to attach ramps, funnels, or other selective devices to codend or intermediate meshes) and to prevent abrasion of the net from various trawl components, such as restraining straps. This revision could also result in escapement of smaller fish by reducing the effective mesh size of the codend and herd fish through the net, and increase net protection by ''armoring'' the trawl.

4. Eliminate Restrictions on the Use of Chafing Gear

The November 2011 TRREC report also suggested eliminating restrictions on the use of chafing gear. The groundfish regulations define chafing gear as a webbing or other material that attaches to the codend to protect trawl nets from wear and damage from bottom contact and contact with the vessels during net retrieval. Regulations implemented in the 1990s required chafing gear with large meshes be fastened to allow escapement of small fish through mesh openings (57 FR 12212, April 9, 1992). These regulations were intended to prevent vessel operators from using chafing gear to create double-walled codends or effectively reducing the mesh size below the minimum mesh size restrictions. Over the past 30 years, NMFS implemented several proposed regulations to expand the use of chafing gear to protect trawl nets to better align with regulations off Alaska.

The current regulations allow vessels to configure chafing gear to encircle no more than 50 percent of a bottom trawl net's circumference. Chafing gear on bottom trawls may be used only on the last 50 meshes, issued from the terminal (closed) end of the codend. Only the front edge (edge closest to the open end of the codend) and sides of each section of chafing gear may be attached to the codend. With the exception of the corners, the terminal edge (edge closest to the closed end of the codend) of each section of chafing gear must not be attached to the net. Chafing gear must be attached outside any riblines and restraining straps.

For midwater trawl, current regulations allow that chafing gear may cover the bottom and sides of the codend in either one or more sections. Only the front edge (edge closest to the open end of the codend) and sides of each section of chafing gear may be attached to the codend; except at the corners, the terminal edge (edge closest to the closed end of the codend) of each section of chafing gear must not be attached to the net. Chafing gear is not permitted on the top codend panel on midwater trawl gear except for a band of mesh (a ''skirt'') may encircle the net under or over transfer cables, lifting or splitting straps (chokers), riblines, and restraining straps, but must be the same mesh size and coincide knot-to-knot with the net to which it is attached and be no wider than 16 meshes.

NMFS proposes removing all restrictions in regulations on the use of chafing gear for groundfish bottom trawl and midwater trawl gear. Removing these restrictions would allow vessel operator flexibility in how they use chafing gear to protect nets and codends and how they fish relative to the seafloor. It is anticipated that under the proposed regulations, vessel operators would use chafing gear strategically to provide protection in areas where the net can be susceptible to wear. This will allow vessels to extend the life of their nets and ultimately reduce operational costs.

It is not anticipated that vessel operators would attach large sections of chafing gear to these additional sections for added net protection, because doing so would increase the drag on the net, which could increase fuel consumption and reduce fishing efficiency. In addition, it would likely provide no additional protection from bottom contact, because the top of the net and tapered portion of the net in front of the codend rarely contact the seabed. Wear patterns on midwater trawl nets indicate that when bottom contact occurs, it typically occurs at the very end of the codend, which can already be protected by chafing gear under the current regulations. The ability of vessels to fish in more rocky habitat has more to do with the size of the footrope than the chafing gear protections, and vessels operators would still be required to abide by the small footrope requirement shoreward of the trawl RCA. Therefore, limiting their ability to fish in high relief areas regardless of chafing gear requirements.

This change is not expected to result in increased catch of undersized or non-target fish. Attaching more chafing gear than necessary to protect the net could also limit the flow within the net, which is needed to allow for adequate escapement of undersized fish, if meshes are blocked. Researchers have also shown there is no detectable difference in selectivity between codends with and without top-side chafing gear if the chafing gear consists of larger meshes than the codend mesh size (*e.g.,* 2 times larger) and if the chafing gear is attached to the codend loosely (*i.e.,* to allow space between the top-side chafing gear and the codend meshes). For those species that escape through the top meshes of codends and intermediates, properly hung top-side chafing gear with large meshes may not block or mask codend meshes and therefore may not measurably impede escapement.

This change is not expected to substantially alter gear contact with the bottom. Numerous disincentives already exist for midwater vessel operators to fish close to the substrate. These disincentives include: (a) Risk of damage to the net from snagging or hanging on hard bottom would not be lessened by increases in chafing gear coverage; (b) reduced gear efficiency and increased operating costs when bottom contact occurs; and (c) bare footropes, sweeps, and 16 in (40.64 cm) mesh size restriction for the first 20 ft (6.1 m) on the front of the net make the gear impractical or ineffective for fishing hard on the bottom (soft or hard bottom).

5. Summary of Potential Impacts From Proposed Regulations for Net Configuration

Eliminating restrictions on groundfish bottom and midwater trawl net configuration would allow vessels to experiment with different mesh sizes,

chafing gear placement, and use of double-walled codends. Each of these proposed regulations individually, and collectively, could result in potential negative impacts to the physical and biological environments. However, in most instances, these impacts are mitigated through incentives and disincentives built into the Trawl Rationalization Program. Additionally, many of the proposed regulations would have a positive impact on harvesters, processors, and the communities they support.

Proposed regulations which could result in a reduction in mesh sizes used and increased net protections could increase bottom trawl effort targeting semi-pelagic rockfish species or longspine thornyhead, and therefore result in some redistribution of effort or a shift of effort to deeper waters. These shifts in effort are not anticipated to result in additional impacts to the physical environment beyond what already occurs under the current regulations. The proposed regulations do not open any new areas to trawling. Any redistribution of effort would not be expected to impact any new habitats which are not already fished with trawl gear. Other restrictions on net configurations, such as the small-footrope requirement shoreward of the trawl RCA, haven been shown to be very effective in limiting effort in high relief areas. Vessel operators would still be at risk of damage to their nets and hang-ups from entering into high relief habitats, even with the ability to provide additional chafing gear or codend protections, which do not provide any protection to the ropes.

Increasing net protections which result in extensively armoring the trawl and reducing mesh sizes is also unlikely for many reasons, including: (a) Increased drag and decreased flow; (b) increased expense while hauling due to increased fuel consumption; (c) increased expense to purchase smaller mesh, additional chafing gear, and double-walled nets; and (d) increased retention of undersized and unmarketable fish. It is important to note that increased drag may not only increase fuel consumption, but also may reduce fishing efficiency, such as reducing door spread of the trawl net.

If vessels make mesh size, chafing gear, or double-walled codend changes throughout the codend and/or intermediate net in a manner that reduces trawl gear selectivity, then catches of undersized or unwanted groundfish could increase. However, the Trawl Rationalization Program creates a strong disincentive for vessel operators to avoid the catch of undersized, unmarketable groundfish. Catching more small fish is not economically advantageous to vessel operators. Although most undersized fish are unmarketable, vessels operators must still account for the catching of undersized fish with individual quota pounds. Vessel operators must debit each pound of unmarketable, undersized fish caught from their total allocation for that species, which means they must forgo the opportunity to use their allocation for marketable catch. For this reason, catching unmarketable, undersized fish has the potential to reduce vessel revenue, as well as add sorting time (workload), for the vessel's crew and processor's employees.

Revisions to the restrictions on net configurations could have a positive impact on harvesters by allowing vessel operators to configure their nets in the most efficient way possible, including the opportunity to experiment with excluders and various combinations of mesh size and mesh shape (square or T–90 mesh) that could reduce bycatch while simultaneously improving the sustainability of the fishery and increasing the likelihood of attainment. Vessel operators have repeatedly testified to the Council that they desire more flexibility to experiment with trawl gear to reduce catch of unwanted species and increase catch of marketable fish. This may ultimately result in improved quality and consistency of product to first receivers and processors over time. Vessel operators would also benefit from the reduced complexity of the regulations by removing additional restrictions that they were subject to previously. This could save time and effort for vessel operators and ultimately reduce operational costs as vessel operators would no longer need to ensure compliance with these regulations.

Eliminating restrictions on mesh size will also likely reduce enforcement costs. Although enforcement of the remaining mesh size restriction on midwater trawl gear would still be required, enforcement of the other restrictions would be removed.

B. Eliminate the Requirement To Use Selective Flatfish Trawl Shoreward of the RCA and North of 42 N Latitude

Selective flatfish trawl is a type of small footrope trawl developed to maintain a nearshore flatfish trawl fishery while reducing the non-target catch of canary rockfish and other overfished rockfish species. The selective flatfish trawl features a headrope set back from a flattened net body to capture low-swimming flatfish while allowing rockfish, particularly canary rockfish, to escape over the upper edge of the trawl net. Along with the elimination of the codend, chafing gear, and mesh size provisions, the 2011 TRREC report suggested the Council consider eliminating the selective flatfish trawl gear requirement and replace them with a small footrope requirement, as well as revising the definition of selective flatfish trawl to allow for four-seam nets. Similar to the adjustments discussed above in Section A., the TRREC pointed to the Trawl Rationalization Program to support this regulatory change.

The current regulations define selective flatfish trawl as a two-seamed net with no more than two riblines, excluding the codend. The breastline may not be longer than 3 feet (0.92 m). There may be no floats along the center third of the headrope or attached to the top panel except on the riblines. The footrope must be less than 105 feet (32.26 m). The headrope must be no less than 30 percent longer than the footrope. The headrope is issued along the length of the headrope from the outside edge to the opposite outside edge.

Since 2005, the groundfish regulations have required the use of selective flatfish trawl gear shoreward of the trawl RCA north of 40°10′ N latitude. The regulations further prohibit vessels fishing north of 40°10′ N latitude from having small footrope trawl gear on board, other than selective flatfish trawl gear, while fishing shoreward of the trawl RCA. Vessels are allowed, but not required, to use selective flatfish trawl gear shoreward of the trawl RCA south of 40°10′ N latitude, and seaward of the trawl RCA coastwide.

This rule proposes revising the definition of selective flatfish trawl gear to allow either a two-seam or a four-seam net with up to four riblines, while retaining all the other existing restrictions related to the configuration of this gear. In addition, the Council proposed eliminating the requirement that vessels use selective flatfish trawl gear shoreward of the trawl RCA north of 40°10′ N latitude. Instead, groundfish bottom trawl vessels would be allowed to use any small footrope trawl gear shoreward of the trawl RCA north and south of 40°10′ N latitude. Large footrope trawl gear would still be prohibited in this area.

Revising the definition of selective flatfish trawl to allow for a four-seam net could potentially provide for better flow and improved selectivity compared to a two-seam net. A four-seam net has more open meshes for smaller fish to escape. In addition, studies have

demonstrated that improved flow within nets improves fishing efficiency, which may increase catch of marketable target and non-target groundfish (*e.g.,* widow rockfish, yellowtail rockfish, and Pacific cod), and reduce bycatch of small or unmarketable groundfish (*e.g.,* undersized redstripe rockfish, rosethorn rockfish, sand dabs).

Eliminating the requirement to use selective flatfish trawl gear north of 40°10′ N. latitude could result in a shift in bottom trawl effort shoreward of the trawl RCA north of 40°10′ N. latitude and increased catch of selected pelagic or semi-pelagic groundfish species (*e.g.,* widow and canary rockfish) over the continental shelf. The shift in fishing effort away from the area seaward of the trawl RCA, is most likely to occur prior to May 15th when midwater trawling is prohibited. Any increased catch would be expected to remain within the current annual catch limits for target and non-target groundfish, and non-groundfish stocks. Furthermore, increased efficiency (*e.g.,* more open meshes due to use of four-seam trawl, improved flow, catch of larger rockfish and roundfish, and improved function of selective devices) may lead to some reduction in overall bottom trawling effort, an increase catch of larger marketable fish, and a decrease catch of small unwanted species.

During development of the proposed action for the 2017 Salmon Biological Opinion, the Council considered several analyses that discussed the potential impacts that the future fishery, including possible impacts from the elimination of the selective flatfish trawl gear requirement, may have on the incidental take of Chinook salmon in the Pacific Coast's groundfish trawl fishery. NMFS presented an analysis at the April 2017 Council meeting, under the 2017 Salmon Biological Opinion agenda item, that suggested that removal of this requirement could dramatically increase the incidental take of Chinook salmon north of 40°10′ N. latitude. At the time, the data that were used suggested this gear requirement is driving the differences in bycatch rates. However, that analysis acknowledged numerous caveats associated with comparing bycatch rates between different periods of time (*i.e.* now vs. 20 years ago) and uncertainty as to how this information could be applied to today's fishery.

To gather data about the potential impacts of changing the existing selective flatfish trawl gear requirement for today's fishery, NMFS issued two EFPs for the 2017 and 2018 groundfish fishing years that, among other measures, exempted vessels from the selective flatfish trawl gear requirement. At its March 2017 and March 2018 meetings, during development of the 2017 and 2018 Trawl Gear EFPs, the Council twice considered and rejected including the area shoreward of the trawl RCA between 42° N latitude and 40°10′ N latitude in the exemption to the selective flatfish trawl gear requirement due to concerns over potential impacts to Chinook salmon. NMFS ultimately permitted more than 40 vessels to participate in the two EFPs. These vessels have completed more than 200 EFP trips. Based on the analysis of this new information, changes that have occurred within the fishery over the past several year, and the analysis in the December 2017 biological opinion, NMFS has determined that Chinook salmon bycatch is unlikely to increase in the area north of 42° N latitude (the southern boundary of the 2017 and 2018 Trawl Gear EFPs) on a scale shown in the report NMFS presented April 2017.

Potential impacts to Chinook salmon in the area between 42° N latitude and 40°10′ N latitude are less certain. The December 2017 biological opinion on salmon bycatch in the Pacific Coast Groundfish Fishery discussed that significant uncertainty exists in the magnitude of impacts, especially the species-level impacts, for fisheries in locations or time periods outside the available data. Areas south of 42° N latitude, particularly between January and early May (outside the Pacific primary whiting season), have particularly limited information because most fishing tends to take place north of 42° N latitude due to other restrictions (*i.e.* federal prohibition on whiting processing south of 42° N lat.).

In addition to concerns about the uncertainty in Chinook salmon bycatch in the groundfish fishery in the area between 42° N. latitude and 40°10′ N latitude, NMFS has made the preliminary determination that the proposed changes to the selective flatfish trawl gear requirement shoreward of the trawl RCA between 42° N latitude and 40°10′ N latitude may be out of compliance with the terms and conditions of the December 2017 Salmon Incidental Take Statement. Term and Condition 4b requires that ''prior to allowing additional non-whiting trawling south 42° N latitude, NMFS will implement one or more EFPs designed to collect information about Chinook and coho bycatch levels and stock composition from fishing in those areas or at those times for a minimum of three years.''

Based on these concerns and the information presented at the Council meetings and while developing this rule, NMFS is specifically asking for public comment on the elimination of the requirement to use selective flatfish trawl gear in the area between 42° N latitude and 40°10′ N latitude.

C. Proposed Regulations for Vessel Operations

This section discusses the three proposed regulations that relate to vessel operations on a single fishing trip, including allowing vessels that fish in the Shorebased IFQ Program under the Trawl Rationalization Program to carry and fish groundfish bottom and midwater trawl gears on the same trip, fish across IFQ management lines, and bring a new haul on deck before the catch from a previous haul is stowed. These three measures are discussed together because they could have similar impacts on vessel operations and catch accounting. Below is a short description of each of the proposed regulations followed by a summary of the potential impacts of each of these measures combined.

1. Eliminate the Prohibition on Multiple Types of Groundfish Trawl Gears Carried and Fished on the Same Trip

The GMT suggested the use of multiple fishing gears on a single trip under the Shorebased IFQ Program to the Council at its November 2011 meeting. The current restrictions on the use of multiple fishing gears during a single trip under the IFQ Program are complex, with different sections of the regulations allowing vessels to carry different gear combinations in different parts of the EEZ. For example, the regulations prohibit vessels from using multiple types of bottom trawl gear during a single trip when fishing seaward or shoreward of the trawl RCA south of 40°10′ N latitude. However, the regulations do not include a similar prohibition for the area north of 40°10′ N latitude, where vessels may fish with multiple types of trawl gear seaward of the trawl RCA. The GMT suggested that simplifying the regulations to allow vessels to carry and fish with multiple types of gear on the same trip could improve economic efficiency and improve safety at sea by reducing the number of trips and days at sea.

Regulations define the following trawl gear types: Large footrope trawl, small footrope trawl, selective flatfish trawl, and midwater trawl. North of 40°10′ N latitude, a vessel may not have both groundfish trawl gear and non-groundfish trawl gear on board simultaneously, or have multiple trawl gear types (groundfish bottom or midwater trawl gear) on board

simultaneously. A vessel may, however, have more than one type of limited entry bottom trawl gear on board (selective flatfish trawl or small footrope trawl gear), either simultaneously or successively, during a trip limit period, with one exception. Only a selective flatfish trawl is allowed onboard when fishing shoreward of the trawl RCA (§ 660.130(c)(2)). Finally, a vessel may have more than one type of midwater groundfish trawl gear on board, either simultaneously or successively, during a cumulative period. South of 40°10′ N latitude, a vessel may not have both groundfish trawl gear and non-groundfish trawl gear on board simultaneously, may not have both bottom trawl gear and midwater trawl gear on board simultaneously, and may not have small footrope trawl gear and any other type of bottom trawl gear on board simultaneously.

Limited entry trawl vessels were allowed to fish with multiple trawl gears during the same trip prior to the development of the trawl RCA. To ensure that bottom trawl gear was not used within trawl RCA, a new regulation was published in 2003 to allow no more than one type of trawl gear on board during a single fishing trip (68 FR 907, January 7, 2003). Regulations requiring vessel monitoring systems (VMS), paired with vessel declarations, became effective on January 1, 2004, to ensure adequate monitoring and to enforce these new gear-specific area restrictions (68 FR 62375, November 4, 2003). Additional monitoring requirements implemented through the Trawl Rationalization Program and changes to when a declaration can be made, proposed through this rule, have made the prohibition unnecessary to achieve its original purpose.

The Council recommended and NMFS proposes eliminating the prohibition on vessels carrying both groundfish bottom trawl gear and midwater trawl gear onboard simultaneously while fishing under the Shorebased IFQ Program north of 40°10′ N latitude, or south of 40°10′ N latitude. Additionally, the rule proposes eliminating the prohibition on having bottom trawl gear, other than selective flatfish trawl gear, on board shoreward of the RCA and north of 40°10′ N latitude. Instead, vessels would be allowed to have any type of bottom trawl (small/large footrope or selective flatfish trawl) and midwater trawl gear on board simultaneously and would be allowed to fish any of these trawl gears during a single trip as long as the appropriate declaration is made when gears are changed. Vessels would be required to keep and land all catch separately by gear type, and catch would be reported on electronic fish tickets by gear type. This rule would not adjust the current provision that requires vessels to stow any gear not authorized for use in the area when transiting through a groundfish conservation area. For species managed with trip limits, crossover provisions, and gear-specific trip limits, all current regulations would remain in effect.

This rule would also modify recordkeeping and reporting requirements for vessels fishing in the Shorebased IFQ Program who choose to use more than one type of groundfish trawl gear on the same trip. These vessels would be required to make a new gear declaration from sea to indicate that they have chosen to fish with a new gear type (*i.e.,* groundfish bottom trawl vs. midwater trawl). Currently, the regulations only allow vessels to declare one type of trawl gear at a time when fishing in the Trawl Rationalization Program. Vessel operators must declare a gear type for a trip prior to leaving port. Therefore, under the current regulations, after a vessel operator has submitted a gear declaration report to NMFS, the vessel cannot change activities, including fishing with any gear other than the gear type that the vessel declared at the start of the trip, until the vessel returns to port and offloads all fish. The proposed regulations would allow vessels operators in the Shorebased IFQ Program who choose to use multiple groundfish trawl gears on the same trip to adjust their trip declarations from sea. Vessel operators would need to make a declaration any time they switched to a gear other than the gear that was declared at the start of the fishing trip, to continued enforcement of closed areas, but they would not be required to return to port to make the new declaration.

Allowing the use of multiple IFQ trawl gears on the same trip could potentially reduce the time at sea, further reducing daily fuel and observer coverage costs. It would also allow greater flexibility for harvesters while at sea when choosing how best to use quota pounds. For instance, vessels could choose to avoid using bottom trawl gear when that gear might result in high catch of prohibited species. Instead they could switch their gear type, and fishing strategy, to target non-whiting midwater species complexes in the same area, which may have reduced interactions with prohibited species, by changing to another trawl gear type. Alternatively, a vessel could choose to target more abundant bottom trawl species on the same trip if it finds targeting non-whiting midwater species to be less profitable or carry increased risk of encountering non-target catch.

Allowing groundfish bottom and midwater trawl gear to be fished on the same trip could have some limited indirect effects on stock assessments for target and non-target species. Because it is impossible for observers and vessels using electronic monitoring to monitor the hold once the catch is stored, there is the potential that removing the prohibition on multiple types of trawl gear could reduce the quality of stock assessments and economic analysis to some extent if the catch mingles and is recorded incorrectly.

2. Eliminate the Prohibition on Bringing a New Haul Onboard Before All Catch From the Previous Haul Is Stowed

The proposed elimination of the prohibition on bringing a new haul on board before all catch from a previous haul had been stowed first came to the Council from the GAP at the Council's November 2015 during discussions of the range of alternatives for the trawl gear changes package. Under current regulations, vessels fishing in the Shorebased IFQ Program are prohibited from bringing a new haul on board the deck until all catch from the previous haul has been stowed. Catch cannot be stowed until all protocols under the Electronic Monitoring Program or the West Coast Groundfish Observer Program (WCGOP) have been completed. Additionally, the regulations require vessels to stow all catch from a haul before the new haul is brought onboard. These requirements were added to the regulations in 2011, through implementation of the Trawl Rationalization Program, to aid observers in carrying out their duties.

This rule proposes eliminating the existing prohibition on bringing a haul on board before the previous haul has been stowed, and the requirement to stow all catch before catch from a new haul is brought on board. However, vessels would be required to keep separate catch from separate hauls until the observer could complete the haul-specific collection of catch for sampling. Vessels fishing with electronic monitoring would be required to keep catch from different hauls separate on deck until fully documented according to protocols established in the specific vessel's monitoring plan. All vessels would still be required to land any catch that was caught using different gears separated by gear type.

Eliminating this prohibition could provide some limited benefit to the vessels. Completely sorting and stowing

catch from a haul in the trawl fishery can take several hours. There have been some instances when the onboard observer may not require all catch to be removed from deck and stowed to successfully complete sampling duties. As long as catch from different hauls does not mingle, the vessel operator could bring a second haul onboard while the observer is completing their duties.

Eliminating the prohibition on bringing a new haul on board could have some potential negative effects on observers if this causes vessel operators to pressure observers to complete their duties more quickly so a new haul could be brought onboard. Degraded observer data could result in indirect impacts on stocks if stock data is affected. The current regulations require that the observers are provided reasonable assistance to complete all duties, including providing adequate time and space to do so. These regulations would still be enforced if the prohibition on bringing a new haul onboard is eliminated.

3. Eliminate the Prohibition on Fishing in Multiple IFQ Management Areas on the Same Tow

There are currently four IFQ management areas in the regulations that are based on the stock information for select species, harvest allocations, and the corresponding quota shares for species. The IFQ management areas include:

- The area between the U.S./Canada border and 40°10′ N latitude
- The area between 40°10′ N latitude and 36° N latitude
- The area between 36° N latitude and 34°27′ N latitude
- The area between 34°27′ N latitude and the U.S./Mexico border.

The Council created these areas as part of the Trawl Rationalization Program to allow for different management measures for species or species groups in different IFQ management areas. Several IFQ species are tracked either as a single species with different quota share by area, or as a single species in one area and as a component of an assemblage in another area (*e.g.,* minor shelf or slope complex north or south of 40°10′ N latitude). To address differences in management measures for species or species complexes among IFQ management areas, vessels have been prohibited from fishing in different IFQ management areas during the same fishing trip.

As mentioned previously, the Council held a workshop in Portland, Oregon on August 29 and 30, 2012. The result of that workshop was a list of recommendations to the Council at its November 2012 meeting. One of those recommendations included the elimination of the prohibition on fishing across management lines for vessels fishing under the Shorebased IFQ Program. Instead, participants suggested allowing vessels to move across IFQ management lines on a single tow.

This rule proposes eliminating the prohibition on fishing in multiple IFQ management areas on the same trip for vessels fishing in the Shorebased IFQ Program. These vessels would be allowed to fish in multiple IFQ management areas on the same trip and the same haul. If retaining catch from multiple IFQ management areas, catch would not need to be sorted by area. Catch from multiple IFQ management areas would be recorded on the same ticket.

Based on recommendations from industry, this rule also proposes to allow vessels to fish across management lines in the same tow. Catch from vessels fishing across management lines would be assigned to an area and quota pounds would be deducted from vessel accounts based on the proportion of hauls in a given management area. For example, if six hauls were taken in one IFQ management area, and two hauls were taken in another management area, the total catch would be apportioned to management areas by a 6 to 2 ratio.

The proposed regulations would improve flexibility for vessels when selecting their harvest strategies to best utilize their available IFQ. Vessels that operate near a management line would most likely benefit the most from reduced operational costs by not having to haul back gear and reset to start a new haul on the other side of the management area boundary line. Vessel towing across lines could reduce the number of hauls and therefore fuel costs and time at sea.

The proposed regulations do increase the catch accounting complexity and could potentially reduce the accuracy of catch reporting. NMFS would need to accurately track the number of hauls in a given area and apply this estimation to total catch landing weight to determine the pro-rata assignment. Additionally, the combination of allowing multiple trawl gears onboard and fishing in multiple management areas creates more complexity to managers in assigning catches.

4. Summary of Potential Impacts From Proposed Regulations for Some Vessel Operations

The proposed regulations would change how vessels in the Shorebased IFQ Program may operate as they would be allowed to tow across IFQ management areas, carry and fish with groundfish bottom and midwater trawl gear, and bring a new haul on board before the previous haul has been stowed. The effect of eliminating these prohibitions is most directly felt by harvesters who would have more flexibility in how they operate their vessels. The proposed regulations are unlikely to increase fishing effort (*i.e.* number of trips) or cause a significant shift in fishing behavior. However, vessels may change where they fish, and would be expected to be more efficient in their fishing practices, which could ultimately increase effort (*i.e.* catch/hour). These impacts are expected to be minimal as most vessels will likely not choose to carry and fish multiple gears on every trip. Additional impacts to the physical environment caused by the proposed regulations are not anticipated because these provisions do not open any new areas to fishing, and vessels will still be required to abide by all groundfish conservation areas. Direct impacts to the biological environment are not expected from these measures. Vessels in the Shorebased IFQ Program are required to cover all catch with quota pounds. Net configurations would not be affected by these proposed regulations.

Vessel operators are expected to use the flexibility to create an efficient fishing strategy that best limits bycatch of non-target and protected species while still maximizing catch of their target species. Vessels would maximize attainment of IFQ by carrying and fishing with both midwater and groundfish bottom trawl gear on the same trip. According to vessel operators, trawl vessels average between 10 and 20 days spent annually traveling back and forth to port to change gear types. If vessels in the Shorebased IFQ Program had less restrictions on how they operate their vessels, including carrying multiple types of trawl gear onboard, vessel operators may be able to eliminate most days spent traveling back and forth to port to change gears resulting in financial savings. For example, the mean fixed operational costs for non-whiting trawl vessels in the Trawl Rationalization Program is just over $5,000 per day. If these vessels were to eliminate 10–20 days which had been previously used to transit back and forth to port, then that would be a savings of between $50,000 and $100,000 per vessel per year.

Vessel operators would also likely create efficiencies and save money if fishing near an IFQ management line. A vessel operator would not have to haul

back gear and reset to start a new haul in a new management area. Vessel towing across IFQ management lines could reduce the number of hauls and therefore the amount of fuel spent trawling and maneuvering the vessel to optimize harvest, potentially increasing attainment for the few vessels that are currently hampered by their inability to cross management lines.

Eliminating regulations that manage vessel operations could also have some potential negative impacts to processors, observers, and managers. Due to the complexity of the sorting options for vessels fishing across IFQ management lines, processors could have difficulty handling deliveries, as the number of hauls in each area would need to be tracked and reported on fish tickets. Additional catch accounting complexity would also result from needing to track the number of hauls by management area. Vessels using multiple groundfish trawl gears on a single trip would need to keep all catch separated by gear type. However, as there are no monitors or cameras below deck, it would be impossible for shoreside monitors, first receivers, vessel operators, or observers to ensure that catch has been kept separate.

A vessel observer's ability to process samples would be the limiting factor for increased efficiency on vessels where an operator would like to bring a new haul onboard before the previous haul has been stowed. Catch from hauls caught by the same gear could not be mixed until the observer had taken all the necessary samples. Therefore, additional pressure on the observer to do their work quickly may result. This pressure could cause mistakes and ultimately degrade data quality. Maintaining restrictions on pressuring observers or catch monitors would ensure continued accurate monitoring and reporting of catch, and help maintain quality catch at sea and landing data used to manage the fishery in season and for stock assessments used to develop catch limits and harvest guidelines.

III. Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law. In making the final determination, NMFS will consider the data, views, and comments received during the public comment period. NMFS also prepared an environmental assessment (EA) for this action. Copies of the draft EA and other supporting documentation is available from NMFS (see **ADDRESSES**) or visit NMFS's website at *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish_catch_shares/rules_regulations/trawl_regulations_compliance_guides.html.*

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

This proposed rule does not contain policies with Federalism or ''takings'' implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed regulations for groundfish bottom trawl and midwater trawl gear would directly affect vessels fishing under the Pacific Coast Groundfish Fishery's Trawl Rationalization Program. Eliminating restrictions on mesh size, chafing gear, and codend will allow vessels to experiment with different mesh sizes and net coverings, which could help reduce fishing operational costs and days on sea. Removing the requirement to use selective flatfish trawl gear and revising the definition to allow for four-seam nets will allow vessel operators to target recently rebuilt overfished stocks, such as widow and yellowtail rockfishes. Allowing vessels that fish in the Shorebased IFQ Program, a component of the Trawl Rationalization Program, to carry and fish with multiple groundfish trawl gears, fish across management lines, and bring a new haul onboard the vessel before the previous haul is stowed could help improve the efficiency of fishing practices. Vessels would not be required to return to port to change gears or haul back to move and reset on the other side of an IFQ management line. Vessels could spend less time at sea, which would reduce fuel and observer costs. Our analysis of the likely economic impacts of this action predicts that these regulatory changes will have positive impacts on fishing vessels, seafood processors, and fishing communities.

IV. Description of Regulated Entities

For the purposes of our Regulatory Flexibility Act (RFA) analysis, the proposed action is expected to affect entities that both process and harvest groundfish under the Trawl Rationalization Program. The U.S. Small Business Association (SBA) established criteria for business in the fishery sector to qualify as small entities. Under that standard, two small processing entities, each of which owns one groundfish permit, would be regulated by the proposed rule. Seven large entities, which own 30 groundfish permits, would be regulated by the proposed rule.

For RFA purposes only, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. The determination as to whether the entity is large or small is based on the average annual revenue for the 3 years from 2013 through 2015. Limited entry groundfish vessels are required to self-report size across all affiliated entities. Of the businesses who earn the majority of their revenue from commercial fishing, one self-reported as large. This entity owns four groundfish permits. The remaining 117 entities primarily involved in seafood harvest self-identified as small, and own 139 permits.

A total of 113 vessels harvested groundfish in the Trawl Rationalization at some point and would potentially benefit from some or all of the flexibility offered in the proposed rule. However, this number of entities represents the maximum number of affected entities. Not all permit owners choose to fish each season, therefore, not all 113 vessels would benefit from this action each year. Only those vessels which are active vessels are the most likely to benefit and be directly impacted by regulations.

V. Description of the Proposed Regulations

The proposed regulations would eliminate and revise regulations that govern the use and configuration of groundfish bottom and midwater trawl gear fished under the Pacific Coast Groundfish Fishery's Trawl Rationalization Program. The specific revisions would eliminate the minimum mesh size requirement for groundfish bottom trawl and midwater trawl gear; the prohibition on the use of double-walled cod-ends; restrictions on where and how chafing gear can be attached to the trawl net; the requirement to use

selective flatfish trawl gear shoreward of the trawl RCA; the prohibition on carrying and using multiple types of groundfish trawl gear (bottom trawl and midwater trawl) on the same trip; the prohibition on fishing across individual fishing quota management lines on the same haul; and the prohibition on bringing a new haul onboard before all catch from the previous haul has been stowed.

VI. Collection of Information Requirements

This action contains a change to an information collection requirement, which has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648–0573: Expanded Vessel Monitoring System Requirement for the Pacific Groundfish Fishery. The proposed regulatory change, which is described above in section C.1 of the preamble, would allow vessel operators who fish in the Shorebased IFQ Program to make a new declaration from sea when a new gear fished on a trip. This revision would remove the requirement that vessels return to port to make a new declaration. The numbers of declaration reports the vessel operator is required to submit to NMFS would not change under this request. Therefore, no small entity would be subject to additional reporting requirements.

Overall, the proposed regulations are expected to have a positive economic effect on small entities. The elimination of these regulations would alleviate some restrictions on how vessels fishing in the Trawl Rationalization may use and configure their gear. Eliminating regulations that may be constraining on industry members and are no longer needed due to the new management system is likely to generate additional groundfish gross revenues as vessels are able to obtain more of their quota and reducing their fishing operational costs. Allowing vessels more flexibility to configure their gear will also allow vessel operators to innovate and adapt to an ever changing environment.

This action is not expected to have a significant economic impact on a substantial number of small entities. The effects on the regulated small entities identified in this analysis are expected to be positive. Under the proposed action, small entities would not be placed at a competitive disadvantage relative to large entities, and the regulations would not reduce the profits for any small entities. As a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: August 31, 2018.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.11, amend the definition of ''Fishing gear'' by revising paragraphs (7) and (11)(iii)(B) to read as follows:

§ 660.11 General definitions.

* * * * *

Fishing gear includes the following types of gear and equipment:

* * * * *

(7) *Mesh size* means the opening between opposing knots, or opposing corners for knotless webbing. Minimum mesh size means the smallest distance allowed between the inside of one knot or corner to the inside of the opposing knot or corner, regardless of twine size.

* * * * *

(11) * * *

(iii) * * *

(B) *Chafing gear* means webbing or other material that is attached to the trawl net to protect the net from wear and abrasions either when fishing or hauling on deck.

* * * * *

■ 3. In § 660.13, revise paragraph (d) to read as follows:

§ 660.13 Recordkeeping and reporting.

* * * * *

(d) *Declaration reporting requirements*—When the operator of a vessel registers a VMS unit with NMFS OLE, the vessel operator must provide NMFS with a declaration report as specified at paragraph (d)(4)(iv) of this section. The operator of any vessel that has already registered a VMS unit with NMFS OLE but has not yet made a declaration, as specified at paragraph (d)(4)(iv) of this section, must provide NMFS with a declaration report upon request from NMFS OLE.

(1) *Declaration reports for vessels registered to limited entry permits.* The operator of any vessel registered to a limited entry permit must provide NMFS OLE with a declaration report, as specified at paragraph (d)(4)(iv) of this section, before the vessel leaves port on a trip in which the vessel is used to fish in U.S. ocean waters between 0 and 200 nm offshore of Washington, Oregon, or California.

(i) Limited entry trawl vessels fishing in the Shorebased IFQ Program must provide NMFS OLE with a new declaration report each time a different groundfish trawl gear (bottom or midwater only) is fished. The declaration may be made from sea and must be made to NMFS before a different type (bottom or midwater only) of groundfish trawl gear is fished.

(ii) [Reserved]

(2) *Declaration reports for all vessels using non-groundfish trawl gear.* The operator of any vessel that is not registered to a limited entry permit and which uses non-groundfish trawl gear to fish in the EEZ (3–200 nm offshore), must provide NMFS OLE with a declaration report, as specified at paragraph (d)(4)(iv) of this section, before the vessel leaves port to fish in the EEZ.

(3) *Declaration reports for open access vessels using non trawl gear (all types of open access gear other than non-groundfish trawl gear).* The operator of any vessel that is not registered to a limited entry permit, must provide NMFS with a declaration report, as specified at paragraph (d)(4)(iv) of this section, before the vessel leaves port on a trip in which the vessel is used to take and retain or possess groundfish in the EEZ or land groundfish taken in the EEZ.

(4) *Declaration reports.* (i) The operator of a vessel specified in paragraphs (d)(1), (d)(2), and (d)(3) of this section must provide a declaration report to NMFS OLE prior to leaving port on the first trip in which the vessel meets the requirement specified at § 660.14(b) to have a VMS.

(ii) A declaration report will be valid until another declaration report revising the existing gear or fishery declaration is received by NMFS OLE. The vessel operator must send a new declaration report when:

(A) A gear type that is different from the gear type most recently declared for the vessel will be used, or

(B) A vessel will fish in a fishery other than the fishery most recently declared.

(iii) During the period of time that a vessel has a valid declaration report on file with NMFS OLE, it cannot fish with a gear other than a gear type declared by the vessel or fish in a fishery other than the fishery most recently declared.

(iv) Declaration reports will include: The vessel name and/or identification number, the gear type, and the fishery

(as defined in paragraph (d)(4)(iv)(A) of this section).

(A) One of the following gear types or sectors must be declared:

(*1*) Limited entry fixed gear, not including Shorebased IFQ Program,

(*2*) Limited entry groundfish non-trawl, Shorebased IFQ Program,

(*3*) Limited entry midwater trawl, non-whiting Shorebased IFQ Program,

(*4*) Limited entry midwater trawl, Pacific whiting Shorebased IFQ Program,

(*5*) Limited entry midwater trawl, Pacific whiting catcher/processor sector,

(*6*) Limited entry midwater trawl, Pacific whiting mothership sector (catcher vessel or mothership),

(*7*) Limited entry bottom trawl, Shorebased IFQ Program, not including demersal trawl,

(*8*) Limited entry demersal trawl, Shorebased IFQ Program,

(B) [Reserved]

(v) Upon receipt of a declaration report, NMFS will provide a confirmation code or receipt to confirm that a valid declaration report was received for the vessel. Vessel owners or operators are responsible for retaining the confirmation code or receipt to verify that a valid declaration report was filed.

■ 4. In § 660.25, revise paragraph (b)(4)(vii)(C) to read as follows:

§ 660.25 Permits.

* * * * *

(b) * * *

(4) * * *

(vii) * * *

(C) *Limited entry MS permits and limited entry permits with an MS/CV or a C/P endorsement.* Limited entry MS permits and limited entry permits with an MS/CV or a C/P endorsement may be registered to another vessel up to two times during the calendar year as long as the second change in vessel registration is back to the original vessel. The original vessel is either the vessel registered to the permit as of January 1, or if no vessel is registered to the permit as of January 1, the original vessel is the first vessel to which the permit is registered after January 1. After the original vessel has been established, the first change in vessel registration would be to another vessel, but any second change in vessel registration must be back to the original vessel. For an MS/CV-endorsed permit on the second change in vessel registration back to the original vessel, that vessel must be used to fish exclusively in the MS Coop Program described § 660.150 for the remainder of the calendar year, and declare in to the limited entry mid water trawl, Pacific whiting mothership sector as specified at § 660.13(d)(4)(iv).

* * * * *

■ 5. In § 660.60, revise paragraphs (h)(7) introductory text, (h)(7)(i) introductory text, (h)(7)(ii)(A), (h)(7)(ii)(B)(*1*) introductory text, and (h)(7)(ii)(B)(*2*) to read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(h) * * *

(7) *Crossover provisions.* Crossover provisions apply to three activities: Fishing on different sides of a management line, fishing in both the limited entry and open access fisheries, or fishing in both the Shorebased IFQ Program and the limited entry fixed gear fishery. Fishery-specific crossover provisions can be found in subparts D through F of this part.

(i) *Fishing in management areas with different trip limits.* Trip limits for a species or a species group may differ in different management areas along the coast. The following crossover provisions apply to vessels fishing in different geographical areas that have different cumulative or ''per trip'' trip limits for the same species or species group, with the following exceptions. Such crossover provisions do not apply to: IFQ species (defined at § 660.140(c), subpart D) for vessels that are declared into the Shorebased IFQ Program (see § 660.13(d)(4)(iv)(A), for valid Shorebased IFQ Program declarations); species that are subject only to daily trip limits; or to trip limits for black rockfish off Washington, as described at §§ 660.230(e) and 660.330(e).

* * * * *

(ii) * * *

(A) *Fishing in limited entry and open access fisheries with different trip limits.* Open access trip limits apply to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear. Except such provisions do not apply to IFQ species (defined at § 660.140(c), subpart D) for vessels that are declared into the Shorebased IFQ Program (see § 660.13(d)(4)(iv)(A) for valid Shorebased IFQ Program declarations). A vessel that fishes in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. If a vessel has a limited entry permit registered to it at any time during the trip limit period and uses open access gear, but the open access limit is smaller than the limited entry limit, the open access limit may not be exceeded and counts toward the limited entry limit. If a vessel has a limited entry permit registered to it at any time during the trip limit period and uses open access gear, but the open access limit is larger than the limited entry limit, the smaller limited entry limit applies, even if taken entirely with open access gear.

(B) * * * (*1*) *Vessel registered to a limited entry trawl permit.* To fish with open access gear, defined at § 660.11, a vessel registered to a limited entry trawl permit must make the appropriate fishery declaration, as specified at § 660.13(d)(4)(iv)(A). In addition, a vessel registered to a limited entry trawl permit must remove the permit from their vessel, as specified at § 660.25(b)(4)(vi), unless the vessel will be fishing in the open access fishery under one of the following declarations specified at § 660.13(d):

* * * * *

(*2*) *Vessel registered to a limited entry fixed gear permit(s).* To fish with open access gear, defined at § 660.11, subpart C, a vessel registered to a limit entry fixed gear permit must make the appropriate open access declaration, as specified at § 660.13(d)(4)(iv)(A). Vessels registered to a sablefish-endorsed permit(s) fishing in the sablefish primary season (described at § 660.231, subpart E) may only fish with the gear(s) endorsed on their sablefish-endorsed permit(s) against those limits.

* * * * *

■ 6. In § 660.112, revise paragraphs (b)(1)(vii), (b)(1)(xi), (b)(1)(xii)(A), (c)(4), and (e)(4) to read as follows:

§ 660.112 Trawl fishery—prohibitions.

* * * * *

(b) * * *

(1) * * *

(vii) For vessels fishing with multiple trawl gear types on a single trip, fail to keep catch from different trawl gears separate and land the catch separately by gear type.

* * * * *

(xi) Mix catch from different hauls before all sampling and monitoring requirements for the hauls have been met.

(xii) * * *

(A) A vessel that is 75-ft (23-m) or less LOA that harvests Pacific whiting and, in addition to heading and gutting, cuts the tail off and freezes the whiting, is not considered to be a C/P vessel nor is it considered to be processing fish, and

* * * * *

(c) * * *

(4) Catch, take, or harvest fish in the MS Coop Program with a vessel that does not have a valid VMS declaration for limited entry midwater trawl, Pacific

whiting mothership sector, as specified at § 660.13(d)(4)(iv)(A), subpart C.

* * * * *

(e) * * *

(4) Fish in the C/P Coop Program with a vessel that does not have a valid VMS declaration for limited entry midwater trawl, Pacific whiting catcher/processor sector, as specified at § 660.13(d)(4)(iv)(A).

* * * * *

■ 7. In § 660.113 revise paragraph (b)(3) to read as follows:

§ 660.113 Trawl fishery—recordkeeping and reporting.

* * * * *

(b) * * *

(3) *Gear switching declaration.* Any person with a limited entry trawl permit participating in the Shorebased IFQ Program using groundfish non-trawl gear (*i.e.,* gear switching) must submit a valid gear declaration reporting such participation as specified in § 660.13(d)(4)(iv)(A).

* * * * *

■ 8. In § 660.130:

■ a. Remove paragraphs (b)(1), (b)(2), and (b)(3)(iii);

■ b. Redesignate paragraphs (b)(3) and (b)(4) as (b)(1) and (b)(2), respectively;

■ c. Revise the newly redesignated paragraphs (b)(1)(ii)(A) and (b)(2);

■ d. Revise paragraphs (c)(1), (c)(2), (c)(3)(ii), (c)(4)(i)(A), (c)(4)(i)(B), (c)(4)(i)(D) and (E), (c)(4)(ii)(A) and (B), (d)(2)(ii), (e) introductory text, (e)(4)(ii), and (e)(4)(iv).

The revisions read as follows:

§ 660.130 Trawl fishery—management measures.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) *Selective flatfish trawl gear.* Selective flatfish trawl gear is a type of small footrope trawl gear. The selective flatfish trawl net must be either a two-seamed or four-seamed net with no more than four riblines, excluding the codend. The breastline may not be longer than 3 ft (0.92 m) in length. There may be no floats along the center third of the headrope or attached to the top panel except on the riblines. The footrope must be less than 105 ft (32.26 m) in length. The headrope must be not less than 30 percent longer than the footrope. The headrope shall be measured along the length of the headrope from the outside edge to the opposite outside edge. An explanatory diagram of a selective flatfish trawl net is provided as Figure 1 of part 660, subpart D.

* * * * *

(2) *Midwater (pelagic or off-bottom) trawl gear.* Midwater trawl gear must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere on any part of the net. The footrope of midwater gear may not be enlarged by encircling it with chains or by any other means. Ropes or lines running parallel to the footrope of midwater trawl gear must be bare and may not be suspended with chains or any other materials. Sweep lines, including the bottom leg of the bridle, must be bare. For at least 20 ft (6.15 m) immediately behind the footrope or headrope, bare ropes or mesh of 16-inch (40.6-cm) minimum mesh size must completely encircle the net.

(c) * * *

(1) *Fishing with large footrope trawl gear.* It is unlawful for any vessel using large footrope gear to fish for groundfish shoreward of the RCAs defined at paragraph (e)(4) of this section and at §§ 660.70 through 660.74, subpart C. The use of large footrope gear is allowed seaward of the RCAs coastwide.

(2) *Fishing with small footrope trawl gear.* The use of small footrope bottom trawl gear is allowed in all areas where bottom trawling is allowed.

(i) *Fishing with selective flatfish trawl gear.* The use of selective flatfish trawl gear, a type of small footrope trawl gear, is allowed in all areas where bottom trawling is allowed.

(ii) [Reserved]

(3) * * *

(ii) South of 40°10′ N latitude, midwater groundfish trawl gear is prohibited within and shoreward of the RCA boundaries (see § 660.130(e)(4)(i)) and allowed seaward of the RCA boundaries.

(4) * * *

(i) * * *

(A) A vessel may not have both groundfish trawl gear and non-groundfish trawl gear onboard simultaneously.

(B) If a vessel fishes exclusively with large or small footrope trawl gear during an entire cumulative limit period, the vessel is subject to the cumulative limits for that gear.

* * * * *

(D) If more than one type of groundfish bottom trawl gear (selective flatfish, large footrope, or small footrope) is on board, either simultaneously or successively, at any time during a cumulative limit period, then the most restrictive cumulative limit associated with the groundfish bottom trawl gear on board during that cumulative limit period applies for the entire cumulative limit period.

(E) If a vessel fishes both north and south of 40°10′ N latitude with any type of small or large footrope gear onboard the vessel at any time during the cumulative limit period, the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative limit for that gear (See crossover provisions at § 660.60(h)(7)).

(ii) * * *

(A) A vessel may not have both groundfish trawl gear and non-groundfish trawl gear onboard simultaneously.

(B) If a vessel fishes both north and south of 40°10′ N latitude with any type of small or large footrope gear onboard the vessel at any time during the cumulative limit period, the most restrictive cumulative limit associated with the gear on board would apply for that trip and all catch would be counted toward that cumulative limit (See crossover provisions at § 660.60(h)(7)).

(d) * * *

(2) * * *

(ii) *Catcher vessels.* All catch must be sorted by the gear types declared in accordance with § 660.13(d), and to the species groups specified in paragraph (d)(1) of this section for vessels with limited entry permits, except those vessels retaining all catch during a Shorebased IFQ trip (*i.e.,* maximized retention trips). The catch must not be discarded from the vessel and the vessel must not mix catch from hauls until the observer has sampled the catch. Catch separated by trawl gear type must be landed separately by trawl gear type. Prohibited species must be sorted according to the following species groups: Dungeness crab, Pacific halibut, Chinook salmon, other salmon. Non-groundfish species must be sorted as required by the state of landing.

* * * * *

(e) *Groundfish conservation areas (GCAs) applicable to trawl vessels.* A GCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude. The latitude and longitude coordinates of the GCA boundaries are specified at §§ 660.70 through 660.74. If a vessel is fishing within a GCA listed in this paragraph (e) using trawl gear authorized for use within a GCA, all prohibited gear: must be stowed below deck; or, if the gear cannot readily be moved, must be stowed in a secured and covered manner detached from all towing lines so that it is rendered unusable for fishing; or, if remaining on deck uncovered, must be stowed disconnected from the trawl doors with the trawl doors hung from their

stanchions. The following GCAs apply to vessels participating in the limited entry trawl fishery. Additional closed areas that specifically apply to vessels using midwater groundfish trawl gear are described at § 660.131(c).

* * * * *

(4) * * *

(ii) Trawl vessels may transit through an applicable GCA, with or without groundfish on board, provided all prohibited groundfish trawl gear: Is stowed below deck; or, if the gear cannot readily be moved, is stowed in a secured and covered manner detached from all towing lines so that it is rendered unusable for fishing; or, if remaining on deck uncovered, is stowed disconnected from the trawl doors with the trawl doors hung from their stanchions. These restrictions do not apply to vessels allowed to fish within the trawl RCA under paragraph (e)(4)(i) of this section.

* * * * *

(iv) If a vessel fishes in the trawl RCA using midwater trawl gear, it may also fish outside the trawl RCA with groundfish bottom trawl gear on the same trip. Nothing in these Federal regulations supersedes any state regulations that may prohibit trawling shoreward of the fishery management area (3–200 nm).

* * * * *

■ 9. In § 660.140, remove paragraphs (c)(1) and (h)(2)(viii)(I), and redesignate paragraph (c)(2) as (c)(1), revise newly redesignated paragraph (c)(1), and reserve paragraph (c)(2) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(c) * * *

(1) *IFQ management areas.* IFQ management areas are as follows:

(i) Between the US/Canada border and 40°10′ N lat.,

(ii) Between 40°10′ N lat. and 36° N lat.,

(iii) Between 36° N lat. and 34°27′ N lat., and

(iv) Between 34°27′ N lat. and the US/Mexico border.

(2) [Reserved]

* * * * *

■ 10. Table 1 (North) and Table 1 (South) to part 660, subpart D are revised to read as follows:

Table 1 (North) to Part 660, Subpart D -- Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for non-IFQ Species and Pacific Whiting North of 40°10' N. Lat.

This table describes Rockfish Conservation Areas for vessels using groundfish trawl gear. This table describes incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 8/13/2018

TABLE 1 (North)

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	North of 45°46' N. lat.	100 fm line[1/] - 150 fm line[1/]					
2	45°46' N. lat. - 40°10' N. lat.	100 fm line[1/] - modified[2/] 200 fm line[1/]					
	Selective flatfish trawl gear is allowed shoreward of the RCA; all bottom trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is allowed seaward of the RCA. Large footrope is prohibited shoreward of the RCA. Midwater trawl gear is allowed for vessels targeting whiting and non-whiting during the days open to the primary whiting season. **Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry groundfish trawl fishery landing allowances in this table, regardless of the type of fishing gear used. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry fixed gear non-trawl RCA, as described in Tables 2 (North) and 2 (South) to Part 660, Subpart E.**						
	See § 660.60, § 660.130, and § 660.140 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70 660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor Nearshore Rockfish & Black rockfish**	300 lb/ month					
4	**Whiting[3/]**						
5	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.					
6	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					
7	**Cabezon[4/]**						
8	North of 46°16' N. lat.	Unlimited					
9	46°16' N. lat. - 40°10' N. lat.	50 lb/ month					
10	**Shortbelly rockfish**	Unlimited					
11	**Spiny dogfish**	60,000 lb/ month					
12	**Big skate**	5,000 lb/ 2 months	30,000 lb/ 2 months	35,000 lb/ 2 months	40,000 lb/ 2 months	15,000 lb/ 2 months	5,000 lb/ 2 months
13	**Longnose skate**	Unlimited					
14	**Other Fish [4/]**	Unlimited					

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ The "modified" fathom lines are modified to exclude certain petrale sole areas from the RCA.

3/ As specificed at §660.131(d), when fishing in the Eureka Area, no more than 10,000 lb of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during the fishing trip, fished in the fishery management area shoreward of 100 fm contour.

4/ "Other Fish" are defined at § 660.11 and include kelp greenling, leopard shark, and cabezon in Washington

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 1 (South) to Part 660, Subpart D -- Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for non-IFQ Species and Pacific Whiting South of 40°10' N. Lat.

This table describes Rockfish Conservation Areas for vessels using groundfish trawl gear. This table describes incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 8/13/2018

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	South of 40°10' N. lat.	100 fm line[1/] - 150 fm line [1/2/]					
Small footrope trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, midwater trawl, and small footrope trawl gear) is allowed seaward of the RCA. Large footrope trawl gear and midwater trawl gear are prohibited shoreward of the RCA. **Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry groundfish trawl fishery landing allowances in this table, regardless of the type of fishing gear used. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry fixed gear non-trawl RCA, as described in Tables 2 (North) and 2 (South) to Part 660, Subpart E.**							
See § 660.60, § 660.130, and § 660.140 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70 660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.							
2	**Longspine thornyhead**						
3	South of 34°27' N. lat.	24,000 lb/ 2 months					
4	**Minor Nearshore Rockfish & Black rockfish**	300 lb/ month					
5	**Whiting**						
6	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.					
7	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					
8	**Cabezon**	50 lb/ month					
9	**Shortbelly rockfish**	Unlimited					
10	**Spiny dogfish**	60,000 lb/ month					
11	**Big skate**	5,000 lb/ 2 months	30,000 lb/ 2 months	35,000 lb/ 2 months	40,000 lb/ 2 months	15,000 lb/ 2 months	5,000 lb/ 2 months
12	**Longnose skate**	Unlimited					
13	**California scorpionfish**	Unlimited					
14	**Other Fish [3/]**	Unlimited					

TABLE 1 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ South of 34°27' N. lat., the RCA is 100 fm line - 150 fm line along the mainland coast; shoreline - 150 fm line around islands.

3/ "Other Fish" are defined at § 660.11 and include kelp greenling, leopard shark, and cabezon in Washington

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 11. In § 660.333, revise paragraphs (b)(1), (c)(1), and (d)(1) to read as follows:

§ 660.333 Open access non-groundfish trawl fishery—management measures

* * * * *

(b) * * *

(1) It is declared ''non-groundfish trawl gear for ridgeback prawn'' under § 660.13(d)(4)(iv)(A)(*10*), regardless of whether it is registered to a Federal limited entry trawl-endorsed permit; and

* * * * *

(c) * * *

(1) It is declared ''non-groundfish trawl gear for California halibut'' under § 660.13(d)(4)(iv)(A)(*11*), regardless of whether it is registered to a Federal limited entry trawl-endorsed permit;

* * * * *

(d) * * *

(1) It is declared ''non-groundfish trawl gear for sea cucumber'' under § 660.13(d)(4)(iv)(A)(*12*), regardless of whether it is registered to a Federal limited entry trawl-endorsed permit;

* * * * *

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Notices

Federal Register
Vol. 83, No. 174
Friday, September 7, 2018

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 4, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by October 9, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: Meeting the Information Requirements of the Animal Welfare Act Workshop Registration Form.

OMB Control Number: 0518–0033.

Summary of Collection: The U.S. Department of Agriculture, National Agricultural Library (NAL), Animal Welfare Information Center conducts a workshop titled ''Meeting the Information Requirements of the Animal Welfare Act.'' The registration form collects information from interested parties necessary to register them for the workshop. This information includes: Workshop data preferences, signature, name, title, organization name, mailing address, phone and fax numbers and email address. The information will be collected using online and printed versions of the form. Also forms can be fax or mailed.

Need and Use of the Information: NAL will collect information to register participants, contact them regarding schedule changes, control the number of participants due to limited resources and training space, and compile and customize class materials to meet the needs of the participants. Failure to collect the information would prohibit the delivery of the workshop and significantly inhibit NAL's ability to provide up-to-date information on the requirements of the Animal Welfare Act.

Description of Respondents: Not-for-Profit Institutions; Business or Other for-profit; Government; State, Local, or Tribal Government.

Number of Respondents: 200.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 17.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–19451 Filed 9–6–18; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revision of the Land Management Plan for the Colville National Forest in Washington State

AGENCY: Forest Service, USDA.

ACTION: Notice of the opportunity to object to the Revised Land Management Plan for the Colville National Forest.

SUMMARY: The USDA Forest Service has prepared a Revised Land Management Plan (Forest Plan) for the Colville National Forest. The Forest Service has also prepared a Final Environmental Impact Statement (FEIS) and a Draft Record of Decision (ROD). This notice is to inform the public that a 60-day objection period is being initiated for individuals or entities who have submitted substantive formal comments related to the revision of the Forest Plan during the opportunities for public comment provided during the planning process for that decision. Objections must be based on previously submitted substantive formal comments attributed to the objector unless the objection concerns an issue that arose after the opportunities for formal comment.

DATES: The Revised Forest Plan, FEIS, Draft ROD, and other supporting documentation are available on the following web page: *https://www.fs.usda.gov/detail/colville/landmanagement/planning/?cid=stelprd3824594.*

A legal notice of the initiation of the 60-day objection period is being published in *The Seattle Times,* which is the newspaper of record for Regional Forester decisions in the Pacific Northwest Region of the Forest Service in the state of Washington. The 60-day objection period will begin the day following the date of the publication of the legal notice in *The Seattle Times.* A copy of the legal notice will be posted on the web page listed above.

ADDRESSES: Electronic objections must be submitted to the Objection Reviewing Officer via email to *objections-chief@fs.fed.us,* with a subject line stating: ''Objection regarding the Revised Colville Forest Plan.'' Electronic submissions must be submitted in a format (Word, PDF, or Rich Text) that is readable and searchable with optical character recognition software.

Faxed objections must be sent and addressed to ''Chris French, Objection Reviewing Officer'' at (202) 649–1172 and must include a subject line stating: ''Objection regarding the Revised Colville Plan.'' The fax coversheet should specify the number of pages being submitted.

Hardcopy objections may be submitted by regular mail, private carrier, or hand delivery to the following address: USDA Forest Service, Attn: Chris French, Objection Reviewing Officer, 1400 Independence Ave. SW, EMC–PEEARS, Mailstop 1104, Washington, DC 20250. Office hours are Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Hardcopy submissions must include a subject line on page one stating: ''Objection regarding the Revised Colville Forest Plan.''

Individuals who need to use telecommunication devices for the deaf (TDD) to transmit objections may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Holly Hutchinson, Team Leader, 765 S Main St., Colville, WA 99114, phone: (509) 684–7201.

SUPPLEMENTARY INFORMATION: The decision to approve the Revised Forest Plan will be subject to the objection process identified in 36 CFR part 219 Subpart B (219.50 to 219.62). Individuals and entities who have submitted substantive formal comments related to the revision of the Forest Plan during the opportunities for public comment, as provided in 36 CFR part 219 Subpart A, during the planning process for that decision may file an objection. Objections must be based on previously submitted substantive formal comments attributed to the objector unless the objection concerns an issue that arose after the opportunities for formal comment. The burden is on the objector to demonstrate compliance with the requirements for objection. All objections must be filed, in writing, with the reviewing officer for the Revised Forest Plan. Objections received in response to this solicitation, including names and addresses of those who object, will be considered part of the public record on these proposed actions and will be available for public inspection. At a minimum, an objection must include the following (36 CFR 219.54(c)):

(1) The objector's name and address along with a telephone number or email address if available. In cases where no identifiable name is attached to an objection, the Forest Service will attempt to verify the identity of the objector to confirm objection eligibility;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection);

(3) Identification of the lead objector, when multiple names are listed on an objection. The Forest Service will communicate to all parties to an objection through the lead objector. Verification of the identity of the lead objector must also be provided if requested;

(4) The name of the Plan Revision document(s) being objected to, and the name and title of the responsible official;

(5) A statement of the issues and/or parts of the Plan Revision document(s) to which the objection applies;

(6) A concise statement explaining the objection and suggesting how the proposed Forest Plan decision may be improved. If the objector believes that the Plan Revision is inconsistent with law, regulation, or policy, an explanation should be included;

(7) A statement that demonstrates the link between the objector's prior substantive formal comments and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment; and

(8) All documents referenced in the objection (a bibliography is not sufficient), except that the following need not be provided:

a. All or any part of a Federal law or regulation,

b. Forest Service Directive System documents and land management Plans or other published Forest Service documents,

c. Documents referenced by the Forest Service in the planning documentation related to the proposal subject to objection, and

d. Formal comments previously provided to the Forest Service by the objector during the plan revision comment period.

Prior to the issuance of the reviewing officer's written response, either the reviewing officer or the objector may request to meet to discuss issues raised in the objection. Interested persons who wish to participate in meetings to discuss issues raised by objectors must have previously submitted substantive formal comments related to the objection issues. Interested persons must file a request to participate as an interested person within 10 days after legal notice of objections received has been published. Requests must be sent to the same email or address identified for filing objections, above, and the interested person must identify the specific issues they have interest in discussing. During the objection meeting, interested persons will be able to participate in discussions related to issues on the agenda that they have listed in their request to be an interested person.

Responsible Official

The Regional Forester for the Pacific Northwest Region (1220 SW 3rd Avenue, Portland, OR 97204, (503) 808–2200), is the responsible official who will approve the final ROD for the Revised Forest Plan.

Reviewing Officer

Chris French, Associate Deputy Chief, is the delegated reviewing officer for the Chief of the Forest Service (36 CFR 219.56(e)(2)).

Dated: August 29, 2018.

Chris French,

Associate Deputy Chief, National Forest System.

[FR Doc. 2018–19468 Filed 9–6–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Generic Clearance for Customer Satisfaction Research

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13.

DATES: To ensure consideration, written comments must be submitted on or before November 6, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *docpra@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Rebecca E. Vilky, 301–

763–2162, U.S. Census Bureau, HQ–8H172F, Washington, DC 20233–0500 (or via email at *rebecca.e.vilky@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is requesting generic clearance to conduct customer satisfaction research which may be in the form of mailed or electronic questionnaires and/or focus groups, telephone interviews, or web-based interviews.

The Census Bureau has ranked a customer-focused environment as one of its most important strategic planning objectives. The Census Bureau routinely needs to collect and analyze customer feedback about its products and services to better align them to its customers' needs and preferences. Several programs, products, and distribution channels have been designed and/or redesigned based on feedback from its various customer satisfaction research efforts.

Each research design is reviewed for content, utility, and user-friendliness by a variety of appropriate staff (including research design and subject-matter experts). The concept and design are tested by internal staff and a select sample of respondents to confirm its appropriateness, user-friendliness, and to estimate burden (including hours and cost) of the proposed collection of information. Collection techniques are discussed and included in the research, concept, and design discussion to define the most time-, cost-efficient and accurate collection media.

The clearance operates in the following manner: A block of burden hours is reserved at the beginning of the clearance period. The particular activities that will be conducted under the clearance are not specified in advance because they would not be known at the beginning of the clearance period. The Census Bureau provides detailed information to the Office of Management and Budget (OMB) about the specific activities a minimum of two weeks prior to the planned start date of the collection. OMB provides any comments it may have prior to the start date of the planned activity. At the end of each year, a report is submitted to OMB that summarizes the number of hours used as well as the nature and results of the activities completed under the clearance.

II. Method of Collection

This research may be in the form of mailed or electronic questionnaires and/or focus groups, telephone or web-based interviews.

III. Data

OMB Control Number: 0607–0760.

Form Number: Various.

Type of Review: Regular submission.

Affected Public: Individuals or households, State or local governments, farms, business or other for-profit organizations, federal agencies or employees, and not-for-profit institutions.

Estimated Number of Respondents: 30,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 5,000.

Estimated Total Annual Cost: There is no cost to respondents, except for their time to answer the questions.

Respondents Obligation: Voluntary.

Legal Authority: Executive Order 12862.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–19434 Filed 9–6–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–55–2018]

Foreign-Trade Zone (FTZ) 207—Richmond, Virginia; Notification of Proposed Production Activity; Kaiser Aluminum Fabricated Products, LLC (Aluminum Extrusions); Richmond, Virginia

Kaiser Aluminum Fabricated Products, LLC (Kaiser) submitted a notification of proposed production activity to the FTZ Board for its facility in Richmond, Virginia. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on August 29, 2018.

The applicant indicates that it will be submitting a separate application for FTZ designation at the Kaiser facility under FTZ 207. The facility is used for the production of aluminum extrusions for the automotive industry. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Kaiser from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Kaiser would be able to choose the duty rates during customs entry procedures that apply to: Hollow profile tubes of aluminum alloys; bars and rods of aluminum alloys; rounded bars and rods of aluminum alloys; non-rounded bars and rods of aluminum alloys; and, tube pipe of aluminum alloys (duty rate ranges from 1.5% to 5.7%). Kaiser would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include alloyed aluminum logs and billets (duty-free). The request indicates that the materials/components are subject to special duties under Section 232 of the Trade Expansion Act of 1962 (Section 232), depending on the country of origin. The applicable Section 232 decision requires subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 17, 2018.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: September 4, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018–19422 Filed 9–6–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request; Licensing Responsibilities and Enforcement

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security.

Title: Licensing Responsibilities and Enforcement.

Form Number(s): N/A.

OMB Control Number: 0694–0122.

Type of Review: Regular submission.

Estimated Total Annual Burden Hours: 78,576.

Estimated Number of Respondents: 1,821,891.

Estimated Time per Response: 5 seconds to 2 hours.

Needs and Uses: This collection of information involves nine miscellaneous activities described in section 758 of the Export Administration Regulation (EAR) that are associated with the export of items controlled by the Department of Commerce. Most of these activities do not involve submission of documents to BIS but instead involve exchange of documents among parties in the export transaction to insure that each party understands its obligations under U.S. law. Others involve writing certain export control statements on shipping documents or reporting unforeseen changes in shipping and disposition of exported commodities. These activities are needed by the Office of Export Enforcement and the U.S. Customs Service to document export transactions, enforce the EAR and protect the National Security of the United States.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at reginfo.gov *http://www.reginfo.gov/public/* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov*

Sheleen Dumas,

Department Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–19415 Filed 9–6–18; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Renewal of the Civil Nuclear Trade Advisory Committee and Solicitation of Nominations for Membership

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of renewal of the Civil Nuclear Trade Advisory Committee and solicitation of nominations for membership.

SUMMARY: Pursuant to provisions of the Federal Advisory Committee Act, the Department of Commerce (the Department) announces the renewal of the Civil Nuclear Trade Advisory Committee (CINTAC or ''Committee'') and requests nominations for membership. The purpose of the CINTAC is to provide advice to the Secretary of Commerce regarding the development and administration of programs to expand U.S. exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, which will be used by the Department in its role as a member of the Civil Nuclear Trade Working Group of the Trade Promotion Coordinating Committee and of the TeamUSA interagency group to promote U.S. civil nuclear trade.

DATES: Nominations for members must be received on or before 4:00 p.m. Eastern Daylight Time (EDT) on September 28, 2018.

ADDRESSES: Nominations may be emailed *Jonathan.Chesebro@trade.gov;* faxed to the attention of Jonathan Chesebro at 202–482–5665; or mailed to Jonathan Chesebro, Office of Energy & Environmental Industries, Room 28018, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jonathan Chesebro, Office of Energy & Environmental Industries, Room 28018, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; phone 202–482–1297; fax 202–482–5665; email *Jonathan.Chesebro@trade.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The CINTAC was established on September 17, 2008, pursuant to the Department of Commerce authority under 15 U.S.C. 1512 and the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. The CINTAC functions solely as an advisory committee in accordance with the provisions of FACA. As noted in the **SUMMARY**, CINTAC provides advice to the Secretary of Commerce regarding the development and administration of programs to expand U.S. exports of civil nuclear goods and services which will be used by the Department in its role as a member of the Civil Nuclear Trade Working Group of the Trade Promotion Coordinating Committee and as a member of the Atoms for Prosperity interagency group to promote U.S. civil nuclear trade. In particular, the Committee advises on matters including, but not limited to:

(1) Matters concerning trade policy development and negotiations relating to U.S. civil nuclear exports;

(2) The effect of U.S. Government policies, regulations, programs, and foreign government policies and practices on the export of U.S. civil nuclear goods and services;

(3) The competitiveness of U.S. industry and its ability to compete for civil nuclear products and services opportunities in international markets, including specific problems in exporting, and provide specific recommendations regarding U.S. Government and public/private actions to assist civil nuclear companies in expanding their exports;

(4) The identification of priority civil nuclear products and services markets with the potential for high immediate returns for U.S. exports, as well as emerging markets with a longer-term potential for U.S. exports;

(5) Strategies to increase private sector awareness and effective use of U.S. Government export promotion programs, and recommendations on how U.S. Government programs may be more efficiently designed and coordinated;

(6) The development of complementary industry and trade association export promotion programs, including ways for greater and more effective coordination of U.S. Government efforts with private sector

organizations' civil nuclear industry export promotion efforts; and

(7) The development of U.S. Government programs to encourage producers of civil nuclear products and services to enter new foreign markets, in connection with which CINTAC may advise on how to gather, disseminate, and promote awareness of information on civil nuclear exports and related trade issues.

II. Membership

CINTAC shall consist of approximately 40 members appointed by the Secretary, in accordance with applicable Department of Commerce guidance and based on their ability to carry out the objectives of the Committee. Members shall represent U.S. entities involved in the export of civil nuclear products and services and reflect the diversity of this sector, including in terms of entities' size and geographic location. The Committee shall also represent the diversity of company or organizational roles in the development of civil nuclear energy projects, including, for example, U.S. civil nuclear manufacturing and services companies, U.S. utilities, U.S. trade associations, and other U.S. organizations in the U.S. civil nuclear sector. The Secretary shall appoint to the Committee at least one individual representing each of the following:

a. Civil nuclear manufacturing and services companies;

b. small businesses;

c. utilities;

d. trade associations in the civil nuclear sector;

e. research institutions and universities; and

f. private sector organizations involved in strengthening the export competitiveness of U.S. civil nuclear products and services.

Members shall serve in a representative capacity, expressing the views and interests of a U.S. entity, as well as its particular subsector; they are, therefore, not Special Government Employees. Each member of the Committee must be a U.S. citizen and must not be registered as a foreign agent under the Foreign Agents Registration Act. No member may represent a U.S. entity that is majority owned or controlled by a foreign government entity (or foreign government entities). The Secretary of Commerce invites applications for the CINTAC, consistent with the above membership requirements. To be considered for membership, submit the following information (2 pages maximum) by 5:00 p.m. EDT on September 28, 2018 to the email or mailing address listed in the **ADRRESSES** section. If you are interested in nominating someone to become a member of the CINTAC, please provide the following information (2 pages maximum):

(1) Name;

(2) Title;

(3) Work phone, fax, and, email address;

(4) Name of entity to be represented and address including website address;

(5) Short biography of nominee including credentials;

(6) Brief description of the entity and its business activities, size (number of employees and annual sales), and export markets served; and,

(7) An affirmative statement that the applicant and entity to be represented meet all eligibility criteria, specifically addressing that the applicant:

(a) Is a U.S. citizen; and

(b) Is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

Please do not send organization brochures or any other information.

All applications should be submitted in pdf or MS Word format via email to *jonathan.chesebro@trade.gov,* or via mail to Jonathan Chesebro, Office of Energy & Environmental Industries, Room 28018, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

Nominees selected for appointment to the Committee will be notified by mail.

Dated: August 29, 2018.

Edward O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2018–19231 Filed 9–6–18; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–867]

Large Power Transformers From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Hyundai Heavy Industries Co., Ltd. (HHI) and Hyundai Electric & Energy Systems Co. (HEES) (collectively, Hyundai) made sales of subject merchandise at less than normal value, and that Hyosung Corporation (Hyosung) did not make sales of subject merchandise at less than normal value, during the period of review (POR) August 1, 2016, through July 31, 2017. Interested parties are invited to comment on these preliminary results.

DATES: Applicable September 7, 2018.

FOR FURTHER INFORMATION CONTACT: Joshua DeMoss, Tyler Weinhold, or John Drury, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3362, (202) 482–1121, or (202) 482–0195, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce initiated this review on October 16, 2017.[1] We selected two mandatory respondents in this review, Hyosung and HHI.[2] Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. The revised deadline for the preliminary results of this review is August 31, 2018.[3] For a more detailed description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum, dated concurrently with these results and hereby adopted by this notice.[4]

The Preliminary Decision Memorandum is a public document and

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 48051 (October 16, 2017) (*Initiation Notice*).

[2] In accordance with Commerce's decision in the LPTs from Korea changed circumstances review, Commerce has determined that HEES is the successor-in-interest to HHI. *See Large Power Transformers from the Republic of Korea: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review,* 83 FR 24973 (May 31, 2018) (LPTs from Korea CCR) (unchanged in *Large Power Transformers from the Republic of Korea: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* signed August 28, 2018; pending publication).

[3] *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

[4] *See* Memorandum to Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, from James Maeder, Senior Director, performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Large Power Transformers from the Republic of Korea; 2016–2017'' (Preliminary Decision Memorandum), dated concurrently with this notice.

is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). Access to ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html*. A list of topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Order

The scope of this order covers large liquid dielectric power transformers having a top power handling capacity greater than or equal to 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete. The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States at subheadings 8504.23.0040, 8504.23.0080 and 8504.90.9540. This tariff classification is provided for convenience and Customs purposes; however, the written description of the scope of the order is dispositive.[5]

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Facts Available

Pursuant to section 776(a) of the Act, Commerce is preliminarily relying upon facts otherwise available to assign an estimated weighted-average dumping margin to Hyundai in this review because Hyundai withheld necessary information that was requested by Commerce, thereby significantly impeding the conduct of the review. Further, Commerce preliminarily determines that Hyundai failed to cooperate by not acting to the best of its ability to comply with requests for information and, thus, Commerce is applying adverse facts available (AFA) to Hyundai, in accordance with section 776(b) of the Act. For a full description of the methodology underlying our conclusions regarding the application of AFA, *see* the Preliminary Decision Memorandum.

Rate for Non-Selected Companies

In accordance with the U.S. Court of Appeals for the Federal Circuit's decision in *Albemarle Corp.* v. *United States,*[6] we are applying to the non-selected companies the rate preliminarily applied to Hyosung in this administrative review.[7] This is the only rate determined in this review for individual respondents and, thus, should be applied to the three non-selected companies under section 735(c)(5)(B) of the Act. For a detailed discussion, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

We preliminarily determine that, for the period August 1, 2016, through July 31, 2017, the following weighted-average dumping margins exist:[8]

Producer/exporter	Weighted-average dumping margin (percent)
Hyosung Corporation	0.00
Hyundai Heavy Industries Co., Ltd./Hyundai Electric & Energy Systems Co., Ltd	60.81
Iljin Electric Co., Ltd	0.00
Iljin	0.00
LSIS Co., Ltd	0.00

Disclosure and Public Comment

Commerce will disclose to parties to the proceeding any calculations performed in connection with these preliminary results of review within five days after the date of publication of this notice.[9] Commerce will announce the briefing schedule to interested parties at a later date. Interested parties may submit case briefs on the deadline that Commerce will announce.[10] Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs.[11]

Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12] Case and rebuttal briefs should be filed using ACCESS.[13] Case and rebuttal briefs must be served on interested parties.[14] Executive summaries should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. 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 date and time to be determined.[15] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

Commerce intends to publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, no later than 120 days after publication of these preliminary results, unless extended.[16]

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If a respondent's weighted-average dumping margin is not zero or *de minimis* in the final results of this review and the respondent reported reliable entered values, we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined

[5] The full text of the scope of the order is contained in Preliminary Decision Memorandum.

[6] *See Albemarle Corp.* v. *United States,* 821 F.3d 1345 (Fed. Cir. 2016).

[7] *See, e.g., Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4½ Inches) from Japan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014–2015,* 81 FR 45124, 45124 (July 12, 2016), unchanged in *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4½ Inches) from Japan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014–2015,* 81 FR 80640, 80641 (November 16, 2016).

[8] As AFA, we preliminarily assign Hyundai a dumping margin of 60.81 percent, an AFA rate used in the previous review. *See Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014–2015,* 82 FR 13432 (March 13, 2017).

[9] *See* 19 CFR 351.224(b).

[10] *See* 19 CFR 351.309(c)(1)(ii) and (d)(1).

[11] *See* 19 CFR 351.309(d)(1) and (2).

[12] *See* 19 CFR 351.309(c)(2).

[13] *See generally* 19 CFR 351.303.

[14] *See* 19 CFR 351.303(f).

[15] *See* 19 CFR 351.310(d).

[16] *See* section 751(a)(3)(A) of the Act; 19 CFR 351.213(h).

sales made during the period of review to each importer to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). If the respondent has not reported reliable entered values, we will calculate a per-unit assessment rate for each importer by dividing the total amount of dumping for the examined sales made during the period of review to that importer by the total sales quantity associated with those transactions. Where an importer-specific *ad valorem* assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). If the respondent's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* ''{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.'' [17]

If the preliminary results are unchanged for the final results, we will instruct CBP to apply an *ad valorem* assessment rate of 60.81 percent to all entries of subject merchandise during the period of review which were produced and/or exported by Hyundai.

Regarding entries of subject merchandise during the period of review that were produced by Hyosung and Hyundai and for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate un-reviewed entries at the all-others rate of 22.00 percent, as established in the less-than-fair-value investigation of the order, if there is no rate for the intermediate company(ies) involved in the transaction.[18] For a full discussion of this matter, *see Assessment Policy Notice.*[19]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this 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 Hyosung and Hyundai and other companies listed above will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or in the 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 merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate of 22.00 percent, the rate established in the investigation of this proceeding.[20] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2018–19428 Filed 9–6–18; 8:45 am]

BILLING CODE 3510–DS–P

[17] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[18] *See Large Power Transformers from the Republic of Korea: Antidumping Duty Order,* 77 FR 53177 (August 31, 2012).

[19] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

[20] *See Large Power Transformers from the Republic of Korea: Antidumping Duty Order,* 77 FR 53177 (August 31, 2012).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–010]

Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding, in part, the administrative review of the antidumping duty (AD) order on certain crystalline silicon photovoltaic products from the People's Republic of China (China) for the period of review (POR), February 1, 2017, through January 31, 2018.

DATES: Applicable September 7, 2018.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen, 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) 482–2769.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2018, Commerce published in the **Federal Register**, a notice of opportunity to request an administrative review of the AD order on certain crystalline silicon photovoltaic products from China (the Order) covering the period February 1,

2017, through January 31, 2018.[1] Commerce received multiple timely requests for an administrative review of the Order. On April 16, 2018, in accordance with section 751(a) of Tariff Act of 1930, as amended (the Act) and 19 CFR 351.221(c)(1)(i), Commerce published in the **Federal Register** a notice initiating an administrative review of the Order with respect to 12 companies or groups of companies covering the period February 1, 2017, through January 31, 2018.[2] All requesting parties subsequently timely withdrew their requests to review the nine companies listed in the Appendix to this notice.

Rescission of Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested the review withdraw their requests within 90 days of the date of publication of the notice of initiation of the requested review. All requesting parties withdrew their respective requests for an administrative review of the nine companies or group of companies listed in the Appendix to this notice within 90 days of the date of publication of the *Initiation Notice*. Accordingly, Commerce is rescinding this review with respect to these companies in accordance with 19 CFR 351.213(d)(1).[3] The administrative review will continue with respect to all other firms for which a review was requested and initiated.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all subject merchandise exported by the companies listed in the Appendix to this notice that was entered, or withdrawn from warehouse, for consumption during the period of review. The entries shall be assessed AD duties that are equal to the cash deposit of estimated AD duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers whose entries will be liquidated as a result of this rescission notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of AD duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of the AD duties occurred and the subsequent assessment of doubled AD duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under an 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 or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: August 31, 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

- BYD (Shangluo) Industrial Co., Ltd.
- Changzhou Trina Solar Energy Co., Ltd./Trina Solar (Changzhou) Science and Technology Co., Ltd./Yangcheng Trina Solar Energy Co., Ltd./Turpan Trina Solar Energy Co., Ltd./Hubei Trina Solar Energy Co., Ltd.
- Chint Solar (Zhejiang) Co., Ltd.
- Hefei JA Solar Technology Co., Ltd.
- Perlight Solar Co., Ltd.
- Shanghai BYD Co., Ltd.
- Shenzhen Letsolar Technology Co., Ltd.
- Sunny Apex Development Ltd.
- Wuxi Suntech Power Co., Ltd.

[FR Doc. 2018–19427 Filed 9–6–18; 8:45 am]

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 83 FR 4639 (February 1, 2018).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 16298 (April 16, 2018) (*Initiation Notice*).

[3] *See* Appendix. As stated in *Change in Practice in NME Reviews,* Commerce will no longer consider the non-market economy (NME) entity as an exporter conditionally subject to administrative reviews. *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013). The China-wide entity is not subject to this administrative review because no interested party requested a review of the entity. *See Initiation Notice.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Correction to the Final Results of Antidumping Duty Administrative Review; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable September 7, 2018.

FOR FURTHER INFORMATION CONTACT: Michael Bowen, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–0768.

SUPPLEMENTARY INFORMATION: On July 26, 2018, the Department of Commerce (Commerce) published the *Final Results* of the 2015–2016 administrative review of the antidumping duty order on multilayered wood flooring from the People's Republic of China (China).[1] The period of review (POR) is December 1, 2015, through November 30, 2016. Commerce is issuing this notice to correct a ministerial error in the *Final Results,* and to amend the partial rescission of certain companies from the administrative review to include Double F Limited. Specifically, in the *Final Results,* Commerce inadvertently misspelled Dalian Guhua Wooden Product Co., Ltd.'s name as Dalian Guhua Wood Product Co., Ltd. Commerce corrected this error in the cash deposit and liquidation instructions issued to U.S. Customs and Border Protection following the publication of the *Final Results.* Further, in accordance with the Court of International Trade's August 15, 2018, order amending the Court's July 3, 2018, judgment in *Changzhou Hawd Flooring Co., Ltd., et al.* v. *United States,*[2] we

[1] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission; 2015–2016,* 83 FR 35461 (July 26, 2018) (*Final Results*).

[2] *See Changzhou Hawd Flooring Co., et al.* v. *United States,* Ct. No. 12–20, Slip Op. 18–82 (Court of Int'l Trade July 3, 2018); *see also Changzhou Hawd Flooring Co., et al.* v. *United States,* Ct. No. 12–20, Dkt. No. 199 (Court of Int'l Trade Aug. 15, 2018).

excluded Double F Limited from the antidumping duty order on multilayered wood flooring from China.[3] Accordingly, we are amending the *Final Results* to include Double F Limited among the companies for which this review was rescinded.[4] Commerce intends to issue rescission instructions including Double F Limited to U.S. Customs and Border Protection, as appropriate.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: August 31, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–19423 Filed 9–6–18; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete products and services from the Procurement List that were previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: October 7, 2018.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s): 8465–01–463–4649—Tent Bag, Personal Gear Pack
Mandatory Source of Supply: Helena Industries, Inc., Helena, MT
Contracting Activity: Defense Logistics Agency Troop Support

NSN(s)—Product Name(s):
8415–00–782–2949—Trousers, Cold Weather, Unisex, Green, XSmall-Long
8415–00–782–2950—Trousers, Cold Weather, Unisex, Green, Small-Short
8415–00–782–2951—Trousers, Cold Weather, Unisex, Green, Small-Regular
8415–00–782–2952—Trousers, Cold Weather, Unisex, Green, Small-Long
8415–00–782–2953—Trousers, Cold Weather, Unisex, Green, Medium-Short
8415–00–782–2954—Trousers, Cold Weather, Unisex, Green, Medium-Regular
8415–00–782–2955—Trousers, Cold Weather, Unisex, Green, Medium-Long
8415–00–782–2956—Trousers, Cold Weather, Unisex, Green, Large-Short
8415–00–782–2957—Trousers, Cold Weather, Unisex, Green, Large-Regular
8415–00–782–2958—Trousers, Cold Weather, Unisex, Green, Large-Long
8415–00–782–2959—Trousers, Cold Weather, Unisex, Green, Large-Short
8415–00–782–2960—Trousers, Cold Weather, Unisex, Green, Large-Regular
8415–00–782–2961—Trousers, Cold Weather, Unisex, Green, Large-Long
Mandatory Source of Supply: Goodwill Industries of South Florida, Inc., Miami, FL
Contracting Activity: Defense Logistics Agency Troop Support

NSN(s)—Product Name(s): 8140–01–004–9410—Container, Wood, Rocket Motor
Mandatory Source of Supply: Helena Industries, Inc., Helena, MT
Contracting Activity: NAVAIR WARFARE CTR AIRCRAFT DIV LKE, JOINT BASE MDL, NJ

NSN(s)—Product Name(s):
MR 376—Resealable Bags, Holiday, 6.5″ x 5.875″
MR 379—Storage Containers, Holiday, 12 oz. or 16 oz., 6PK
Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: Defense Commissary Agency

Services

Service Type: Distribution of Licensed Products for the G.R.E.AT
Mandatory for: Department of the Treasury: Bureau of ATF, 650 Massachusetts Ave., Washington, DC
Mandatory Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: DEPARTMENT OF THE TREASURY

Service Type: Mailing Support Service
Mandatory for: Bureau of Public Debt (Offsite: 750 23rd St., Arlington, VA), 200 Third Street, Parkersburg, WV
Mandatory Source of Supply: Linden Resources, Inc., Arlington, VA
Contracting Activity: BUREAU OF THE FISCAL SERVICE, PSB 3

Service Type: Custodial and Related Service
Mandatory for: GSA, PBS Region 2, Michael J. Dillon U.S. Federal Courthouse, 68 Court Street, Buffalo, NY
Mandatory Source of Supply: Human Technologies Corporation, Utica, NY
Contracting Activity: PUBLIC BUILDINGS SERVICE, GSA PBS R2 ACQUISITION MANAGEMENT DIVISION

Service Type: Janitorial/Custodial Service
Mandatory for: Vancouver Army Barracks, Vancouver, WA
Mandatory Source of Supply: Relay Resources, Portland, OR
Contracting Activity: Dept of the Army, W40M NORTHEREGION CONTRACT OFC

Service Type: Mailroom Service
Mandatory for: National Labor Relations Board, HQ, 1099 14th Street NW, Washington, DC
Mandatory Source of Supply: Linden Resources, Inc., Arlington, VA
Contracting Activity: National Labor Relations Board

Service Type: Mailroom Operation Service
Mandatory for: U.S. Army Corps of Engineers: 20 Massachusetts Avenue, Pulaski Building, Washington, DC
Mandatory Source of Supply: Linden Resources, Inc., Arlington, VA
Contracting Activity: Dept of the Army, W40M NORTHEREGION CONTRACT OFC

Service Type: Switchboard Operation Service
Mandatory for: VA Medical Clinic: 25 North Spruce, Colorado Springs, CO
Mandatory Source of Supply: Bayaud Industries, Inc., Denver, CO
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, 259-NETWORK CONTRACT OFC 19(00259)

Service Type: Janitorial/Custodial Service
Mandatory for: Naval Command Control & Ocean Surveillance Center: East Coast Division Complex (trailers/laboratories), Charleston, SC
Mandatory Source of Supply: Palmetto Goodwill Services, North Charleston, SC
Contracting Activity: DEPT OF THE NAVY, NAVFAC SOUTHEAST

Service Type: Janitorial/Custodial Service
Mandatory for: U.S. Army Reserve Center: Los Angeles, Hazard Park, Los Angeles, CA
Mandatory Source of Supply: Lincoln Training Center and Rehabilitation Workshop, South El Monte, CA
Contracting Activity: Dept of the Army, W40M NORTHEREGION CONTRACT OFC

Service Type: Grounds Maintenance Service
Mandatory for: Lake Sonoma/Warm Springs Dam, Geyserville, CA

[3] *See Multilayered Wood Flooring from the People's Republic of China: Amendment to Notice of Court Decision Not in Harmony with the Second Amended Final Determination and Amendment to Notice of Third Amended Final Determination of the Antidumping Duty Investigation,* 83 FR 44027 (August 29, 2018).

[4] *See Final Results* at 35462.

Mandatory Source of Supply: Unknown
Contracting Activity: Dept of the Army, W40M NORTHEREGION CONTRACT OFC

Service Type: Janitorial/Custodial Service
Mandatory for: Environmental Protection Agency: Standard Chlorine Site, Delaware City, DE
Mandatory Source of Supply: The Chimes, Inc., Baltimore, MD
Contracting Activity: ENVIRONMENTAL PROTECTION AGENCY

Service Type: Warehouse Operation Service
Mandatory for: National Labor Relations Board HQ, 1099 14th Street, Washington, DC
Mandatory Source of Supply: Linden Resources, Inc., Arlington, VA
Contracting Activity: NATIONAL LABOR RELATIONS BOARD

Service Type: Reproduction Service
Mandatory for: Army Materiel Command Headquarters, Alexandria, VA
Mandatory Source of Supply: Linden Resources, Inc., Arlington, VA
Contracting Activity: Dept of the Army, W40M NORTHEREGION CONTRACT OFC

Service Type: Mailroom Operation Service
Mandatory for: Fort Stewart, 1042 William H. Wilson Avenue, Suite 219, Fort Stewart, GA
Mandatory Source of Supply: Abilities, Inc. of Florida, Clearwater, FL
Contracting Activity: Dept of the Army, W40M NORTHEREGION CONTRACT OFC

Service Type: Custodial Service
Mandatory for: Consumer Financial Protection Bureau, (Limited areas Floors 1, 3, 4 & 5), 1625 Eye Street, NW, Washington, DC
Mandatory Source of Supply: Service Disabled Veterans Business Association, Silver Springs, MD
Contracting Activity: CONSUMER FINANCIAL PROTECTION BUREAU, CFPB PROCUREMENT

Michael R. Jurkowski,

Business Management Specialist, Business Operations.

[FR Doc. 2018–19420 Filed 9–6–18; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes services from the Procurement List previously furnished by such agencies.

DATES: *Date deleted from the Procurement List:* October 7, 2018.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On 8/3/2018 (83 FR 150), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the services deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Service Type: Janitorial/Custodial Service
Mandatory for: Veterans Affairs Medical Center: Outpatient Clinic, Pensacola, FL
Mandatory Source(s) of Supply: Lakeview Center, Inc., Pensacola, FL
Contracting Activity: DEPARTMENT OF VETERANS AFFAIRS, NAC

Service Type: Food Service
Mandatory for: Michigan Army National Guard: Maneuver Training Center, Building 426MA, Camp Grayling, MI
Mandatory Source(s) of Supply: G.W. Services of Northern Michigan, Inc., Traverse City, MI
Contracting Activity: Dept of the Army, W7NF USPFO ACTIVITY MI ARNG

Service Type: Administrative Service
Mandatory for: Fleet and Industrial Supply Center, 937 North Harbor Drive, San Diego, CA
Mandatory Source of Supply: Unknown
Contracting Activity: Dept of the Navy, U.S. Fleet Forces Command

Service Type: Janitorial Service
Mandatory for: U.S. Army Reserve Center, 2201 Laurens Road, Center #1, Greenville, SC
Mandatory Source(s) of Supply: SC Vocations & Individual Advancement, Inc., Greenville, SC
Contracting Activity: Dept of the Army, W074 ENDIST CHARLESTON

Service Type: Grounds Maintenance Service
Mandatory for: U.S. Army Corps of Engineers, Gallagher Memorial USARC, 1300 West Brown Road, Las Cruces, NM
Mandatory Source of Supply: Let's Go To Work, El Paso, TX
Contracting Activity: Dept of the Army, W075 ENDIST SACRAMENTO

Service Type: Janitorial/Custodial Service
Mandatory for: U.S. Army Reserve, Charles W. Whittlesey USARC, 200 Barker Road, Pittsfield, MA
Mandatory Source(s) of Supply: Berkshire County Association for Retarded Citizens, Inc., Pittsfield, MA
Contracting Activity: Dept of the Army, W6QK ACC–PICA

Service Type: Janitorial/Custodial Service
Mandatory for: Port Hueneme Naval Construction Battalion Center: Navy Family Housing Units, Port Hueneme, CA
Mandatory Source(s) of Supply: Unknown
Contracting Activity: Dept of the Navy, U.S. Fleet Forces Command

Service Type: Custodial Service
Mandatory for: Pentagon Building: Washington, DC
Federal Building #2, Food Court
Common area stairs and (plus): Corridors, 1st Floor, 2nd Floor, 3rd Floor
Au Bon Pain
B.C Café
Common area restrooms
Corridor 1 Food Court
Corridor 10 Food Court
Corridor 9/10 Apex, Five Star Expresso Coffee Bar
Five Star Expresso Coffee Bar, Federal Bldg #2
Grease and Garbage Room
Loading dock, 1st Floor, Wedge 1
Pentagon Dining Room and Kitchen
Production Kitchen
Wedge 1 Food Court
Mandatory Source(s) of Supply: The Chimes, Inc., Baltimore, MD
Contracting Activity: Dept of the Navy, U.S. Fleet Forces Command

Service Type: Recycling Service
Mandatory for: Crane Division, Naval Surface Warfare Center, 300 HWY 361, Crane, IN
Mandatory Source(s) of Supply: Orange County Rehabilitative and Developmental Services, Inc., Paoli, IN
Contracting Activity: Dept of the Navy, NSWC Crane

Service Type: Janitorial/Grounds Maintenance Service
Mandatory for: Federal Aviation Administration Air Traffic: JFK International Airport, Control Towers, Jamaica, NY
Mandatory Source of Supply: Fedcap Rehabilitation Services, Inc., New York, NY

Contracting Activity: Federal Aviation Administration, FAA

Michael R. Jurkowski,

Business Management Specialist.

[FR Doc. 2018–19421 Filed 9–6–18; 8:45 am]

BILLING CODE 6353–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meetings

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

TIME AND DATE: Wednesday, September 19, 2018, 12:00 p.m.–1:00 p.m. (ET).

PLACE: Corporation for National and Community Service, 250 E Street SW, Suite 4026, Washington, DC 20525. Please go to the first floor lobby reception area for escort.

CALL-IN INFORMATION: This meeting is available to the public via conference call through the following toll-free call-in number: 888–603–9224; the call access code number is 8900220. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and CNCS will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Call replays are generally available one hour after a call ends. The toll-free phone number for the replay is 800–860–4697. The end date for the replay is October 3, 2018 at 11:59 p.m. (ET).

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Chair's Opening Comments
II. CEO Report
III. Public Comments
IV. Final Comments and Adjournment

Members of the public who would like to comment on the business of the Board may do so in writing or in person. Individuals may submit written comments to *sscott@cns.gov* with subject line: September 2018 CNCS Board Meeting by 5:00 p.m. (ET) on September 17, 2018. Individuals attending the meeting in person who would like to comment will be asked to sign in upon arrival. Comments are requested to be limited to 2 minutes.

REASONABLE ACCOMMODATIONS: The Corporation for National and Community Service provides reasonable accommodations to individuals with disabilities, where appropriate. Anyone who needs an interpreter or other accommodation should notify Sandy Scott at *sscott@cns.gov* or 202–606–6724 by 5 p.m. (ET) by September 14, 2018.

CONTACT PERSON FOR MORE INFORMATION: Sandy Scott, Senior Advisor, Corporation for National and Community Service, 250 E Street SW, Washington, DC 20525. Phone: 202–606–6724. Fax: 202–606–3460. TTY: 800–833–3722. Email: *sscott@cns.gov.*

Timothy F. Noelker,

General Counsel.

[FR Doc. 2018–19494 Filed 9–5–18; 11:15 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2013–OS–0199]

Proposed Collection; Comment Request

AGENCY: Under Secretary of Defense for Acquisition and Sustainment, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency'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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 6, 2018.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24 Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Logistics Agency Information Operations, ATTN: Timothy Noll, 2001 Mission Drive, Suite 2, New Cumberland, PA 17070, or call (717) 982–9599.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Project Time Record System; OMB Control Number 0704–0452.

Needs and Uses: This collection of information is for the purpose of tracking Defense Logistics Agency (DLA) contractor workload/project activity, time and attendance, and labor distribution and data for analysis and reporting, management, and planning purposes. Additionally, the data allows government supervisors to maintain management records associated with the operations of contracts and to evaluate and monitor contractor performance and other matters concerning contracts. Government supervisors are able to monitor all aspects of a contract and resolve any discrepancy in hours billed to DLA. Records devoid of personal identifiers are used for extraction or compilation of data and reports for management studies and statistical analyses for use internally as required by the Department of Defense (DoD).

Affected Public: Individuals or Households.

Annual Burden Hours: 15,600 hours.

Number of Respondents: 1,200.

Responses per Respondent: 52.

Annual Responses: 62,400.

Average Burden per Response: 15 minutes.

Frequency: Weekly.

Dated: August 30, 2018.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2018–19433 Filed 9–6–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–41–000]

Notice of Schedule for Environmental Review of the Eagle LNG Partners Jacksonville, LLC Jacksonville Project

On January 31, 2017, Eagle LNG Partners Jacksonville, LLC (Eagle LNG) filed an application with the Federal Energy Regulatory Commission (FERC or Commission) in Docket No. CP17–41–000 pursuant to section 3(a) of the Natural Gas Act and Parts 153 and 380 of the Commission's Regulations, requesting authorization to site, construct, and operate a natural gas liquefaction, storage, and liquefied natural gas (LNG) export facility. The proposed project, known as the Jacksonville Project, would consist of three liquefaction trains with a total capacity of 132 million cubic feet per day and one full containment LNG storage tank capable of storing 12,000,000 gallons of LNG (equivalent to 1.0 billion cubic feet of natural gas), for domestic LNG markets and for export overseas. The terminal would receive natural gas to the export facilities from a third-party intrastate pipeline. On July 21, 2016, in Order No. 3867, the U.S. Department of Energy, Office of Fossil Energy, granted to Eagle LNG a long-term, multi-contract authorization to export LNG to Free Trade Agreement nations.

FERC issued its Notice of Application for the Jacksonville Project on February 13, 2017. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final environmental impact statement (EIS) for the Jacksonville Project. This notice identifies the FERC staff's planned schedule for completion of the final EIS for the Jacksonville Project, which is based on an issuance of the draft EIS in November 2018. The forecasted schedule for both the draft and final EIS is based upon Eagle LNG providing complete and timely responses to any future data requests. In addition, the schedule assumes that the cooperating agencies will provide input on their areas of responsibility on a timely basis.

Schedule for Environmental Review

Issuance of Notice of Availability of the final EIS—April 12, 2019

90-Day Federal Authorization Decision Deadline—July 11, 2019

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of project's progress.

Background

On December 3, 2014, the Commission staff granted Eagle LNG's request to use FERC's pre-filing environmental review process and assigned the Jacksonville Project Docket No. PF15–7–000. On February 24, 2015, the Commission issued a *Notice of Intent To Prepare an Environmental Impact Statement for the Planned Jacksonville Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting.* On March 25, 2015, the Commission issued a *Supplemental Notice* to seek comments. The notices were issued during the pre-filing review of the project in Docket No. PF15–7–000 and were sent to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; affected property owners; other interested parties; and local libraries and newspapers. Major issues raised during scoping include visual impacts, threatened and endangered species, surface water and groundwater resources, air quality and noise, and safety.

The U.S. Army Corps of Engineers, the U.S. Coast Guard, the U.S. Department of Transportation, and the U.S. Department of Energy are cooperating agencies in the preparation of the EIS.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents via email. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Jacksonville Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP17–41), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: August 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19393 Filed 9–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–480–000]

Notice of Schedule for Environmental Review of the Annova LNG Common Infrastructure, LLC, Annova LNG Brownsville A, LLC, Annova LNG Brownsville B, LLC, and Annova LNG Brownsville C, LLC Annova LNG Brownsville Project

On July 13, 2016, Annova LNG Common Infrastructure, LLC; Annova LNG Brownsville A, LLC; Annova LNG Brownsville B, LLC; and Annova LNG Brownsville C, LLC (collectively, Annova) filed an application in Docket No. CP16–480–000, section 3(a) of the Natural Gas Act (NGA) and Part 153 of the Commission's Regulations, requesting authorization to site, construct, and operate a natural gas liquefaction and liquefied natural gas (LNG) export facility, located on the Brownsville Ship Channel (BSC) in Cameron County, Texas. The proposed project is known as the Annova LNG Brownsville Project (Project) and would receive natural gas from a third-party pipeline, create and store LNG, and load up to 6.95 million tonnes per annum of LNG onto carriers for export to overseas markets. On February 20, 2014, in Order No. 3394, the U.S. Department of Energy, Office of Fossil Energy, granted to Annova a long-term, multi-contract authorization to export LNG to Free Trade Agreement nations.

On July 27, 2016, the Federal Energy Regulatory Commission (FERC or Commission) issued its Notice of Application for the Project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date

of issuance of the Commission staff's final Environmental Impact Statement (EIS) for the Annova LNG Brownsville Project. This instant notice identifies the FERC staff's planned schedule for completion of the final EIS for the Project, which is based on an issuance of the draft EIS in December 2018. The forecasted schedule for both the draft and final EIS is based upon Annova providing complete and timely responses to any future data requests. In addition, the schedule assumes that the cooperating agencies will provide input on their areas of responsibility on a timely basis.

Schedule for Environmental Review

Issuance of Notice of Availability of the final EIS—April 19, 2019
90-Day Federal Authorization Decision Deadline—July 18, 2019

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

The proposed Project would be located on about 364 acres of an approximately 731-acre site on the southern bank of the BSC at mile marker 8.2. The site is owned by the Port of Brownsville and Annova has entered into a Lease Option Agreement for possible use of the site. The BSC has direct access to the Gulf of Mexico via the Brazos Santiago Pass.

The Project would include six liquefaction trains with a total capacity of 6 million tons per year of LNG. The natural gas delivered to the site would be treated, liquefied, and stored on site in two single containment LNG storage tanks. The Project would include two principal parts, the LNG facilities and associated marine facilities. The LNG facilities would be designed to receive 0.9 billion cubic feet per day of natural gas via a planned intrastate pipeline; treat the gas to remove constituents that affect the cryogenic process; liquefy the gas; and store the LNG in storage tanks prior to loading for shipment to overseas markets. The marine facilities would allow access to the site and LNG loading onto LNG carriers.

Background

On March 27, 2015, the Commission staff granted Annova's request to use the FERC's Pre-filing environmental review process and assigned the Annova LNG Brownsville Project Docket No. PF15–15–000. On July 23, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Annova LNG Brownsville Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting* (NOI).

The NOI was issued during the pre-filing review of the Project in Docket No. PF15–15–000 and was sent to federal, state, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Native American tribes and regional organizations; commentors and other interested parties; and local libraries and newspapers. Major issues raised during scoping include: The purpose and need for the Project; impacts on recreational areas and users; impacts on the socioeconomic conditions of the area; impacts on wildlife, wetlands, and vegetation; and impacts on sensitive areas such as the Bahia Grande wetland restoration area and the Padre Island Seashore.

The U.S. Army Corps of Engineers; U.S. Coast Guard; U.S. Department of Transportation; U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service; National Park Service; the National Oceanic and Atmospheric Administration, National Marine Fisheries Service; Federal Aviation Administration; and U.S. Department of Energy are cooperating agencies in the preparation of the EIS.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP16–480), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: August 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19399 Filed 9–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2348–038; 2373–011; 2446–050]

Midwest Hydro, LLC, STS Hydropower, Ltd.; Notice of Application Accepted for Filing, Soliciting Comments, Protests and Motions To Intervene

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Proceeding:* Extension of License Term.

b. *Project Nos.:* P–2348–038, P–2373–011, and P–2446–050.

c. *Date Filed:* June 27, 2018.

d. *Licensees:* Midwest Hydro, LLC and STS Hydropower, Ltd.

e. *Names and Locations of Projects:* Beloit Hydroelectric Project No. 2348, located on the Rock River, in Rock County, Wisconsin. Rockton Hydroelectric Project No. 2373, located on the Rock River, in Winnebago County, Illinois. Dixon Hydroelectric Project No. 2446, located on the Rock River, in Lee County, Illinois.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Licensee Contact Information:* Mr. Michael Scarzello, Regulatory Director, Eagle Creek Renewable Energy, 116 North State Street, P.O. Box 167, Neshkoro, Wisconsin 54960–0167, Phone: (973) 998–8400, Email: *Michael.Scarzello@eaglecreekre.com.*

h. *FERC Contact:* Mr. Ashish Desai, (202) 502–8370, *Ashish.Desai@ferc.gov.*

i. Deadline for filing comments, motions to intervene and protests, is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, and recommendations, 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–2348–038, P–2373–011, and P–2446–050.

j. *Description of Proceeding:* Midwest Hydro, LLC, licensee for the Beloit and Rockton projects, and STS Hydropower, Ltd., licensee for the Dixon Project request that the Commission extend the term of the licenses to synchronize license expiration with the nearby Central Project No. 2347, also located on the Rock River, in Rock County Wisconsin and licensed to Midwest Hydro, LLC. The license for the Central Project expires on August 31, 2024 and the licensees request eight-month extensions for the Dixon and Rockton projects, currently set to expire on December 31, 2023, and a three-month extension of the license term for the Beloit Project, which expires on May 31, 2024. The licensees requests the license term extensions to coordinate and streamline relicensing efforts for the four projects and perform a more comprehensive analysis of the resources involved.

k. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE, Washington, DC 20426. The filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the Docket number (P–2348–038, P–2373–011, or P–2446–050) excluding the last three digits in the docket number field to access the notice. 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 toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *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, 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.

n. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the license term extension requests. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: August 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19407 Filed 9–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–521–000]

Gulf LNG Liquefaction Company, LLC, Gulf LNG Energy, LLC, Gulf LNG Pipeline, LLC; Notice of Anticipated Schedule of Final Order for the Gulf LNG Liquefaction Project

On June 19, 2015, Gulf LNG Liquefaction Company, LLC (Gulf Liquefaction), Gulf LNG Energy, LLC (Gulf Energy), and Gulf LNG Pipeline LLC (Gulf Pipeline) filed an application pursuant to section 3(a) of the Natural Gas Act (NGA) and Part 153 of the Commission's regulations, requesting authorization to construct and operate the Gulf LNG Liquefaction Project (Project) at Gulf Energy's liquefied natural gas terminal located near Pascagoula, Jackson County, Mississippi. The Project consists of new natural gas liquefaction and export facilities. Additionally, within the same application, Gulf Pipeline requested, pursuant to section 7(c) of the NGA and Part 157 of the Commission's regulations, to make modifications to the terminal's sendout pipeline to allow for bi-directional flow. These facilities will enable Gulf Liquefaction to liquefy and export about 11 million metric tons of LNG per year.

In accordance with Title 41 of the Fixing America's Surface Transportation Act, enacted on December 4, 2015, agencies are to publish completion dates for all federal environmental reviews and authorizations. This notice identifies the Commission's anticipated schedule for issuance of the final order for the Project, which is based on the anticipated date of issuance of the final Environmental Impact Statement. Accordingly, we currently anticipate issuing a final order for the Project no later than:

Issuance of Final Order—July 16, 2019

If a schedule change becomes necessary for the final order, an additional notice will be provided so that interested parties and government agencies are kept informed of the Project's progress.

Dated: August 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19387 Filed 9–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP15–550–000; CP15–551–001]

Notice of Anticipated Schedule of Final Order for the Calcasieu Pass Project: Venture Global Calcasieu Pass, LLC; TransCameron Pipeline, LLC

On September 4, 2015, Venture Global Calcasieu Pass, LLC filed an application in Docket No. CP15–550–000, pursuant to section 3 of the Natural Gas Act (NGA) and Part 153 of the Commission's regulations, for authorization to site, construct, and operate a new liquefied natural gas (LNG) export terminal and associated facilities along the Calcasieu Ship Channel in Cameron Parish,

Louisiana. On the same day, TransCameron Pipeline, LLC filed an application in Docket No. CP15–551–000 requesting a Certificate of Public Convenience and Necessity pursuant to section 7(c) of the NGA to construct, operate, and maintain certain natural gas pipeline facilities. The combined proposed projects, known as the Calcasieu Pass Project (Project), would liquefy and export about 12 million tons per annum of LNG.

In accordance with Title 41 of the Fixing America's Surface Transportation Act, enacted on December 4, 2015, agencies are to publish completion dates for all federal environmental reviews and authorizations. This notice identifies the Commission's anticipated schedule for issuance of the final order for the Project, which is based on the anticipated date of issuance of the final Environmental Impact Statement. Accordingly, we currently anticipate issuing a final order for the Project no later than:

Issuance of Final Order—January 22, 2019

If a schedule change becomes necessary for the final order, an additional notice will be provided so that interested parties and government agencies are kept informed of the Project's progress.

Dated: August 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19389 Filed 9–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP17–117–000; CP17–118–000]

Notice of Revised Schedule for Environmental Review of the Driftwood LNG LLC and Driftwood Pipeline LLC Driftwood LNG Project

This notice identifies the Federal Energy Regulatory Commission (FERC) staff's revised schedule for the completion of the environmental impact statement (EIS) for Driftwood LNG LLC's liquefied natural gas facility and for Driftwood Pipeline LLC's pipeline facilities, collectively referred to as the Driftwood LNG Project. The first notice of schedule, issued on December 22, 2017, identified October 12, 2018 as the final EIS issuance date. Staff has revised the schedule for issuance of the final EIS, based on an issuance of the draft EIS in September 2018. The forecasted schedule for both the draft and final EIS is based upon Driftwood LNG LLC and Driftwood Pipeline LLC providing complete and timely responses to any future data requests. In addition, the schedule assumes that the cooperating agencies will provide input on their areas of responsibility on a timely basis.

Schedule for Environmental Review

Issuance of Notice of Availability of the final EIS—January 18, 2019

90-day Federal Authorization Decision Deadline—April 18, 2019

If a schedule change becomes necessary, an additional notice will be provided so that the relevant agencies are kept informed of the project's progress.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP17–117 or CP17–118), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: August 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19395 Filed 9–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–2364–000.

Applicants: ISO New England Inc.

Description: Compliance filing: ISO–NE Filing to Establish a Fuel Security Reliability Standard; EL18–182–000 to be effective 10/30/2018.

Filed Date: 8/31/18.

Accession Number: 20180831–5137.

Comments Due: 5 p.m. ET 9/21/18.

Docket Numbers: ER18–2365–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: SA 697 4th Revised—NITSA with the City of Great Falls to be effective 11/1/2018.

Filed Date: 8/31/18.

Accession Number: 20180831–5148.

Comments Due: 5 p.m. ET 9/21/18.

Docket Numbers: ER18–2366–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2018–08–31 Reliability Coordinator Services Amendment to be effective 11/15/2018.

Filed Date: 8/31/18.

Accession Number: 20180831–5165.

Comments Due: 5 p.m. ET 9/21/18.

Docket Numbers: ER18–2367–000.

Applicants: Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: DEC–DEP Revisions to Joint OATT Formula Transmission Rates (M&S) to be effective 11/1/2018.

Filed Date: 8/31/18.

Accession Number: 20180831–5179.

Comments Due: 5 p.m. ET 9/21/18.

Docket Numbers: ER18–2368–000.

Applicants: Duke Energy Florida, LLC.

Description: § 205(d) Rate Filing: DEF Revisions to Joint OATT Formula Transmission Rates (M&S and Storm Damage) to be effective 11/1/2018.

Filed Date: 8/31/18.

Accession Number: 20180831–5181.

Comments Due: 5 p.m. ET 9/21/18.

Docket Numbers: ER18–2369–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2018–08–31 Interim Reliability Must-Run Agreement to be effective 9/1/2018.

Filed Date: 8/31/18.

Accession Number: 20180831–5189.

Comments Due: 5 p.m. ET 9/21/18.

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 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19409 Filed 9–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP17–495–000; CP17–494–000]

Notice of Anticipated Schedule of Final Order for the Jordan Cove Project: Jordan Cove Energy Project, LP; Pacific Connector Gas Pipeline, LP

On September 21, 2017, Jordan Cove Energy Project, L.P. filed an application in Docket No. CP17–495–000, pursuant to section 3 of the Natural Gas Act (NGA) and Part 153 of the Commission's regulations, for authorization to site, construct and operate a liquefied natural gas export terminal and associated facilities on the bay side of the North Spit of Coos Bay in unincorporated Coos County, Oregon. On the same day, Pacific Connector Gas Pipeline, LP filed an application in Docket No. CP17–494–000 requesting a Certificate of Public Convenience and Necessity, pursuant to section 7(c) of the NGA and Parts 157 and 284 of the Commission's regulations, to construct, operate, and maintain an approximately 220-mile-long natural gas pipeline to be located in Klamath, Jackson, Douglas, and Coos Counties, Oregon. The combined proposed projects, known as the Jordan Cove Project (Project), would liquefy and export about 7.8 million metric tons of natural gas per annum.

In accordance with Title 41 of the Fixing America's Surface Transportation Act, enacted on December 4, 2015, agencies are to publish completion dates for all federal environmental reviews and authorizations. This notice identifies the Commission's anticipated schedule for issuance of the final order for the Project, which is based on the anticipated date of issuance of the final Environmental Impact Statement. Accordingly, we currently anticipate issuing a final order for the Project no later than:

Issuance of Final Order—November 29, 2019

If a schedule change becomes necessary for the final order, an additional notice will be provided so that interested parties and government agencies are kept informed of the Project's progress.

Dated: August 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19404 Filed 9–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–470–000]

Freeport LNG Development, L.P.; Notice of Schedule for Environmental Review of the Train 4 Project

On June 29, 2017, Freeport LNG Development, L.P. (Freeport LNG) filed an application in Docket No. CP17–470–000 requesting an Authorization for siting, construction, and operation of a liquefied natural gas (LNG) facility pursuant to Section 3 of the Natural Gas Act. The proposed project is known as the Train 4 Project (Project), and would increase Freeport LNG's ability to liquefy and export by 5.1 million metric tonnes per annum of natural gas at the existing Freeport LNG terminal.

On July 14, 2017, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of the EA—November 2, 2018

90-day Federal Authorization Decision Deadline—January 31, 2019

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

The Project would add a fourth liquefaction unit (Train 4) and associated infrastructure and utilities to Freeport LNG's terminal on Quintana Island in Brazoria County, Texas. The Project would also expand the Pretreatment Plant located about 4 miles north of the terminal in Freeport, Texas and includes a new pipeline to connect various facilities. The Project would be located adjacent to the facilities authorized and currently under construction for the Phase II Modification Project (Docket No. CP12–29–000) and Liquefaction Project (Docket No. CP12–509–000), which comprises three liquefaction trains and related facilities. The proposed fourth liquefaction train would be within the existing Freeport LNG Terminal site and the additions to the Pretreatment Plant would be within the current construction footprint. The proposed 10.6-mile-long, 42-inch-diameter pipeline would connect the existing Stratton Ridge meter station, the Pretreatment Plant, and the Freeport LNG Liquefaction Plant.

Background

On August 19, 2015 the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Planned Train 4 Project and Request for Comments on Environmental Issues* (NOI). A subsequent change to the Project resulted in the Commission issuing the *Supplemental Notice of Intent to Prepare an Environmental Assessment for the Planned Freeport LNG Train 4 Project and Request for Comments on Environmental Issues* (Supplemental NOI) on August 31, 2016. The NOI and the Supplemental NOI were issued during the pre-filing review of the Project in Docket No. PF15–25–000 and were sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOI and Supplemental NOI; the Commission received comments from the Federal Emergency Management Agency, U.S. Environmental Protection Agency, Texas Historical Commission, U.S. Fish and Wildlife Service, Texas Parks and Wildlife, Sierra Club, and eight members of the public. The primary issues raised by the commentors are alternative pipeline routes, and impacts on land use, wetlands, protected species, visual landscape, noise environment, air quality, road traffic, marine traffic, and safety.

The U.S. Department of Transportation, U.S. Environmental Protection Agency, and U.S. Department of Energy are cooperating agencies in the preparation of the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP17–470), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.*

The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: August 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19402 Filed 9–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP16–454–000; CP16–455–000]

Notice of Schedule for Environmental Review of the Rio Grande LNG, LLC and Rio Bravo Pipeline Company, LLC Rio Grande LNG Project

On May 5, 2016, Rio Grande LNG, LLC (RG LNG) filed an application in Docket No. CP16–454–000 requesting authorization pursuant to Section 3(a) of the Natural Gas Act (NGA) to construct and operate liquefied natural gas (LNG) export facilities. On the same day, Rio Bravo Pipeline Company, LLC (RB Pipeline) filed an application in Docket No. CP16–455–000, requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the NGA to construct, operate, and maintain certain natural gas pipeline facilities. The combined projects, collectively referred to as the Rio Grande LNG Project, would provide gas and processing to produce up to 27 million tons per annum of LNG for export. On August 17, 2016, in Order No. 3869, the U.S. Department of Energy, Office of Fossil Energy, granted to RG LNG a long-term, multi-contract authorization to export LNG to Free Trade Agreement nations.

On May 19, 2016, the Federal Energy Regulatory Commission (FERC or Commission) issued its Notice of Application for the project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final Environmental Impact Statement (EIS) for the Rio Grande LNG Project. This instant notice identifies the FERC staff's planned schedule for completion of the final EIS for the project, which is based on an issuance of the draft EIS in October 2018. The forecasted schedule for both the draft and final EIS is based upon RG LNG and RB Pipeline providing complete and timely responses to any future data requests. In addition, the schedule assumes that the cooperating agencies will provide input on their areas of responsibility on a timely basis.

Schedule for Environmental Review

Issuance of Notice of Availability of the final EIS—April 26, 2019

90-Day Federal Authorization Decision Deadline—July 25, 2019

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the project's progress.

Project Description

RG LNG and RB Pipeline, collectively the Rio Grande Developers (RG Developers), propose to construct and operate natural gas pipelines and liquefaction facilities in Jim Wells, Kleberg, Kenedy, Willacy, and Cameron Counties, Texas. The Rio Bravo Pipeline would include two new parallel 42-inch-diameter natural gas pipelines, each about 135.5 miles long, capable of transporting 4.5 billion cubic feet per day of natural gas. In addition, a 2.4-mile-long header system at the origin of the pipelines would interconnect with existing natural gas transmission pipelines. The pipeline facilities would include three new compressor stations in Kleberg, Kenedy, and Cameron Counties and two new interconnect booster stations in Kenedy County.

The Rio Grande LNG Terminal would be located on 750.4 acres of an approximately 1,000-acre site along the Brownsville Ship Channel about 5.5 miles inland from the channel entrance, in Cameron County, Texas. The terminal would include six liquefaction trains capable of producing 27 million tons per annum of LNG; marine facilities, including two LNG berths, a turning basin, and a material offloading facility; truck loading and unloading facilities for LNG and natural gas liquids; and four LNG storage tanks. If approved, RG Developers would construct the project in stages. Operation of the first liquefaction train, and one of the two parallel pipelines, is proposed to begin during the fourth quarter of 2021; operation of the full project is proposed for early 2025.

Background

On April 13, 2015, the Commission staff granted the RG Developers' request to use the FERC's Pre-filing environmental review process. On July 23, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Rio Grande LNG Project and Rio Bravo Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* (NOI) in Docket No. PF15–20–000. The NOI was issued during the pre-filing review of the project, and was sent to federal, state, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Native American tribes and regional organizations; commentors and other interested parties; and local libraries and newspapers. Major issues raised during scoping include impacts on wildlife and wildlife habitat (including threatened and endangered species), aquatic resources, surface water, wetlands, public lands, visual resources, local ecotourism, public health and safety, air and noise quality, and cumulative impacts.

The U.S Coast Guard, U.S. Department of Energy, U.S Department of Transportation, U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, National Marine Fisheries Service, National Park Service, and Federal Aviation Administration are cooperating agencies in the preparation of the EIS.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP16–454 or CP16–455), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: August 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19398 Filed 9–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–525–000]

Notice of Intent To Prepare an Environmental Assessment for the Proposed Gulf South Pipeline Company, LP Willis Lateral Project, and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Willis Lateral Project involving construction and operation of facilities by Gulf South Pipeline Company, LP (Gulf South) in Montgomery and San Jacinto Counties, Texas. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on October 1, 2018.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider and address all filed comments during the preparation of the EA.

If you sent comments on this project to the Commission before the opening of this docket on July 13, 2018, you will need to file those comments in Docket No. CP18–525–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

Gulf South provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP18–525–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Gulf South proposes to construct, operate, and maintain various facilities in connection with its proposed Willis Lateral Project located in Montgomery and San Jacinto Counties, Texas. According to Gulf South, the Willis Lateral Project would provide about 200 million standard cubic feet of natural gas per day to the existing Goodrich Compressor Station.

The Willis Lateral Project would consist of the following facilities:

- Approximately 19 miles of 24-inch-diameter pipeline;
- addition of a new 15,876 horsepower turbine engine to the existing Goodrich Compressor Station and construction of a new Meter and Regulator (M&R) station;
- a tie-in and launcher facility (including a pig [1] launcher, and ancillary equipment);
- a M&R station at the terminus of the project (including a pig receiver, filter separators with a liquid storage tank, and ancillary equipment); and
- a mainline valve facility.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 465 acres of land for the aboveground facilities and the pipeline. Following construction, Gulf South would maintain about 141 acres of land for permanent operation of the project's facilities; the remaining acreage would be restored and would revert to former uses. About 91 percent of the proposed pipeline route parallels existing pipeline, utility, or road rights-of-way.

The EA Process

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present Commission staffs' independent analysis of the issues. The EA will be available in the public record through eLibrary [3] and will be issued for an allotted comment period. Commission staff will consider and address all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the EA.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] Commission staff will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). The EA for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that information related to this environmental review is sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

A *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on General Search and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP18–525). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings

[1] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called eLibrary or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] For instructions on connecting to eLibrary, refer to the last page of this notice.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[5] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

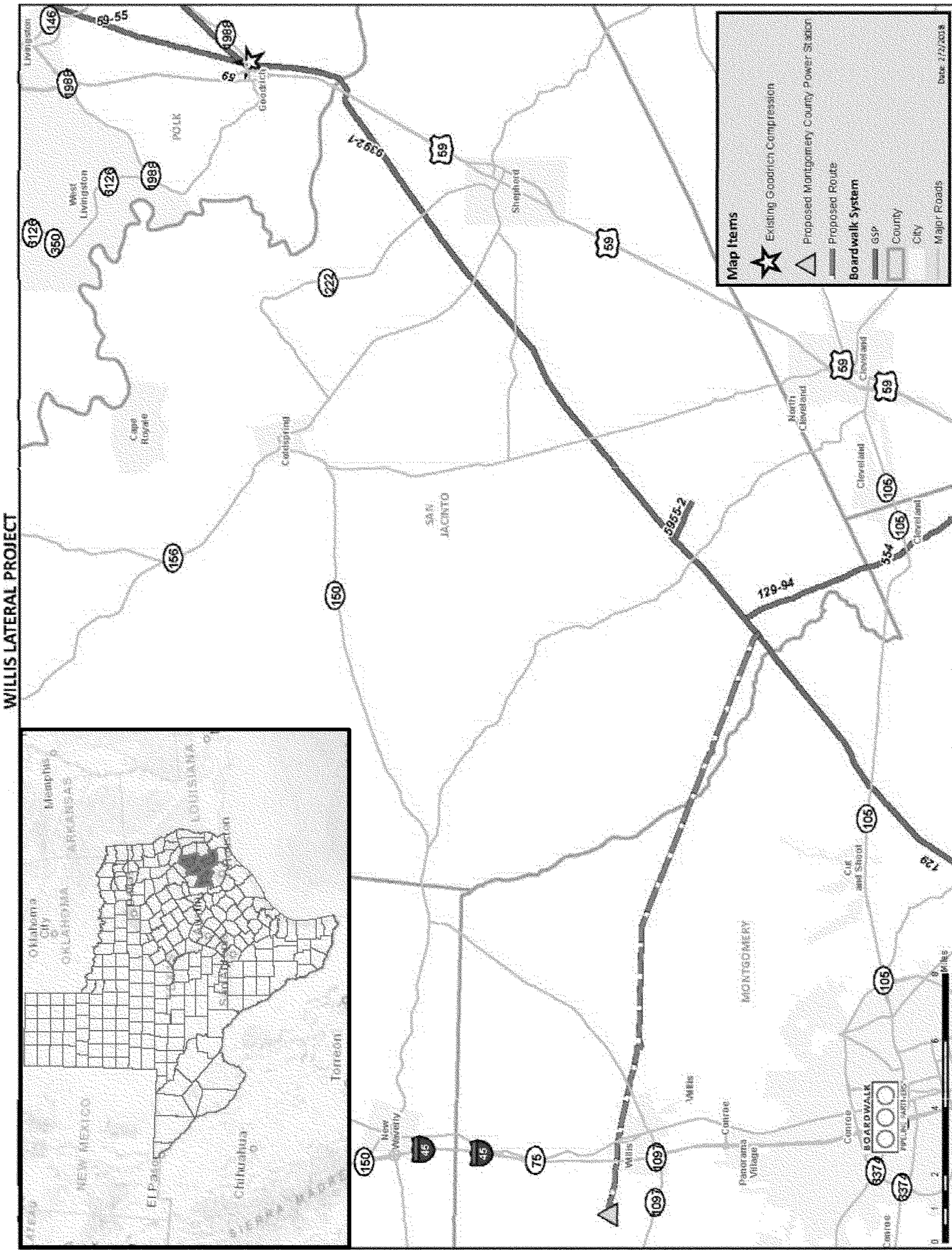
Dated: August 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

BILLING CODE 6717–01–P

Appendix 1


WILLIS LATERAL PROJECT
Map Items
Existing Goodrich Compression
Proposed Montgomery County Power Station
Proposed Route
Boardwalk System
GSP
County
City
Major Roads
POLK
SAN JACINTO
MONTGOMERY
BOARDWALK
Miles

Appendix 2

MAILING LIST UPDATE FORM

Willis Lateral Project

Name_____

Agency_____

Address_____

City_____**State**_____ **Zip Code**_____

☐ **Please update the mailing list**

☐ **Please remove my name from the mailing list**

FROM_____

_____

_____

_____

ATTN: OEP - Gas 4, PJ - 11.4
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

(CP18-525-000, Willis Lateral Project)

Staple or Tape Here

[FR Doc. 2018–19397 Filed 9–6–18; 8:45 am]
BILLING CODE 6717–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP18–512–000, CP18–513–000]

Corpus Christi Liquefaction Stage III, LLC; Corpus Christi Liquefaction, LLC; and Cheniere Corpus Christi Pipeline, L.P.; Notice of Schedule for Environmental Review of the Stage 3 Project

On June 28, 2018, Corpus Christi Liquefaction Stage III, LLC and Corpus Christi Liquefaction, LLC (collectively with Cheniere Corpus Christi Pipeline, L.P. referred to as Cheniere) filed an application in Docket No. CP18–512–000 requesting an authorization for siting, construction, and operation of a liquefied natural gas (LNG) export facility pursuant to Section 3(a) of the Natural Gas Act (NGA). On the same day, Cheniere Corpus Christi Pipeline, L.P. filed an application in Docket No. CP18–513–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the NGA to construct, operate, and maintain certain natural gas pipeline facilities. Combined, the proposed project is known as the Stage 3 Project (Project) and would provide gas and processing to produce up to 11.45 million tonnes per annum of LNG for export.

On July 12, 2018, the Federal Energy Regulatory Commission (FERC or Commission) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for completion of the EA for the Project. The forecasted schedule for the EA is based upon Cheniere providing complete and timely responses to any data requests. In addition, the schedule assumes that the cooperating agencies will provide input on their areas of responsibility on a timely basis.

Schedule for Environmental Review

Issuance of EA: February 8, 2019
90-Day Federal Authorization Decision Deadline: May 9, 2019

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Cheniere proposes to install seven mid-scale liquefaction trains and one new LNG storage tank expanding the previously authorized and currently under construction Corpus Christi Liquefaction Project in Nueces County, Texas. The proposed LNG facilities would be located primarily within areas previously disturbed for construction and/or operation of the Corpus Christi Liquefaction Project. Cheniere would also construct a new 21-mile-long, 42-inch-diameter natural gas pipeline from the recently completed Sinton Compressor Station (FERC Docket No. CP12–508–000) to the proposed Stage 3 liquefaction facilities, all of which would be located within Nueces County, Texas. The Project would also include the addition of two compressor units totaling approximately 44,000 horsepower at the Sinton Compressor Station. No new marine facilities would be installed as part of the Project; however, Cheniere anticipates that an annual increase of 100 LNG carriers would utilize the LNG terminal during operation of the Project.

Background

On June 9, 2015, the Commission staff granted Cheniere's request to use the FERC's pre-filing environmental review process and assigned the Stage 3 Project Docket No. PF15–26–000. On August 17, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Planned Stage 3 Project, and Request for Comments on Environmental Issues* (NOI). The NOI was issued during the pre-filing review of the Project in Docket No. PF15–26–000 and was sent to federal, state, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Native American tribes and regional organizations; commenters and other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received comments from the U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, Tonkawa Tribe of Oklahoma, Federal Emergency Management Agency, and Texas Parks and Wildlife Department. The primary issues raised by the commenters include effects on threatened and endangered species and vegetation, water quality impacts, greenhouse gas emissions, and cumulative impacts.

The U.S. Department of Transportation Pipeline and Hazardous Materials Administration, U.S. Coast Guard, U.S. Department of Energy, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and U.S. Environmental Protection Agency are cooperating agencies in the preparation of the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP18–512 and CP18–513), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Dated: August 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19406 Filed 9–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–45–000]

Notice of Availability of the Environmental Assessment for the Proposed Dominion Energy Transmission, Inc. Sweden Valley Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Sweden Valley Project (Project), proposed by Dominion Energy Transmission, Inc. (Dominion) in the above-referenced docket. The Project is designed to provide 120 million cubic feet per day of firm transportation service from an existing point of interconnection located on Dominion's

Line TL–489 in Clinton County, Pennsylvania to a new point of interconnection between Dominion and Tennessee Gas Pipeline in Tuscarawas County, Ohio.

The EA assesses the potential environmental effects of constructing and operating the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the Project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Army Corps of Engineers (USACE) participated as cooperating agency in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The USACE would adopt the EA to fulfill their agency's NEPA obligations and would use the EA and supporting documentation to consider the issuance of Clean Water Act Section 404 permit.

The Sweden Valley Project would consist of the following actions in Ohio:

- Install approximately 1.7 miles of 20-inch-diameter pipeline lateral in Tuscarawas County;
- Re-wheel the compressors on three-existing centrifugal compression sets at Dominion's existing Newark Compressor Station in Licking County;
- Construct a new Metering and Regulation (M&R) site in Tuscarawas County; and
- Install a new pig launcher/receiver on the TL–653 OH Pipeline Lateral in Tuscarawas County.

In Pennsylvania, the Project would include:

- Installation of approximately 3.2 miles of 24-inch-diameter pipeline looping in Greene County;
- Installation of regulation equipment at the South Bend Compressor Station in Armstrong County;
- Installation of M&R equipment at a new interconnect in Clinton County; and
- Installation of new mainline gate assemblies on the TL–654 Loop in Greene County.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the Environmental Documents page (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://www.ferc.gov/docs-filing/elibrary.asp*), click on General Search, and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.*, CP18–45). Be sure you have selected an appropriate date range. 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.

Any person wishing to comment on the EA may do so. Your comments should focus on EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC, on or before 5:00 p.m. Eastern Time on October 1, 2018.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP18–45–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission may grant affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: August 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19405 Filed 9–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–14–000]

Notice of Schedule for Environmental Review of the UGI LNG, Inc. Temple Truck Rack Expansion Project

On November 14, 2016, UGI LNG, Inc. filed an application in Docket No. CP17–14–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain

natural gas pipeline facilities at the existing Temple Liquefied Natural Gas (LNG) Peak-shaving Facility in Berks County, Pennsylvania. The proposed project is known as the Temple Truck Rack Expansion Project (Project), and would allow UGI LNG, Inc. to more reliably serve the growing demand for truck deliveries by UGI Energy Services.

On November 29, 2016, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA—September 18, 2018
90-Day Federal Authorization Decision Deadline—December 17, 2018

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

UGI LNG, Inc. proposes to expand its existing Temple LNG truck loading facility by constructing two additional trailer loading/unloading racks. The new facilities would consist of two racks with scales, trailer loading skid, pump skid, transfer piping, and associated equipment. The Project would also include constructing a new driveway connecting the expansion to Willow Creek Road. The Project is projected to increase truck volumes from an average of one to three trucks per day to an average of three to six trucks per day.

Background

On January 23, 2017, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Temple Truck Rack Expansion Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received one public comment concerning increased traffic.

The U.S. Department of Transportation is a cooperating agencies in the preparation of the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp*.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP17–14), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: August 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19391 Filed 9–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP17–494–000; CP17–495–000]

Pacific Connector Gas Pipeline LP, Jordan Cove Energy Project LP; Notice of Schedule for Environmental Review Pacific Connector Pipeline Project and Jordan Cove Energy Project

On September 21, 2017, Pacific Connector Gas Pipeline LP (Pacific Connector) and Jordan Cove Energy Project L.P. (Jordan Cove) filed applications in Docket Nos. CP17–494–000 and CP17–495–000, respectively. Pacific Connector is requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act (NGA) to construct, operate, and maintain certain natural gas pipeline facilities. Jordan Cove is requesting authorization pursuant to Section 3(a) of the NGA to construct and operate liquefied natural gas (LNG) export facilities. The proposed projects are collectively referred to as the Jordan Cove LNG Project (Project). Jordan Cove's LNG facilities would be designed to liquefy about 7.8 million metric tons of natural gas per annum for export to markets across the Pacific Rim. On August 20, 2015, in Order No. 3698, the U.S. Department of Energy, Office of Fossil Energy, granted to Jordon Cove a long-term, multi-contract authorization to export LNG to Free Trade Agreement nations.

On October 5, 2017, the Federal Energy Regulatory Commission (FERC or Commission) issued a Notice of Applications for the Projects. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final Environmental Impact Statement (EIS) for the Projects. This instant notice identifies the FERC staff's planned schedule for completion of the final EIS for the Projects, which is based on an issuance of the draft EIS in February 2019. The forecasted schedule for both the draft and final EIS is based upon Jordon Cove and Pacific Connector providing complete and timely responses to any future data requests. In addition, the schedule assumes that the cooperating agencies will provide input on their areas of responsibility on a timely basis.

Schedule for Environmental Review

Issuance of Notice of Availability of the final EIS—August 30, 2019
90-Day Federal Authorization Decision Deadline—November 28, 2019

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Jordan Cove proposes to construct and operate an LNG export terminal on the North Spit of Coos Bay in Coos County, Oregon. The terminal would include five liquefaction trains and associated equipment, two full-containment LNG storage tanks, an LNG transfer line, LNG ship loading facilities, a marine slip, access channel, and modifications to the Coos Bay Navigation Channel.

Pacific Connector proposes to construct and operate an approximately 230-mile-long, 36-inch-diameter interstate natural gas transmission pipeline and associated aboveground

facilities. The pipeline would originate near Malin in Klamath County, Oregon, traverse Douglas and Jackson Counties, and terminate (at the LNG Terminal) in Coos County. The associated aboveground facilities would include the new Klamath Compressor Station (62,200 horsepower) near Malin.

Background

On February 10, 2017, the Commission staff granted Jordan Cove and Pacific Connector's requests to use the FERC's Pre-filing environmental review process and assigned them jointly to Docket No. PF17–4–000. On June 9, 2017, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Jordan Cove LNG Terminal and Pacific Connector Pipeline Projects, Request for Comments on Environmental Issues, and Notice of Public Scoping Sessions* (NOI).

The NOI was issued during the pre-filing review of the Projects in Docket No. PF17–4–000 and was sent to federal, state, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Native American tribes and regional organizations; commentors and other interested parties; and local libraries and newspapers. Major issues raised during scoping include purpose and need, property rights, use of eminent domain, reliability and safety, cumulative impacts, cultural resources, threatened and endangered species, water resources, vegetation, and alternatives.

The U.S. Forest Service, Bureau of Land Management, Bureau of Reclamation, U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Department of Energy, Pipeline and Hazardous Materials Safety Administration, and the Coquille Indian Tribe are cooperating agencies in the preparation of the EIS.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP17–494 and/or CP17–495), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: August 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19403 Filed 9–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP17–178–000]

Notice of Anticipated Schedule of Final Order for the Alaska Gasline Development Corporation Alaska LNG Project

On April 17, 2017, Alaska Gasline Development Corporation filed an application in Docket No. CP17–178–000, pursuant to section 3 of the Natural Gas Act and Part 153 of the Commission's regulations, for authorization to site, construct, and operate a new liquefied natural gas (LNG) export terminal and associated facilities on the eastern shore of Cook Inlet in the Nikiski area of the Kenai Peninsula in Alaska, and to construct approximately 871 miles of natural gas pipeline and associated facilities, all within the State of Alaska. The proposed project, known as the Alaska LNG (Project), would liquefy and export up to 20.0 million metric tons per annum of LNG.

In accordance with Title 41 of the Fixing America's Surface Transportation Act, enacted on December 4, 2015, agencies are to publish completion dates for all federal environmental reviews and authorizations. This notice identifies the Commission's anticipated schedule for issuance of the final order for the Project, which is based on the anticipated date of issuance of the final Environmental Impact Statement. Accordingly, we currently anticipate issuing a final order in the Project no later than:

Issuance of Final Order—February 6, 2020

If a schedule change becomes necessary for the final order, an additional notice will be provided so that interested parties and government agencies are kept informed of the Project's progress.

Dated: August 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19396 Filed 9–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP17–66–000; CP17–67–000]

Notice of Schedule for Environmental Review of the Venture Global Plaquemines LNG, LLC and Venture Global Gator Express, LLC Plaquemines LNG and Gator Express Pipeline Project

On February 28, 2017, Venture Global Plaquemines LNG, LLC (Plaquemines LNG) filed an application in Docket No. CP17–66–000 requesting authorization pursuant to Section 3(a) of the Natural Gas Act (NGA) to construct and operate liquefied natural gas (LNG) export facilities. On the same day, Venture Global Gator Express, LLC (Gator Express Pipeline) filed an application in Docket No. CP17–67–000, requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the NGA to construct, operate, and maintain certain natural gas pipeline facilities. Combined, the proposed project is known as the Plaquemines LNG and Gator Express Pipeline Project (Project) and would provide gas and processing to produce up to 20.0 million tonnes per annum of LNG for export. On July 21, 2016, in Order No. 3866, the U.S. Department of Energy, Office of Fossil Energy, granted to Plaquemines LNG authorization to export LNG to Free Trade Agreement nations.

On March 13, 2017, the Federal Energy Regulatory Commission (FERC or Commission) issued its Notice of Application for the Project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final Environmental Impact Statement (EIS) for the Plaquemines LNG and Gator Express Pipeline Project. This

instant notice identifies the FERC staff's planned schedule for completion of the final EIS for the Project, which is based on an issuance of the draft EIS in November 2018. The forecasted schedule for both the draft and final EIS is based upon Plaquemines LNG and Gator Express Pipeline providing complete and timely responses to any future data requests. In addition, the schedule assumes that the cooperating agencies will provide input on their areas of responsibility on a timely basis.

Schedule for Environmental Review

Issuance of Notice of Availability of the final EIS—May 3, 2019

90-Day Federal Authorization Decision Deadline—August 1, 2019

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Plaquemines LNG plans to construct an LNG terminal on a 632-acre site on the Mississippi River in Plaquemines Parish, Louisiana. Gator Express Pipeline plans to construct two parallel 42-inch-diameter gas lateral pipelines totaling approximately 26.8 miles, also in Plaquemines Parish, Louisiana. These pipelines would connect the LNG terminal to the existing interstate natural gas grid. Each pipeline would have a nominal gas supply capability of 1.97 standard billion cubic feet per day. The Project would consist of a liquefaction plant, aboveground storage tanks, marine loading berthing docks, a utility dock, and air-cooled electric power generation facilities, in addition to the two lateral pipelines.

Background

On July 2, 2015, the Commission staff granted Plaquemines LNG and Gator Express Pipeline's request to use the FERC's pre-filing environmental review process and assigned the Plaquemines LNG and Gator Express Pipeline Project Docket No. PF15–27–000. On October 5, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Plaquemines LNG and Gator Express Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* (NOI). On September 14, 2016, the FERC sent a letter to potentially-affected landowners informing them of changes that Plaquemines LNG and Gator Express Pipeline had made to the planned pipelines since the initiation of the pre-filing process.

The NOI and pipeline modification letter were issued during the pre-filing review of the Project in Docket No. PF15–27–000 was sent to federal, state, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Native American tribes and regional organizations; commentors and other interested parties; and local libraries and newspapers. Major issues raised during scoping include potential impacts to the river floodway and the flood protection levee from terminal construction, construction and wetland fill in the Coastal Zone, saltwater intrusion from marsh pipeline construction, impacts on productivity of Barataria Bay estuary, greenhouse gas emissions from project operation, and noise and light pollution impacts on nearby sensitive areas.

The U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Department of Energy, U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration, and U.S. Environmental Protection Agency are cooperating agencies in the preparation of the EIS.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP17–66 and CP17–67), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: August 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19394 Filed 9–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–116–000]

Notice of Schedule for Environmental Review of the Texas LNG Brownsville LLC Texas LNG Project

On March 31, 2016, Texas LNG Brownsville LLC (Texas LNG) filed an application in Docket No. CP16–116–000 requesting authorization pursuant to Section 3(a) of the Natural Gas Act to site, construct, modify, and operate liquefied natural gas (LNG) export facilities located on the Brownsville Ship Channel in Cameron County, Texas. The proposed project is known as the Texas LNG Project (Project) and would include a new LNG export terminal capable of producing up to 4 million tonnes per annum of LNG for export. The terminal would receive natural gas to the export facilities from a third-party intrastate pipeline. On September 24, 2015, in Order No. 3716, the U.S. Department of Energy, Office of Fossil Energy, granted to Texas LNG a long-term, multi-contract authorization to export LNG to Free Trade Agreement nations.

On April 14, 2016, the Federal Energy Regulatory Commission (FERC or Commission) issued its Notice of Application for the Project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final Environmental Impact Statement (EIS) for the Texas LNG Project. This instant notice identifies the FERC staff's planned schedule for completion of the final EIS for the Project, which is based on an issuance of the draft EIS in October 2018. The forecasted schedule for both the draft and final EIS is based upon Texas LNG providing complete and timely responses to any future data requests. In addition, the schedule assumes that the cooperating agencies will provide input on their areas of responsibility on a timely basis.

Schedule for Environmental Review

Issuance of Notice of Availability of the final EIS—March 15, 2019

90-Day Federal Authorization Decision Deadline—June 13, 2019

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Texas LNG's proposed facilities include two liquefaction trains, each capable of producing 2 million tonnes per annum, one new LNG storage tank, and a single marine berth capable of accommodating LNG carriers with capacities up to 180,000 cubic meters. The Project would be constructed on about 285 acres of a 625-acre parcel of land, on the north side of the Brownsville Ship Channel near mile marker 4. An additional 26.5 acres would be located outside of the 625-acre parcel to provide deepwater access to the Brownsville Ship Channel.

Background

On April 14, 2015, the Commission staff granted Texas LNG's request to use the FERC's Pre-filing environmental review process and assigned the Texas LNG Project Docket No. PF15–14–000. On July 23, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Texas LNG Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting* (NOI).

The NOI was issued during the pre-filing review of the project in Docket No. PF15–14–000 and was sent to federal, state, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Native American tribes and regional organizations; commenters and other interested parties; and local libraries and newspapers. Major issues raised during scoping include threatened and endangered species, LNG safety, land use, water quality, air quality, and cumulative impacts.

The U.S. Department of Energy, U.S. Coast Guard, U.S. Department of Transportation, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Park Service, National Marine Fisheries Service, and Federal Aviation Administration are cooperating agencies in the preparation of the EIS.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP16–116), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: August 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19390 Filed 9–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–178–000]

Notice of Revised Schedule for Environmental Review of the Alaska Gasline Development Corporation Alaska LNG Project

This notice identifies the Federal Energy Regulatory Commission (FERC) staff's revised schedule for the completion of the environmental impact statement (EIS) for the Alaska LNG Project (Project). The first notice of schedule, issued on March 12, 2018, identified December 9, 2019 as the final EIS issuance date. Staff has revised the schedule for issuance of the final EIS, based on an issuance of the draft EIS in February 2019. The forecasted schedule for both the draft and final EIS is based upon the Alaska Gasline Development Corporation providing complete and timely responses to any future data requests. In addition, the schedule assumes that the cooperating agencies will provide input on their areas of responsibility on a timely basis.

Schedule for Environmental Review

Issuance of Notice of Availability of the final EIS—November 8, 2019

90-Day Federal Authorization Decision Deadline—February 6, 2020

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP17–178), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: August 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19401 Filed 9–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC18–145–000.

Applicants: Choice Energy, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Choice Energy LLC.

Filed Date: 8/29/18.

Accession Number: 20180829–5158.

Comments Due: 5 p.m. ET 9/19/18.

Docket Numbers: EC18–146–000.

Applicants: PPL Electric Utilities Corporation.

Description: Application for Authorization under Section 203 of the Federal Power Act of PPL Electric Utilities Corporation.

Filed Date: 8/30/18.

Accession Number: 20180830–5169.

Comments Due: 5 p.m. ET 9/20/18.

Docket Numbers: EC18–147–000.
Applicants: Avista Corporation.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Avista Corporation.
Filed Date: 8/31/18.
Accession Number: 20180831–5081.
Comments Due: 5 p.m. ET 9/21/18.

Docket Numbers: EC18–148–000.
Applicants: Golden Fields Solar II, LLC, Golden Fields Solar III, LLC, Golden Fields Solar IV, LLC, Golden Fields Solar V, LLC.
Description: Application for Authorization under Section 203 of the Federal Power Act for Disposition of Jurisdictional Facilities, et al, of Golden Fields Solar II, LLC, et al.
Filed Date: 8/31/18.
Accession Number: 20180831–5090.
Comments Due: 5 p.m. ET 9/21/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–256–005; ER17–242–005; ER17–243–005; ER17–245–005; ER17–652–005.
Applicants: Darby Power, LLC, Gavin Power, LLC, Lawrenceburg Power, LLC, Waterford Power, LLC, Lightstone Marketing LLC.
Description: Notice of Non-Material Change in Status of Darby Power, LLC, et al.
Filed Date: 8/30/18.
Accession Number: 20180830–5228.
Comments Due: 5 p.m. ET 9/20/18.

Docket Numbers: ER18–1648–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2018–08–29_Deficiency response to Time Limits for Disputes and Resettlements to be effective 11/1/2018.
Filed Date: 8/30/18.
Accession Number: 20180830–5050.
Comments Due: 5 p.m. ET 9/20/18.

Docket Numbers: ER18–2073–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2018–08–31_SA 3134 ETI-Liberty County Solar Project GIA (J483) Amendment to be effective 7/13/2018.
Filed Date: 8/31/18.
Accession Number: 20180831–5078.
Comments Due: 5 p.m. ET 9/21/18.

Docket Numbers: ER18–2075–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2018–08–31_SA 3135 ELL–ELL GIA (J484) Amendment to be effective 7/13/2018.
Filed Date: 8/31/18.
Accession Number: 20180831–5094.
Comments Due: 5 p.m. ET 9/21/18.

Docket Numbers: ER18–2076–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2018–08–31_SA 3136 Entergy Texas, Inc-Entergy Texas, Inc GIA (J472) Amendment to be effective 7/13/2018.
Filed Date: 8/31/18.
Accession Number: 20180831–5114.
Comments Due: 5 p.m. ET 9/21/18.

Docket Numbers: ER18–2346–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Oncor Electric Delivery Company Amended TSA to be effective 8/3/2018.
Filed Date: 8/30/18.
Accession Number: 20180830–5179.
Comments Due: 5 p.m. ET 9/20/18.

Docket Numbers: ER18–2347–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3474 Clarksville Light & Water NITSA NOA to be effective 8/1/2018.
Filed Date: 8/30/18.
Accession Number: 20180830–5180.
Comments Due: 5 p.m. ET 9/20/18.

Docket Numbers: ER18–2348–000.
Applicants: Idaho Power Company.
Description: Tariff Cancellation: Notice of Cancellation of Rate Schedule 166—Goshen-Jefferson Line Rebuild to be effective 10/29/2018.
Filed Date: 8/30/18.
Accession Number: 20180830–5183.
Comments Due: 5 p.m. ET 9/20/18.

Docket Numbers: ER18–2349–000.
Applicants: Southwestern Electric Power Company.
Description: § 205(d) Rate Filing: Bentonville PSA to be effective 8/1/2018.
Filed Date: 8/30/18.
Accession Number: 20180830–5194.
Comments Due: 5 p.m. ET 9/20/18.

Docket Numbers: ER18–2350–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to OATT, Sch. 12-Appx A re: RTEP Projects Approved July 2018 to be effective 11/28/2018.
Filed Date: 8/30/18.
Accession Number: 20180830–5201.
Comments Due: 5 p.m. ET 9/20/18.

Docket Numbers: ER18–2351–000.
Applicants: New York State Electric & Gas Corporation.
Description: § 205(d) Rate Filing: NYSEG–KCE NY1 EPC Agreement to be effective 8/30/2018.
Filed Date: 8/30/18.
Accession Number: 20180830–5203.
Comments Due: 5 p.m. ET 9/20/18.

Docket Numbers: ER18–2352–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2018–08–30_Real-Time Buybacks of Spinning and Offline Supplemental Reserve to be effective 12/1/2018.
Filed Date: 8/30/18.
Accession Number: 20180830–5204.
Comments Due: 5 p.m. ET 9/20/18.

Docket Numbers: ER18–2353–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2018–08–30_Price Volatility Make Whole Payments Enhancement to be effective 12/1/2018.
Filed Date: 8/30/18.
Accession Number: 20180830–5205.
Comments Due: 5 p.m. ET 9/20/18.

Docket Numbers: ER18–2354–000.
Applicants: BE CA LLC.
Description: Tariff Cancellation: MBR Tariff Cancellation to be effective 9/30/2018.
Filed Date: 8/30/18.
Accession Number: 20180830–5206.
Comments Due: 5 p.m. ET 9/20/18.

Docket Numbers: ER18–2355–000.
Applicants: Virginia Electric and Power Company, Duke Energy Progress, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: VEPCO and Duke Energy Process submit amended IA SA No. 3453 to be effective 10/26/2018.
Filed Date: 8/30/18.
Accession Number: 20180830–5211.
Comments Due: 5 p.m. ET 9/20/18.

Docket Numbers: ER18–2356–000.
Applicants: Florida Power Development LLC.
Description: Tariff Cancellation: MBR Tariff cancellation to be effective 9/30/2018.
Filed Date: 8/30/18.
Accession Number: 20180830–5212.
Comments Due: 5 p.m. ET 9/20/18.

Docket Numbers: ER18–2357–000.
Applicants: Interstate Power and Light Company.
Description: § 205(d) Rate Filing: IPL—Hearland—CIPCO LBA Agreement to be effective 10/29/2018.
Filed Date: 8/30/18.
Accession Number: 20180830–5213.
Comments Due: 5 p.m. ET 9/20/18.

Docket Numbers: ER18–2358–000.
Applicants: GridLiance High Plains LLC, Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revisions to Add Oklahoma Panhandle Facilities for GridLiance High Plains LLC to be effective 11/1/2018.
Filed Date: 8/30/18.
Accession Number: 20180830–5216.
Comments Due: 5 p.m. ET 9/20/18.

Docket Numbers: ER18–2359–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Second Revised ISA SA No. 2832; Queue #AC1–181 to be effective 8/28/2018.

Filed Date: 8/30/18.

Accession Number: 20180830–5218.

Comments Due: 5 p.m. ET 9/20/18.

Docket Numbers: ER18–2360–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2018–08–30 EIM Agreement with Balancing Authority of Northern California to be effective 10/30/2018.

Filed Date: 8/30/18.

Accession Number: 20180830–5222.

Comments Due: 5 p.m. ET 9/20/18.

Docket Numbers: ER18–2361–000.

Applicants: Enel Green Power Hilltopper Wind, LLC.

Description: Baseline eTariff Filing: MBR Tariff to be effective 9/1/2018.

Filed Date: 8/30/18.

Accession Number: 20180830–5223.

Comments Due: 5 p.m. ET 9/20/18.

Docket Numbers: ER18–2362–000.

Applicants: NTE Ohio, LLC.

Description: Baseline eTariff Filing: Baseline new rates to be effective 9/1/2018.

Filed Date: 8/30/18.

Accession Number: 20180830–5227.

Comments Due: 5 p.m. ET 9/20/18.

Docket Numbers: ER18–2363–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2018–08–31_Refiling of Resource Adequacy Construct Locational Enhancements to be effective 11/1/2018.

Filed Date: 8/31/18.

Accession Number: 20180831–5128.

Comments Due: 5 p.m. ET 9/21/18.

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 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19408 Filed 9–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–521–000]

Gulf LNG Liquefaction Company, LLC, Gulf LNG Energy, LLC, Gulf LNG Pipelines, LLC; Notice of Schedule for Environmental Review of the Gulf LNG Liquefaction Project

On June 19, 2015, Gulf LNG Liquefaction Company, LLC and Gulf LNG Energy, LLC, and Gulf LNG Pipeline, LLC (collectively referred to as Gulf LNG) filed an application with the Federal Energy Regulatory Commission (FERC or Commission) in Docket No. CP15–521–000 pursuant to section 3(a) and 7(c) of the Natural Gas Act, requesting authorization to construct and operate the Gulf LNG Liquefaction Project (Project) at Gulf Energy's existing import liquefied natural gas (LNG) terminal in Jackson County, Mississippi. Within the same application, Gulf LNG Pipeline, LLC proposes to make modifications to the terminal's send-out pipeline to allow for bi-directional flow. The Project would expand the terminal to enable it to liquefy approximately 11 million metric tons of LNG per year for export. On June 15, 2012, in Order No. 3104, the U.S. Department of Energy, Office of Fossil Energy, granted to Gulf LNG authorization to export LNG by vessel from the terminal to Free Trade Agreement nations. On August 31, 2012, Gulf LNG filed an application with the U.S. Department of Energy, Office of Fossil Energy, for a long-term, multi-contract authorization to export LNG to Non-Free Trade Agreement nations. A decision by the U.S. Department of Energy, Office of Fossil Energy is still pending.

FERC issued its Notice of Application for the Project on July 1, 2015. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final environmental impact statement (EIS) for the Project. This notice identifies the FERC staff's planned schedule for completion of the final EIS for the Gulf LNG Liquefaction Project, which is based on an issuance of the draft EIS in November 2018. The forecasted schedule for both the draft and final EIS is based upon Gulf LNG providing complete and timely responses to any future data requests. In addition, the schedule assumes that the cooperating agencies will provide input on their areas of responsibility on a timely basis.

Schedule for Environmental Review

Issuance of Notice of Availability of the final EIS—April 17, 2019

90-Day Federal Authorization Decision Deadline—July 16, 2019

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of project's progress.

Background

On May 21, 2014, the Commission staff granted Gulf LNG's request to use FERC's pre-filing environmental review process and assigned the Gulf LNG Liquefaction Project Docket No. PF13–4–000. On July 31, 2014, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Gulf LNG Liquefaction Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting.* On August 27, 2014, the Commission issued a *Notice of Extension of Time* to allow additional time for comments. The notices were sent to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; affected property owners; other interested parties; and local libraries and newspapers. Major issues raised during scoping include impacts on air and water quality, socioeconomic conditions, environmental justice, federal and state-listed threatened and endangered species, noise levels and nighttime light, visual resources, public safety, and cumulative impacts.

The U.S. Army Corps of Engineers; U.S. Coast Guard; U.S. Department of Energy, Office of Fossil Energy; U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration; U.S. Fish and Wildlife Service; National Oceanic and Atmospheric Administration, National Marine Fisheries Service; and U.S. Environmental Protection Agency are cooperating agencies in the preparation of the EIS.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of

all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents via email. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Gulf LNG Liquefaction Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP15–521), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: August 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19388 Filed 9–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP17–20–000; CP17–21–000; CP17–21–001; CP18–7–000]

Notice of Schedule for Environmental Review of the Port Arthur Liquefaction Project, the Texas Connector Project, and the Louisiana Connector Project: Port Arthur LNG, LLC; PALNG Common Facilities Company, LLC; Port Arthur Pipeline, LLC

On November 29, 2016, Port Arthur LNG, LLC and PALNG Common Facilities Company, LLC (collectively referred to as PALNG) filed an application in Docket No. CP17–20–000 requesting authorization pursuant to Section 3(a) of the Natural Gas Act (NGA) to construct and operate liquefied natural gas (LNG) export facilities. On the same day, Port Arthur Pipeline, LLC (PAPL) filed an application in Docket No. CP17–21–000, requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the NGA to construct, operate, and maintain certain natural gas pipeline facilities for its Texas Connector Project. On October 16, 2017, PAPL filed an application in Docket No. CP18–7–000, requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the NGA to construct, operate, and maintain certain natural gas pipeline facilities for its Louisiana Connector Project. The combined projects, collectively referred to as the Port Arthur Liquefaction and Pipeline Projects (Projects), would provide gas and processing to produce up to 13.5 million tonnes per annum of LNG for export. On August 20, 2015, in Order No. 3698, the U.S. Department of Energy, Office of Fossil Energy, granted to Port Arthur LNG, LLC a long-term, multi-contract authorization to export LNG to Free Trade Agreement nations.

On December 13, 2016, and October 30, 2017, the Federal Energy Regulatory Commission (FERC or Commission) issued its Notices of Application for the Projects. Among other things, these notices alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final Environmental Impact Statement (EIS) for the Projects. This instant notice identifies the FERC staff's planned schedule for completion of the final EIS for the Projects, which is based on an issuance of the draft EIS in September 2018. The forecasted schedule for both the draft and final EIS is based upon PALNG and PAPL providing complete and timely responses to any future data requests. In addition, the schedule assumes that the cooperating agencies will provide input on their areas of responsibility on a timely basis.

Schedule for Environmental Review

Issuance of Notice of Availability of the final EIS—January 31, 2019

90-Day Federal Authorization Decision Deadline—May 1, 2019

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the Projects' progress.

Project Description

PALNG's proposed facilities consist of an export liquefaction termination that includes two LNG liquefaction trains, three LNG storage tanks, a refrigerant storage area and truck unloading facilities, a condensate storage area and truck loading facilities, a construction dock, a marine offloading facility, a pioneer dock, and two marine berths capable of accommodating two LNG carriers of up to 266,000 cubic meters each. PALNG's proposed facilities would occupy approximately 898 acres of a 2,900-acre site on the western shore of the Port Arthur Canal, about 5 miles south of Port Arthur, Texas and 6 miles north of Sabine, Texas.

PAPL's Texas Connector Project would consist of 26.6 miles of 42-inch-diameter pipeline entering the liquefaction facility from the north; 7.6 miles of 42-inch-diameter pipeline entering the liquefaction facility from the south; 4.7 miles of lateral pipelines; two compressor stations providing a total of approximately 31,600 horsepower of compression; six meter stations; eight pig launchers and receivers; and one mainline valve. These facilities would be located in in Jefferson and Orange Counties, Texas and Cameron Parish, Louisiana.

PAPL's Louisiana Connector Project would consist of 130.8 miles of 42-inch-diameter pipeline; 0.5 mile of lateral pipelines; one compressor station providing a total of approximately 89,900 horsepower of compression; nine meter stations; nine mainline valves; and four pig launchers/receivers in Jefferson and Orange Counties, Texas and Cameron, Calcasieu, Beauregard, Allen, Evangeline, and St. Landry Parishes, Louisiana.

Background

On March 31, 2015, the Commission staff granted PALNG's and PAPL's requests to use the FERC's Pre-filing environmental review process for the Liquefaction and Texas Connector Projects. On June 24, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Port Arthur Liquefaction Project and Port Arthur Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting.* On March 17, 2017, the Commission staff granted PAPL's request to use the FERC's Pre-filing environmental review process for the Louisiana Connector Project. On May 25, 2017, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Louisiana Connector Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Sessions.*

The two referenced Notices of Intent were issued during the respective pre-filing review of the Projects, and were sent to federal, state, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Native American tribes and regional organizations; commentors and other interested

parties; and local libraries and newspapers. Major issues raised during scoping included wetland impacts and mitigation, and dredge material testing and beneficial reuse.

The U.S. Coast Guard; U.S. Department of Energy; U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration; U.S. Army Corps of Engineers, Galveston District; and U.S. Environmental Protection Agency are cooperating agencies in the preparation of the EIS.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Projects is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP17–20, CP17–21, or CP18–7), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: August 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19392 Filed 9–6–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9041–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7156 or *https://www2.epa.gov/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 08/27/2018 Through 08/31/2018 Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20180203, Draft Supplement, USN, HI, Surveillance Towed Array Sensor System (SURTASS LFA) Sonar, Comment Period Ends: 10/22/2018, Contact: Patrick Havel 703–695–8266.

EIS No. 20180204, Final, USACE, AZ, Ray Mine Tailings Storage Facility, Review Period Ends: 10/09/2018, Contact: Michael Langley 602–689–0606.

EIS No. 20180205, Revised Draft, USFWS, WA, Revised Draft Environmental Impact Statement for a Long-term Conservation Strategy for the Marbled Murrelet, Comment Period Ends: 11/06/2018, Contact: Mark Ostwald 360–753–9564.

EIS No. 20180206, Revised Draft, USACE, NY, Integrated Hurricane Sandy General Reevaluation Report and Environmental Impact Statement, Atlantic Coast of New York, East Rockaway Inlet to Rockaway Inlet and Jamaica Bay, Comment Period Ends: 10/22/2018, Contact: Daria Mazey 917–790–8726.

EIS No. 20180207, Final, USACE, NE, Missouri River Recovery Management Plan, Review Period Ends: 10/09/2018, Contact: Tiffany Vanosdall 402–995–2695.

EIS No. 20180208, Draft, BLM, OR, Tucker Hill Perlite Mine Expansion Plan of Operations Amendment No. 7, Comment Period Ends: 10/22/2018, Contact: Paul Whitman 541–947–6110.

Amended Notices

EIS No. 20180124, Draft, USFS, MT, Draft Environmental Impact Statement for the Draft Revised Forest Plan Helena—Lewis and Clark National Forest, Revision to the FR Notice Published 06/08/2018, Extend Comment Period from 09/06/2018 to 10/09/2018, Contact: Deborah Entwistle 406–495–3774.

EIS No. 20180185, Draft, BLM, UT, Grand Staircase-Escalante National Monument-Grand Staircase, Kaiparowits, and Escalante Canyon Units and Federal Lands Previously Included in the Monument that are excluded from the Boundaries Draft Resource Management Plans and Associated Environmental Impact Statement, Revision to FR Notice Published 08/17/2018, Extend comment period from 11/15/2018 to 11/30/2018, Contact: Matt Betenson 435–644–1200.

EIS No. 20180189, Draft, NRC, LA, License Renewal for Waterford Steam Electric Station, Unit 3, NUREG–1437, Supplement 59, Correction to FR Notice Published 08/24/2018, List correct project title, Contact: Elaine Keegan 301–415–8517.

Dated: September 4, 2018.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2018–19424 Filed 9–6–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–18–17AZI]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Understanding Decisions and Barriers about PrEP Use and Uptake Among Men Who Have Sex With Men to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on October 10, 2017 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(d) Minimize the burden of the collection of information on those who

are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Understanding Decisions and Barriers about PrEP Use and Uptake Among Men Who Have Sex With Men—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This project involves original, formative research toward improving the uptake and adherence necessary to achieve efficacious levels of protection offered by pre-exposure prophylaxis (PrEP) among the most highly affected population. HIV incidence and prevalence are higher among gay, bisexual, and other men who have sex with men (MSM) than any other risk group in the U.S. Approximately half of all diagnosed HIV infections are among gay, bisexual, and other MSM. The FDA-approved PrEP regimen, daily Tenofovir/emtricitabine (aka Truvada®), has shown greater than 90% efficacy in reducing HIV infections among MSM when taken in accordance with its prescribed daily schedule. In 2014, CDC published clinical practice guidelines for the use of PrEP in high-risk populations, and began national promotion of PrEP as an effective HIV prevention strategy for MSM. While hailed as an HIV-prevention ''game-changer,'' in reality PrEP uptake has been slow. Some studies report a wide range in the percentages of MSM (28–81%) interested in PrEP. In addition, other studies indicate that specific cities have alarmingly low rates of PrEP uptake (for example, the estimate for Atlanta is 2%). Moreover, recent survey findings have shown that less than 1 in 10 MSM on PrEP are adherent to their PrEP regimen; adherence is necessary to optimize efficacy.

In order to develop effective programs that increase PrEP uptake among MSM at greatest risk for HIV, studies are needed to better understand the decisions men make about their HIV prevention needs. Qualitative methods will be used to explore in-depth the ''Whys'' and ''How's'' of MSM's decisions to refuse or use PrEP, and barriers and challenges to successfully undertake a PrEP medication regimen. Quantitative methods will be used to understand the HIV risk behavior context, attitudes towards PrEP, health seeking behavior, and acceptability of new modes of PrEP delivery (that differ from current recommendation of daily PrEP and that are in development or discussion) and emerging biomedical HIV prevention options.

The purpose of this research is to explore decisions, barriers, and facilitators about PrEP use among MSM: (1) Who were offered PrEP but refused it; (2) who were interested in or started a PrEP regimen but did not follow through; and (3) who are eligible for PrEP per CDC guidelines (report condomless anal sex within last three months) but not currently on PrEP.

This study will provide insight on individual and community level PrEP-related decision-making, and identify barriers and facilitators to successful PrEP initiation and PrEP acceptability. Findings will improve programming, in line with the CDC Division of HIV/AIDS Prevention goal of high-impact prevention to reduce HIV infections in the U.S. Findings will assist the CDC and frontline public health programs in identifying and designing programs and intervention approaches that encourage, support, and maintain appropriate PrEP uptake among eligible MSM and anticipate future HIV prevention needs, including anticipated changes in PrEP delivery.

The total annual burden hours are 335. There are no other costs to the respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
General Public—Adults	Screener	600	1	5/60
General Public—Adults	Contact Information Form	300	1	1/60
General Public—Adults	In-Depth Interview Guide	60	1	45/60
General Public—Adults	Focus Group Moderator Guide	60	1	1
General Public—Adults	Eligibility verification (verification of continuing eligibility)	300	1	5/60
General Public—Adults	Structured response self-administered behavioral assessment ..	300	1	30/60

Jeffrey M. Zirger,

Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–19378 Filed 9–6–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–18–1102]

Agency Forms Undergoing Paperwork Reduction Act Review

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period; withdrawal.

SUMMARY: The Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS) announces the withdrawal of the notice published under the same title on August 22, 2018 for public comment.

DATES: Applicable September 7, 2018.

FOR FURTHER INFORMATION CONTACT: Information Collection Review Office,

Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: On August 22, 2018 CDC published a notice in the **Federal Register** titled ''Information Collection for Tuberculosis Data from Panel Physicians'' (Vol. 83, No. 163 Docket No. CDC–2018–0049, Pages 42502–542503). This notice was published inadvertently. The notice is being withdrawn immediately for public comment.

Jeffrey M. Zirger,

Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–19383 Filed 9–6–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–18–0666; Docket No. CDC–2018–0042]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled National Healthcare Safety Network (NHSN). NHSN is a public health surveillance system that collects, analyzes, reports, and makes available data for monitoring, measuring, and responding to healthcare associated infections (HAIs), antimicrobial use and resistance, blood transfusion safety events, and the extent to which healthcare facilities adhere to infection prevention practices and antimicrobial stewardship.

DATES: CDC must receive written comments on or before November 6, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2018–0042 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

National Healthcare Safety Network (NHSN)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NHSN is a public health surveillance system that collects, analyzes, reports, and makes available data for monitoring, measuring, and responding to healthcare associated infections (HAIs), antimicrobial use and resistance, blood transfusion safety events, and the extent to which healthcare facilities adhere to infection prevention practices and antimicrobial stewardship. The data collected will be used to inform and detect changes in the epidemiology of adverse events resulting from new and current medical therapies and changing risks. NHSN is comprised of six components: Patient Safety, Healthcare Personnel Safety, Biovigilance, Long-Term Care Facility, Outpatient Procedure, and Dialysis.

Changes were made to 33 data collection facility surveys with this new ICR. CDC revised three annual facility surveys for the Patient Safety component for Hospitals, Long-Term Acute Care Facilities, and Inpatient Rehabilitation Facilities. CDC's revisions clarify the reporting requirements for the data collected on fungal testing, facility locations, and laboratory testing locations. Additionally, corresponding response options for these questions have been revised to include updated testing methods used by facilities to capture current HAI specific data specification requirements for NHSN. New required questions have been added to all Patient Safety component surveys. The new questions are designed to provide data on surveillance processes, policies, and standards that are used by reporting facilities to ensure that when an event is detected, the facility has the appropriate mechanism to conduct complete reporting. The Hospital Annual Survey added new required questions to provide data about neonatal antimicrobial stewardship practices because the focus of stewardship efforts in neonatology differ from the focus in adult and pediatric practice. Questions were removed and replaced on all three

Patient Safety surveys to align better with the Core Elements of Hospital Antibiotic Stewardship Programs specified by CDC. The Core Elements defined by CDC are part of broad-based efforts by CDC and its healthcare and public health partners to combat the threat of antibiotic-resistant bacteria. The new Antibiotic Stewardship Program questions will provide additional data about operational features of the programs that hospitals have implemented, which in turn will enable CDC and its healthcare and public health partners to target their efforts to help invigorate and extend antibiotic stewardship.

CDC is introducing a new optional survey form that is designed to be completed by state and local health departments that participate in HAI surveillance and prevention activities. This new form will provide data on legal and regulatory requirements that are pertinent to HAI reporting. CDC plans to include data the health department survey in its annual National and State Healthcare-Associated Infection Progress Report. The report helps identify the progress in HAI surveillance and prevention at the state and national levels. Data about the extent to which state health departments have validated HAI data that healthcare facilities in their jurisdiction report to NHSN and the extent of state and local health department HAI reporting requirements are important data for users of CDC's HAI Progress Report to consider when they are reviewing and interpreting data in the report.

NHSN now includes a ventilator-associated event available for NICU locations, which requires additional denominator reporting, in which CDC has provided an option to accommodate facilities that are reporting requested data by updating the corresponding surveys. The Pediatric Ventilator-Associated Event (PedVAE) was removed from the survey because a single algorithm is used to detect PedVAE events.

NHSN has made updates to the Antimicrobial Use and Resistance (AUR) data collection tools for the purposes of monitoring additional microorganisms and their antimicrobial susceptibility profiles. Use of these updates in AUR surveillance will provide important additional data for clinical and public health responses to mounting antibiotic resistance problems.

The Long-term Care Facility Component (LTCF) will be updating three forms, two of which will include an update for facilities to document the ''CDI treatment start'' variable. Early CDI reporting data from nursing homes has shown exceptionally low event rates for many reporting facilities (*e.g.,* zero events for six or more months). Since current CDI event detection is based on presence of a positive laboratory specimen, variability in the use of diagnostic testing as part of CDI management will have direct impact on the estimate of CDI burden in a facility (*e.g.,* empiric treatment for CDI without confirmatory testing may result in the appearance of low disease burden). In order to determine whether low CDI event rates might be due to empiric CDI treatment practices, a new process measure will be incorporated into the monthly summary data on CDI for LTCFs. This measure, called ''CDI treatment starts,'' will allow providers to capture the number of residents started on antibiotic treatment for CDI that month based on clinical decisions (*i.e.,* even those without a positive CDI test). This process measure should provide data on clinically-treated CDI in order to inform our understanding of CDI management practices and serve as a proxy for CDI burden in nursing homes.

Overall, minor revisions have been made to a total of 33 forms within the package to clarify and/or update surveillance definitions, increase or decrease the number of reporting facilities, and add new forms.

The previously approved NHSN package included 72 individual collection forms; the current revision request includes a total of 73 forms. The reporting burden will decrease by 109,745 hours, for a total of 5,393,725 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Healthcare facility	57.100 NHSN Registration Form	2,000	1	5/60	167
	57.101 Facility Contact Information	2,000	1	10/60	333
	57.103 Patient Safety Component—Annual Hospital Survey.	6,000	1	1.17	7,500
	57.105 Group Contact Information	1,000	1	5/60	83
	57.106 Patient Safety Monthly Reporting Plan	6,000	12	15/60	18,000
	57.108 Primary Bloodstream Infection (BSI)	6,000	44	33/60	145,200
	57.111 Pneumonia (PNEU)	1,800	72	30/60	64,800
	57.112 Ventilator—Associated Event	6,000	144	28/60	403,200
	57.113 Pediatric Ventilator—Associated Event (PedVAE).	100	120	30/60	6,000
	57.114 Urinary Tract Infection (UTI)	6,000	40	20/60	80,000
	57.115 Custom Event	600	91	35/60	31,850
	57.116 Denominators for Neonatal Intensive Care Unit (NICU).	6,000	12	4	288,000
	57.117 Denominators for Specialty Care Area (SCA)/Oncology (ONC).	2,000	9	5.03	90,600
	57.118 Denominators for Intensive Care Unit (ICU)/Other locations (not NICU or SCA).	6,000	60	5.03	1,812,000
	57.120 Surgical Site Infection (SSI)	6,000	36	35/60	126,000
	57.121 Denominator for Procedure	6,000	540	10/60	540,000
	57.122 HAI Progress Report State Health Department Survey.	55	1	45/60	41
	57.123 Antimicrobial Use and Resistance (AUR)—Microbiology Data Electronic Upload Specification Tables.	1,000	12	5/60	1,000

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
	57.124 Antimicrobial Use and Resistance (AUR)—Pharmacy Data Electronic Upload Specification Tables.	2,000	12	5/60	2,000
	57.125 Central Line Insertion Practices Adherence Monitoring.	100	100	25/60	4,167
	57.126 MDRO or CDI Infection Form	6,000	72	30/60	216,000
	57.127 MDRO and CDI Prevention Process and Outcome Measures Monthly Monitoring.	6,000	24	15/60	36,000
	57.128 Laboratory-identified MDRO or CDI Event	6,000	240	20/60	480,000
	57.129 Adult Sepsis	50	250	25/60	5,208
	57.137 Long-Term Care Facility Component—Annual Facility Survey.	2,600	1	2	5,200
	57.138 Laboratory-identified MDRO or CDI Event for LTCF.	2,600	12	20/60	10,400
	57.139 MDRO and CDI Prevention Process Measures Monthly Monitoring for LTCF.	2,600	12	20/60	10,400
	57.140 Urinary Tract Infection (UTI) for LTCF	2,600	14	35/60	18,200
	57.141 Monthly Reporting Plan for LTCF	2,600	12	5/60	2,600
	57.142 Denominators for LTCF Locations	2,600	12	4.17	130,000
	57.143 Prevention Process Measures Monthly Monitoring for LTCF.	2,600	12	5/60	2,600
	57.150 LTAC Annual Survey	400	1	1.17	467
	57.151 Rehab Annual Survey	1,000	1	1.17	1,167
	57.200 Healthcare Personnel Safety Component Annual Facility Survey.	50	1	8	400
	57.203 Healthcare Personnel Safety Monthly Reporting Plan.	19,500	1	5/60	1,625
	57.204 Healthcare Worker Demographic Data	50	200	20/60	3,333
	57.205 Exposure to Blood/Body Fluids	50	50	1	2,500
	57.206 Healthcare Worker Prophylaxis/Treatment	50	30	15/60	375
	57.207 Follow-Up Laboratory Testing	50	50	15/60	625
	57.210 Healthcare Worker Prophylaxis/Treatment—Influenza.	50	50	10/60	417
	57.300 Hemovigilance Module Annual Survey	500	1	1.42	708
	57.301 Hemovigilance Module Monthly Reporting Plan.	500	12	1/60	100
	57.303 Hemovigilance Module Monthly Reporting Denominators.	500	12	1.17	7,000
	57.305 Hemovigilance Incident	500	10	10/60	833
	57.306 Hemovigilance Module Annual Survey—Non-acute care facility.	200	1	35/60	117
	57.307 Hemovigilance Adverse Reaction—Acute Hemolytic Transfusion Reaction.	500	4	20/60	667
	57.308 Hemovigilance Adverse Reaction—Allergic Transfusion Reaction.	500	4	20/60	667
	57.309 Hemovigilance Adverse Reaction—Delayed Hemolytic Transfusion Reaction.	500	1	20/60	167
	57.310 Hemovigilance Adverse Reaction—Delayed Serologic Transfusion Reaction.	500	2	20/60	333
	57.311 Hemovigilance Adverse Reaction—Febrile Non-hemolytic Transfusion Reaction.	500	4	20/60	667
	57.312 Hemovigilance Adverse Reaction—Hypotensive Transfusion Reaction.	500	1	20/60	167
	57.313 Hemovigilance Adverse Reaction—Infection.	500	1	20/60	167
	57.314 Hemovigilance Adverse Reaction—Post Transfusion Purpura.	500	1	20/60	167
	57.315 Hemovigilance Adverse Reaction—Transfusion Associated Dyspnea.	500	1	20/60	167
	57.316 Hemovigilance Adverse Reaction—Transfusion Associated Graft vs. Host Disease.	500	1	20/60	167
	57.317 Hemovigilance Adverse Reaction—Transfusion Related Acute Lung Injury.	500	1	20/60	167
	57.318 Hemovigilance Adverse Reaction—Transfusion Associated Circulatory Overload.	500	2	20/60	333
	57.319 Hemovigilance Adverse Reaction—Unknown Transfusion Reaction.	500	1	20/60	167
	57.320 Hemovigilance Adverse Reaction—Other Transfusion Reaction.	500	1	20/60	167

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
	57.400 Outpatient Procedure Component—Annual Facility Survey.	5,000	1	10/60	417
	57.401 Outpatient Procedure Component—Monthly Reporting Plan.	5,000	12	20/60	15,000
	57.402 Outpatient Procedure Component Same Day Outcome Measures.	1,200	25	40/60	20,000
	57.403 Outpatient Procedure Component—Monthly Denominators for Same Day Outcome Measures.	1,200	12	40/60	9,600
	57.404 Outpatient Procedure Component—SSI Denominator.	5,000	540	10/60	450,000
	57.405 Outpatient Procedure Component—Surgical Site (SSI) Event.	5,000	36	35/60	105,000
	57.500 Outpatient Dialysis Center Practices Survey.	7,000	1	2.12	14,817
	57.501 Dialysis Monthly Reporting Plan	7,000	12	5/60	7,000
	57.502 Dialysis Event	7,000	60	25/60	175,000
	57.503 Denominator for Outpatient Dialysis	7,000	12	10/60	14,000
	57.504 Prevention Process Measures Monthly Monitoring for Dialysis.	2,000	12	1.42	17,000
	57.505 Dialysis Patient Influenza Vaccination	325	75	10/60	4,063
	57.506 Dialysis Patient Influenza Vaccination Denominator.	325	5	10/60	271
	57.507 Home Dialysis Center Practices Survey	350	1	30/60	175
Total					5,393,725

Jeffrey M. Zirger,

Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–19382 Filed 9–6–18; 8:45 am]

BILLING CODE 4163–18–P?≤

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the Community Preventive Services Task Force (CPSTF)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: The Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services announces the next meeting of the Community Preventive Services Task Force (CPSTF) on October 17–18, 2018, in Atlanta, Georgia.

DATES: The meeting will be held on Wednesday, October 17, 2018, from 8:30 a.m. to 6:00 p.m. EDT and Thursday, October 18, 2018, from 8:30 a.m. to 1:00 p.m. EDT.

ADDRESSES: The CPSTF Meeting will be held at the CDC Edward R. Roybal Campus, Centers for Disease Control and Prevention Headquarters (Building 19), 1600 Clifton Road NE, Atlanta, GA 30329. You should be aware that the meeting location is in a Federal government building; therefore, Federal security measures are applicable. For additional information, please see Roybal Campus Security Guidelines under **SUPPLEMENTARY INFORMATION.** Information regarding meeting logistics will be available on the Community Guide website (*www.thecommunityguide.org*) closer to the date of the meeting.

FOR FURTHER INFORMATION CONTACT: Onslow Smith, Center for Surveillance, Epidemiology and Laboratory Services; Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–E–69, Atlanta, GA 30329, phone: (404) 498–6778, email: *CPSTF@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Meeting Accessibility: This space-limited meeting is open to the public. All meeting attendees must register. To ensure completion of required security procedures and access to the CDC's Global Communications Center, U.S. citizens intending to attend in person must register by October 10, 2018, and non-U.S. citizens intending to attend in person must register by September 19, 2018. Failure to register by the dates identified could result in the inability to attend the CPSTF meeting in person.

Those unable to attend the meeting in person are able to do so via Webcast. CDC will send the Webcast URL to registrants upon receipt of their registration. All meeting attendees must register by October 11, 2018 to receive the webcast information. CDC will email webcast information from the *CPSTF@cdc.gov* mailbox.

To register for the meeting, whether in person or via webcast, individuals should send an email to *CPSTF@cdc.gov* and include the following information: name, title, organization name, organization address, phone, email, and whether attending in person or via webcast.

Public Comment: A public comment period, limited to three minutes per person, will follow the CPSTF's discussion of each systematic review. Individuals wishing to make public comments must indicate their desire to do so with their registration by providing their name, organizational affiliation, and the topic to be addressed (if known). Public comments will become part of the meeting summary. Public comment is not possible via Webcast.

Background on the CPSTF: The CPSTF is an independent, nonfederal panel whose members are appointed by the CDC Director. CPSTF members

represent a broad range of research, practice, and policy expertise in prevention, wellness, health promotion, and public health. The CPSTF was convened in 1996 by the Department of Health and Human Services (HHS) to identify community preventive programs, services, and policies that increase healthy longevity, save lives and dollars, and improve Americans' quality of life. CDC is mandated to provide ongoing administrative, research, and technical support for the operations of the CPSTF. During its meetings, the CPSTF considers the findings of systematic reviews on existing research and practice-based evidence and issues recommendations. CPSTF recommendations are not mandates for compliance or spending. Instead, they provide information about evidence-based options that decision makers and stakeholders can consider when they are determining what best meets the specific needs, preferences, available resources, and constraints of their jurisdictions and constituents. The CPSTF's recommendations, along with the systematic reviews of the evidence on which they are based, are compiled in *The Community Guide.*

Matters Proposed for Discussion: Cardiovascular Disease Prevention (Pharmacy-Based Interventions to Increase Medication Adherence); Mental Health (Effectiveness of School-Based Depression and Anxiety Prevention Interventions); Cancer Prevention and Control (Community Health Worker Interventions to Improve Screening Rates for Breast, Colorectal, and Cervical Cancer); Health Equity (Supportive Housing Policies to Address Homelessness); Obesity Prevention and Control (Combined School-Based Diet and Physical Activity Interventions); Economic Review (Active Travel to School); and discussion of Community Guide effectiveness methods. The agenda is subject to change without notice.

Roybal Campus Security Guidelines: The Edward R. Roybal Campus is the headquarters of the CDC and is located at 1600 Clifton Road NE, Atlanta, Georgia. The meeting is being held in a Federal government building; therefore, Federal security measures are applicable.

All meeting attendees must register by the dates outlined under MEETING ACCESSABILITY. In planning your arrival time, please take into account the need to park and clear security. All visitors must enter the Edward R. Roybal Campus through the front entrance on Clifton Road. Vehicles may be searched, and the guard force will then direct visitors to the designated parking area. Upon arrival at the facility, visitors must present government-issued photo identification (*e.g.,* a valid federal identification badge, state driver's license, state non-driver's identification card, or passport). Non-United States citizens must complete the required security paperwork prior to the meeting date and must present a valid passport, visa, Permanent Resident Card, or other type of work authorization document upon arrival at the facility. Instructions for completing the required security paperwork will be provided after registration. All persons entering the building must pass through a metal detector. CDC Security personnel will issue a visitor's ID badge at the entrance to Building 19. Visitors may receive an escort to the meeting room. All items brought to HHS/CDC are subject to inspection.

Dated: September 4, 2018.

Lauren Hoffmann,

Acting Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2018–19442 Filed 9–6–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the World Trade Center Health Program Scientific/ Technical Advisory Committee (STAC)

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), in accordance with provisions of the James Zadroga 9/11 Health and Compensation Act of 2010, is seeking nominations for membership on the World Trade Center (WTC) Health Program STAC. The STAC consists of 17 members including experts in fields associated with occupational medicine, pulmonary medicine, environmental medicine or environmental health, industrial hygiene, epidemiology, toxicology, mental health, and representatives of WTC responders, as well as representatives of certified-eligible WTC survivors. The STAC reviews scientific and medical evidence and makes recommendations to the Administrator of the WTC Health Program on additional Program eligibility criteria and additional WTC-related health conditions and provides consultation on research regarding certain health conditions related to the September 11, 2001 terrorist attacks.

DATES: Nominations for membership on the STAC must be received no later than November 16, 2018. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be mailed to NIOSH Docket 229–G, c/o Mia Wallace, Committee Management Specialist, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 1600 Clifton Rd. NE, MS: E–20, Atlanta, Georgia 30333, or emailed (recommended) to *nioshdocket@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Tania Carreón-Valencia, WTC Health Program Associate Director for Science, 1600 Clifton Rd. NE, MS: R–12, Atlanta, GA 30333; telephone (404)498–2500 (this is not a toll-free number); email *TCarreonValencia@cdc.gov.*

SUPPLEMENTARY INFORMATION: Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to accomplishing the committee's objectives. The Administrator of the WTC Health Program is seeking nominations for members fulfilling the following categories:

- Environmental medicine or environmental health specialist;
- Occupational physician who has experience treating WTC rescue and recovery workers;
- Physician with expertise in pulmonary medicine;
- Representative of WTC responders; and
- Representative of certified-eligible WTC survivors.

Members may be invited to serve for three-year terms. Selection of members is based on candidates' qualifications to contribute to the accomplishment of STAC objectives. More information on the committee is available at *https://www.cdc.gov/wtc/stac.html.*

U.S. Department of Health and Human Services (HHS) policy stipulates that committee membership be balanced in terms of points of view represented, and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee

members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning of and annually during their terms. NIOSH identifies potential candidates and provides a slate of nominees for consideration to the Director of CDC for STAC membership each year; CDC reviews the proposed slate of candidates, and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in October, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year.

Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address);
- The category of membership (environmental medicine or environmental health specialist, occupational physician, pulmonary physician, representative of WTC responders, representative of certified-eligible WTC survivors, industrial hygienist, toxicologist, epidemiologist, or mental health professional) that the candidate is qualified to represent;
- A summary of the background, experience, and qualifications that demonstrates the candidate's suitability for the nominated membership category; and
- At least one letter of recommendation from a person(s) not employed by HHS. (Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, NIH, FDA, etc.).

Nominations may be submitted by the candidate him- or herself, or by the person/organization recommending the candidate.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2018–19418 Filed 9–6–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–18–0134; Docket No. CDC–2018–0078]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Foreign Quarantine Regulations, an information collection related to illness and death reports from airplanes and maritime vessels coming to the United States, illness and death investigations of travelers, and information from importers of certain items specified under 42 CFR 71 subpart F.

DATES: CDC must receive written comments on or before November 6, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2018–0078 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

Foreign Quarantine Regulations (42 CFR 71) (OMB Control No. 0920–0134) (Exp 5/31/2019)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 361 of the Public Health Service Act (PHSA) (42 U.S.C. 264) (Attachment A1) authorizes the Secretary of Health and Human Services to make and enforce regulations necessary to prevent the introduction, transmission or spread of communicable diseases from foreign countries into the United States. Statute and the existing

regulations governing foreign quarantine activities (42 CFR 71) authorize quarantine officers and other personnel to inspect and undertake necessary control measures with respect to conveyances, persons, and shipments of animals and etiologic agents in order to protect the public's health. Other inspection agencies, such as Customs and Border Protection (CBP), assist quarantine officers in public health screening of persons, pets, and other importations of public health importance and make referrals to quarantine station staff when indicated. These practices and procedures ensure protection against the introduction and spread of communicable diseases into and within the United States with a minimum of recordkeeping and reporting procedures, as well as a minimum of interference with trade and travel.

U.S. Quarantine Stations are located at 20 ports of entry and land-border crossings where international travelers arrive. The jurisdiction of each station includes air, maritime, and/or land-border ports of entry. Quarantine Station staff work in partnership with international, federal, state, and local agencies and organizations to fulfill their mission to reduce morbidity and mortality among globally mobile populations. This work is performed to prevent the introduction, transmission, and spread of communicable diseases from foreign countries into the United States or from one State or possession to another State or possession. When an illness suggestive of a communicable disease is reported by conveyance operators or port partners (*e.g.*, Customs and Border Protection), Quarantine Officers respond to carry out an onsite public health assessment and collect data from the individual. This response may occur jointly with port partners. The collection of comprehensive, pertinent public health information during these responses enables Quarantine Officers to make an accurate public health assessment and identify appropriate next steps. For this reason, quarantine station staff need to systematically interview ill travelers and collect relevant health and epidemiologic information.

CDC is making a number of changes and adjustments to this information collection. The changes are as follows:

- CDC is merging this information collection with another, 0920–0821 Illness Response Forms: Airline, Maritime, and Land/Border Crossing.
- CDC is disaggregating the information collection 42 CFR 71.21(a) report of illness or death from ships so that the influenza like illness (ILI) report, which is voluntary, is separate from the required report of ill person or death.
- CDC is removing the information collection pertaining to Partner Government Agency Message Sets, because CDC will not collect information using these tools.
- CDC is removing the acute gastroenteritis reports from ships and removal of medical logs information collection from this information collection request, because CDC's Vessel Sanitation Program will submit a separate information collection request for these tools.

CDC is requesting the following adjustments

- As described above, CDC is requesting a separation of the maritime (ILI) and other maritime illness or death reports. CDC is also requesting an increase in the total number of maritime reports of illness of each type, ILI and others.
- For fall 2018, CDC is considering a policy change related to requirements for rabies vaccination documentation for dogs coming from certain countries; therefore, CDC is providing estimates of burden and respondents related to importation of dogs into the United States.
- Revised estimates under 42 CFR 71.55, 42 CFR 71.32 Dead Bodies—Death certificates.
- Revised estimate of the number of requests for exemptions for importation of African rodents.

Respondents for this information collection request are any pilot in command of an aircraft or maritime vessel operator. With an ill person meeting certain criteria, or death aboard; any individual who is subject to federal quarantine or isolation; any ill traveler who is reported by the airlines, Customs and Border Protection, or EMS to CDC or the local public health authority that meets the definition of ill person; and any importer or filer who seeks to bring certain animals, animal products, or other CDC-regulated item into the United States.

For most of these collections, there are no costs to respondents other than their time. Examinations of imported animals is only required if the pet is ill on arrival or if it has died during transport. These exams are not routine. Depending on the time of arrival, the initial exam fee may be between $100 and $200. Rabies testing on a dog that dies may be between $50 and $100. The expected number of ill or dead dogs arriving into the United States for which CDC may require an examination is estimated at less than 30 per year. CDC is requesting a three-year approval.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Regulatory provision or form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Maritime Vessel Operator	42 CFR 71.21(a) report of illness or death from ships—Maritime Conveyance Illness or Death Investigation Form sections 1–4.	500	1	5/60	42
Maritime Vessel Operator	42 CFR 71.21(a) report of illness or death from ships—Maritime Conveyance Illness or Death Investigation Form section 5.	100	1	2/60	3
Maritime Vessel Operator	Cumulative Influenza/Influenza-Like Illness (ILI)	3,000	1	2/60	100
Pilot in command	42 CFR 71.21(b) Death/Illness reports from aircrafts	1,700	1	2/60	57
Traveler	Airline Travel Illness or Death Investigation Form	1,700	1	5/60	142
Traveler	Land Travel Illness or Death Investigation Form	100	1	5/60	8
Isolated or Quarantined individuals.	42 CFR 71.33 Report by persons in isolation or surveillance	11	1	3/60	1
Maritime Vessel Operator	42 CFR 71.35 Report of death/illness during stay in port	5	1	30/60	3
Importer	42 CFR 71.51(c)(1), (d)—Valid Rabies Vaccination Certificates	113,500	1	15/60	28,375
Importer	CDC Form 75.37 Notice To Owners And Importers Of Dogs: Requirement for Dog Confinement.	14	1	10/60	2
Importer	42 CFR 71.51(c)(i), (ii), and (iii) exemption criteria for the importation of a dog without a rabies vaccination certificate.	958,000	1	15/60	239,500
Importer	42 CFR 71.51(c)(2), (d) Application For Permission To Import A Dog Inadequately Against Rabies.	50	1	45/60	38
Importer	42 CFR 71.51(b)(3) Dogs/cats: Record of sickness or deaths	20	1	15/60	5
Importer	42 CFR 71.52(d) Turtle Importation Permits	5	1	30/60	3

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Regulatory provision or form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Importers	42 CFR 71.55 Dead Bodies, 42 CFR 71.32—Death certificates	20	1	1	20
Importer	42 CFR 71.56 (a)(2) African Rodents—Request for exemption	25	1	1	25
Importer	42 CFR 71.56(a)(iii) Appeal	2	1	1	2
Importer	42 CFR 71.32 Statements or documentation of non-infectiousness.	2,000	1	5/60	167
Total					268,493

Jeffrey M. Zirger,

Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–19381 Filed 9–6–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–18–18CI]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Evaluation of TransLife Center (TLC): A Locally-Developed Combination Prevention Intervention for Transgender Women at High Risk of HIV Infection'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on January 30, 2018 to obtain comments from the public and affected agencies. CDC received one (1) comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Evaluation of TransLife Center (TLC): A Locally-Developed Combination Prevention Intervention for Transgender Women at High Risk of HIV Infection—New—National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention is requesting approval for 24 months of data collection entitled, ''Evaluation of TransLife Center (TLC): A Locally-Developed Combination Prevention Intervention for Transgender Women at High Risk for HIV Infection.'' The purpose of this study is to evaluate the efficacy of TLC, which provides combination (biomedical, behavioral and social/structural) HIV prevention and care services to adult transgender women at high risk for HIV infection, in a culturally specific and accessible environment. The information collected through this study will be used to evaluate whether the TLC intervention is an effective HIV-prevention strategy by assessing whether exposure to TLC services results in improvements in participants' health and HIV prevention behaviors. The trial will assess whether intervention participants' behaviors significantly change from baseline to 4- and 8-month follow-up periods.

This study will be carried out in Chicago, Illinois, where the TLC program is located. The study population will include 150 HIV-negative adult transgender women living in the Chicago metropolitan area. Participants will be at least 18 years of age; self-identify as transgender, transsexual, women and/or female who was assigned male sex at birth; and have a self-reported history of sex with men in the past four months. The study population will also include 10 TLC staff members. Staff members will be adults, involved in the delivery of TLC intervention services. Participation in this study is voluntary.

We anticipate enrollment of a diverse sample of transgender women comprised mainly of racial/ethnic minority participants under 35 years of age, consistent with the current TLC program and the epidemiology of HIV infection among transgender women. Intervention participants will be recruited to the study through a combination of approaches, including traditional print advertisement, referral, in-person outreach, and through word of mouth. TLC staff members will be randomly selected to participate in the evaluation.

A computer-assisted quantitative assessment will be used to collect information for this study, which will be delivered at the time of study enrollment and again at 4-month and 8-month follow-ups. The assessment will be used to measure changes in sexual risk behavior including condom use and pre-exposure prophylaxis (PrEP) care engagement. Intervention mediators, including gender affirmation, collective self-esteem and social support, and intervention satisfaction will also be

measured. Participants will complete the assessment at baseline and again at 4- and 8-month follow-ups after joining the TLC program.

We will also examine intervention experiences through semi-structured interview with 20 of the 150 TLC participants and 10 TLC staff members involved in the delivery of services through the TLC intervention. The audio-recorded interviews will capture participants and staff views about the TLC implementation process, the process through which the TLC intervention influences HIV risk behavior, and the role of the intervention in addressing social determinates of health (housing, employment, legal issues, health care access).

It is expected that 50% of transgender women screened will meet study eligibility. We expect the initial screening to take approximately four minutes to complete and that providing contact information will take four minutes. The assessment will take 60 minutes (one hour) to complete and will be administered to 150 participants a total of three times. The interview will take 60 minutes (one hour) to complete and will be administered to 30 participants (20 intervention participants and 10 TLC staff) one time.

There are no costs to the respondents other than their time. The total estimated annualized burden hours are 255.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
General Public-Adults	Eligibility Screener	150	1	4/60
	Contact Information	75	1	4/60
	Baseline Assessment	75	1	1
	Follow Up Assessment	75	2	1
	Participant Interview	10	1	1
	Staff Interview	5	1	1

Jeffrey M. Zirger,

Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–19379 Filed 9–6–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–18–18MY]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Network Epidemiology of Syphilis Transmission (NEST) to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on 03/05/2018 to obtain comments from the public and affected agencies. CDC received 1 (one) comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Network Epidemiology of Syphilis Transmission (NEST)—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC, Division of STD Prevention (DSTDP), requests a 3-year approval for a new data collection entitled, Network Epidemiology of Syphilis Transmission (NEST). Study participants' sociodemographic, risk behavior, and insurance coverage information will be collected as part of study enrollment.

This study is funded by a cooperative agreement between CDC and three study grantees, two universities (Ohio State University and University of Illinois at Chicago) and one local health department (Baltimore City Health Department) in collaboration with a university (Johns Hopkins School of Medicine). The recruitment of study participants as well as the data collection activities will be carried out at university-affiliated sites including local health departments, community LGBT organizations, local STD clinics and HIV/AIDS care facilities.

The overall objective of NEST is to support the establishment of cohorts of MSM at high risk for syphilis and to prospectively collect behavioral, social, and sexual network data, and biological specimens. Study participants will attend study visits every three months for a period of up to 24 months. NEST is a multi-site study, with a target

enrollment of approximately 720 MSM aged 18 years and older from three geographic areas of the United States: (1) Chicago, Illinois, (2) Baltimore, Maryland, and (3) Columbus, Ohio.

At each study visit, study participants will be interviewed and biological specimens (blood and urine) will be collected to facilitate testing for syphilis, gonorrhea, chlamydia, and HIV, which are part of the routine clinical care at participating sites. All data will be collected using Form 1—Questionnaire and Data Elements (Attachment 3) and submitted electronically directly to the CDC NEST data manager. All personal identifying information (*e.g.,* name, address) collected on individual patients will be retained by the local NEST site, will not be collected on NEST data collection forms, and will not be transmitted to CDC.

The United States is currently experiencing an ongoing syphilis epidemic. MSM are disproportionately impacted by syphilis and the majority of incident syphilis cases in the United States occur among MSM. However, factors influencing syphilis transmission within this population, such as social and sexual network characteristics, sexual behaviors, and healthcare access and utilization, are poorly understood. In order to address these knowledge gaps, both individual-level and network-level data needs to be collected among this population. As such, we need to develop a better understanding of the feasibility of collecting complex sexual network data among this population. The collection of complex sexual network data—in addition to more traditional individual-level data, such as demographics and individual-level sexual and social behaviors—will help to collectively address some of the knowledge gaps in the transmission dynamics and epidemiology of syphilis among MSM in the United States and point towards effective public health interventions to slow the spread of syphilis.

The goal of NEST is to pilot the use of survey instruments to collect complex longitudinal sexual network data among MSM at high risk for syphilis in the United States. The feasibility of data collection on basic information about recent partners of persons diagnosed with syphilis is clear and is routinely performed by public health officials. However, the feasibility and optimal approaches for serial collection of complex sexual network data among populations that may have dynamic networks are not at all clear. Specifically, it is not clear what the optimal recruitment strategies are to recruit and enroll MSM at high risk for syphilis. The optimal approaches for retaining men as study participants for follow-up visits over a defined study period have not been well defined. Furthermore the best survey format for our proposed data collection activities has not been established. For example, it is not known whether study participants would prefer a survey that is completely self-administered and whether data collected using a self-administered survey will result in complete and valid data being collected or whether a survey administered by study staff would be a better format.

CDC is not engaged in research, and therefore not involved in data collection activities. The grantees are responsible for implementing the testing and collecting data and specimens from the participants.

Before starting any data collection activities a short eligibility screener (Attachment 4) will be administered to prospective study participants and if determined to be eligible consent from the participant will be obtained. Once consent is obtained data collection will begin and will include a baseline visit and follow-up visits every three months for a total follow-up period of 24 months. At each visit participants will provide biological specimens (blood and urine) to facilitate testing for syphilis, gonorrhea, chlamydia, and HIV. In addition to providing biological specimens, participants will complete a standardized survey which will be delivered electronically on a tablet or computer and will collect information on the participants' sexual network, individual behaviors, healthcare access and demographics (Attachment 3). The survey consists of 13 questionnaire modules with a range of 5 to 15 questions per module (Attachment 3). A small subset of sexual behavior questions will be delivered to the participant closer to real time using an open survey format and a weekly format (Attachment 5). The open survey format is a brief survey that participants can respond to at any to record a sexual encounter or other event. The weekly format will be sent on Sunday nights with a reminder on Monday evening, to address sexual behavior in the last week. These brief surveys will be delivered electronically to participants and each survey is expected to take 2 minutes or less. Data collected on electronic devices will be stored on a secure web-accessible local server at each site which will only be accessible with a user name and password. Study site investigators provided input (based on knowledge of relevant local communities) into development of the survey.

The total estimated annualized hourly burden anticipated for this study is 6,828 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Potential participants	Screener	900	1	2/60
Site data manager	Form 1—Questionnaire	3	5	10
Study participant	Form 1—Questionnaire	720	5	1.5
Study participant	Smartphone survey	720	52	2/60

Jeffrey M. Zirger,

Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–19380 Filed 9–6–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0376]

Policy Regarding Quantitative Labeling of Dietary Supplements Containing Live Microbials; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a draft guidance for industry entitled ''Policy Regarding Quantitative Labeling of Dietary Supplements Containing Live Microbials.'' The draft guidance, when finalized, will advise firms that manufacturer, market, or distribute dietary supplements of FDA's intent to exercise enforcement discretion if a firm wishes to specify the amount of a live microbial in colony forming units (CFUs) in addition to the currently required unit of measure (milligrams) in the Supplement Facts label.

DATES: Submit either electronic or written comments on the draft guidance by November 6, 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–2011–D–0376 for ''Policy Regarding Quantitative Labeling of Dietary Supplements Containing Live Microbials: Draft Guidance for Industry.'' 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 Office of Dietary Supplement Programs, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Steven Tave, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2878.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a draft guidance for industry entitled ''Policy Regarding Quantitative Labeling of Dietary Supplements Containing Live Microbials.'' We are issuing the draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

The draft guidance, when finalized, would advise firms that manufacture, market, or distribute dietary supplements of FDA's intent to exercise enforcement discretion with respect to declaration of live microbial quantity in CFUs, in addition to the quantitative amount by weight declaration required by regulation, within the Supplement Facts label of dietary supplements containing live microbials, provided that certain conditions are met.

II. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/FoodGuidances* or *https://www.regulations.gov.* Use the

FDA website listed in the previous sentence to find the most current version of the guidance.

III. Paperwork Reduction Act

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 101.36 have been approved under OMB control number 0910–0381.

Dated: August 31, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–19367 Filed 9–6–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Charter Renewal for the Advisory Committee on Organ Transplantation

AGENCY: Health Resources and Services Administration (HRSA), The Department of Health and Human Services (HHS).

ACTION: Notice of charter renewal.

SUMMARY: HHS is hereby giving notice that the Advisory Committee on Organ Transplantation (ACOT) has been rechartered. The effective date of the renewed charter is August 31, 2018.

FOR FURTHER INFORMATION CONTACT: Robert Walsh, Executive Secretary, Advisory Committee on Organ Transplantation, Health Resources and Services Administration, Department of Health and Human Services, Room 08W60, 5600 Fishers Lane, Rockville, Maryland 20857. Phone: (301) 443–6839; fax: (301) 594–6095; email: *rwalsh@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The ACOT was authorized by section 121.12 of the amended Final Rule of the Organ Procurement and Transplantation Network (OPTN) (42 CFR part 121). In accordance with the Federal Advisory Committee Act (FACA), Public Law 92–463, it was initially chartered on September 1, 2000, and was renewed at the appropriate intervals.

The ACOT provides advice to the Secretary on all aspects of organ donation, procurement, allocation, and transplantation, and on such other matters that the Secretary determines. The recommendations of the ACOT will facilitate the Department's efforts to oversee the Organ Procurement and Transplantation Network (OPTN), as set forth in the National Organ Transplant Act of 1984, as amended.

The charter renewal for the ACOT was approved on August 31, 2018, which will also stand as the filing date. Renewal of the ACOT charter gives authorization for the Committee to operate until August 31, 2020.

A copy of the ACOT charter is available on the ACOT website at: *http://www.organdonor.gov/legislation/advisory.html.* A copy of the charter can also be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The website for the FACA database is *http://www.facadatabase.gov/.*

Amy P. McNulty,

Acting Director, Division of the Executive Secretariat.

[FR Doc. 2018–19454 Filed 9–6–18; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Responsibility of Applicants for Promoting Objectivity in Research for Which Public Health Service (PHS) Funding is Sought and Responsible Prospective Contractors (Office of the Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH.

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: Ms. Diane Dean, Director, Division of Grants Compliance and Oversight, Office of Policy for Extramural Research Administration, Office of Extramural Research, National Institutes of Health, 6705 Rockledge Drive, Room 3525, Bethesda, MD 20892, or call non-toll-free number (301) 435–0930 or Email your request, including your address to: *deand@od31em1.od.nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on March 16, 2018, (FR 83 pages 11763–11765) and allowed 60 days for public comment. One public comment was received. The purpose of this notice is to allow an additional 30 days for public comment.

The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Responsibility of Applicants for Promoting Objectivity in Research for which Public Health Service (PHS) Funding is Sought 42 CFR part 50 subpart F and Responsible Prospective Contractors 45 CFR part 94, 0925–0417, expiration date 2/28/2015, REINSTATEMENT WITHOUT CHANGE, Office of Policy for Extramural Research Administration (OPERA), Office of Extramural Research (OER), National Institutes of Health (NIH).

Need and Use of Information Collection: This request is for Office of Management and Budget (OMB) approval of a Reinstatement Without Change of a currently approved collection resulting from the development of revised regulations regarding the Responsibility of Applicants for Promoting Objectivity in Research for which PHS Funding is Sought (42 CFR part 50, subpart F) and Responsible Prospective Contractors (45 CFR part 94). The purpose of these regulations is to promote objectivity in research by requiring institutions to establish standards to ensure that there is no reasonable expectation that the design, conduct, or reporting of PHS-

funded research will be biased by any Investigator Financial Conflict of Interest (FCOI).

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 677,820.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents based on applicable section of regulation	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Reporting:				
Initial Reports under 42 CFR 50.605(b)(1) and (b)(3) or 45 CFR 94.5(b)(1) and (b)(3) from awardee Institutions.	992	1	2	1,984
Subsequent Reports under 42 CFR 50.605(a)(3)(iii) and (b)(2) or 45 CFR 94.5(a)(3)(iii) and (b)(2) from awardee Institutions.	50 FCOI reports as in 42 CFR 50.605(a)(3)(ii) and 45 CFR 94.5(a)(3)(ii).	1	2	100
	5 Mitigation Reports	1	2	10
Annual Report under 42 CFR 50.605(b)(4) or 45 CFR 94.5(b)(4) from awardee Institutions.	2,031	1	1	2,031
Subsequent Reports under 42 CFR 50.606(a) or 45 CFR 94.6 from awardee Institutions.	20	1	10	200
Record Keeping:				
Under 42 CFR 50.604(i) or 45 CFR 94.4(i) from awardee institutions.	2,000	1	4	8,000
Disclosure:				
Under 42 CFR 50.604(a) or 45 CFR 94.4 for Investigators.	3,000	1	81	243,000
Under 42 CFR 50.604(b) or 45 CFR 94.4(e)(1) for Investigators.	38,000	1	30/60	19,000
Under 42 CFR 50.604(b) or 45 CFR 94.4 (e)(1) for Institutions.	2,000	1	6	12,000
Under 42 CFR 50.604(c)(1) or 45 CFR 94.4(c)(1) from subrecipients.	500	1	1	500
Under 42 CFR 50.604(d) or 45 CFR 94.4 for Institutions.	3,000[1]	1	1	3,000
Under 42 CFR 50.604(e)(1) or 45 CFR 94.4(e)(1) for Investigators.	38,000	1	4	152,000
Under 42 CFR 50.604(e)(2) or 45 CFR 94.4(e)(2) for Investigators.	38,000	1	1	38,000
Under 42 CFR 50.604(e)(3) or 45 CFR 94.4(e)(3) for Investigators.	992	1	30/60	496
Under 42 CFR 50.604(f) or 45 CFR 94.4(f) for institutions.	2,000	1	1	2,000
Under 42 CFR 50.605(a)(1) or 45 CFR 94.5(a)(1) for Institutions.	2,000[2]	1	82	164,000
Under 42 CFR 50.605(a)(3) or 45 CFR 94.5(a)(3) for Institutions.	500[3]	1	3	1,500
Under 42 CFR 50.605(a)(3)(i) or 45 CFR 94.5(a)(3)(i).	50[4]	1	80	4,000
Under 42 CFR 50.605(a)(3)(ii) or 45 CFR 94.5(a)(3)(ii).	50[5]	1	80	4,000
Under 42 CFR 50.605(a)(3)(iii) or 45 CFR 94.5(a)(3)(iii).	50	1	1	50
Under 42 CFR 50.605(a)(4) or 45 CFR 94.5(a)(4)	992	1	12	11,904
Public Website Posting under 42 CFR 50.605(a)(5) or 45 CFR 94.5(a)(5) from awardee Institutions.	2,000	1	5	10,000
Under 42 CFR 50.606(c) or 45 CFR 94.6(c)	50[6]	[7]3	18/60	45
Total	136,282	136,382		677,820

[1] Assuming that 3,000 Institutions solicit disclosures on an annual basis by sending a notification to all Investigators.

[2] Although an estimated 992 reports of Conflict of Interest are expected annually, the 2,000 responding Institutions must review all financial disclosures associated with PHS-funded awards to determine whether any conflicts of interest exist. Thus, the review burden of 76,000 hours is based upon estimates that it will take on the average 2 hours for an institutional official(s) to review each of 38,000 financial disclosures associated with PHS funded awards. The burden for developing a management plan for identified FCOI is estimated at 80 hours × 992 cases = 79,360 hours.

[3] Assuming that this is a rare occurrence based on prior experience.

[4] Assuming only a fraction of the newly identified SFIs will constitute FCOI.

[5] Assuming only a fraction of the newly identified SFIs will constitute FCOI.

[6] Number based on 50.605/94.5(a)(3)(i)—of those only a fraction will relate to a project of clinical research whose purpose is to evaluate the safety or effectiveness of a drug, medical device, or treatment, but we are calculating the maximum estimated burden.

[7] Assuming an average of 3 publications annually.

Dated: August 30, 2018.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2018–19339 Filed 9–6–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2018–0791]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0018

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0018, Official Logbook; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before November 6, 2018.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2108–0791] to the Coast Guard 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.

A copy of the ICR is available through the docket on the internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2018–0791], and must be received by November 6, 2018.

Submitting Comments

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. Documents mentioned in this notice, and all public comments, are 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.

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, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: Official Logbook.

OMB Control Number: 1625–0018.

Summary: The Official Logbook contains information about the voyage, the vessel's crew, drills, watches, and operations conducted during the voyage. Official Logbook entries identify particulars of the voyage, including the name of the ship, official number, port of registry, tonnage, names and merchant mariner credential numbers of the master and crew, the nature of the voyage, and class of ship. In addition, it also contains entries for the vessel's drafts, maintenance of watertight integrity of the ship, drills and inspections, crew list and report of character, a summary of laws applicable to Official Logbooks, and miscellaneous entries.

Need: Title 46 U.S.C. 11301, 11302, 11303, and 11304 require applicable merchant vessels to maintain an Official Logbook. The Official Logbook contains information about the vessel, voyage, crew, and watch. Lack of these particulars would make it difficult for a seaman to verify vessel employment and wages, and for the Coast Guard to verify compliance with laws and regulations concerning vessel operations and safety procedures. The Official Logbook serves as an official record of recordable events transpiring at sea such as births, deaths, marriages, disciplinary actions, etc. Absent the Official Logbook, there would be no official civil record of these events. The courts accept log entries as proof that the logged event occurred. If this information was not collected, the Coast Guard's commercial vessel safety program would be negatively impacted, as there would be no official record of U.S. merchant vessel voyages. Similarly, those seeking to prove that an event required to be logged occurred would not have an official record available.

Forms: CG–706B, Official Logbook.

Respondents: Shipping companies.

Frequency: On occasion.

Hour Burden Estimate: The estimated annual burden remains at 1,750 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: August 30, 2018.

James D. Roppel,

U.S. Coast Guard, Acting Chief, Office of Information Management.

[FR Doc. 2018–19412 Filed 9–6–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2018–N106; FXES11140100000–189–FF01E00000]

Revised Draft Environmental Impact Statement; Amendment to the 1997 Washington State Department of Natural Resources State Lands Habitat Conservation Plan and Incidental Take Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have jointly developed with the Washington State Department of Natural Resources (WDNR) a revised draft environmental impact statement (RDEIS) addressing an amendment to the 1997 WDNR State Lands Habitat Conservation Plan (HCP) to cover the implementation of a Long-Term Conservation Strategy (LTCS) for the marbled murrelet. The RDEIS also addresses an amendment to the Endangered Species Act incidental take permit (ITP) for take of marbled murrelet resulting from the implementation of the LTCS. The RDEIS is intended to satisfy the requirements of both the National Environmental Policy Act and the Washington State Environmental Policy Act. If approved, the proposed LTCS will replace an interim marbled murrelet conservation strategy that is currently being implemented under the WDNR HCP.

DATES: To ensure consideration, please send your written comments by November 6, 2018.

ADDRESSES: To view the pertinent documents for this proposal, request further information, or submit comments, please use one of the following methods, and note that your information request or comments are in reference to FWS–R1–ES–2018–N106.

- *Internet:* You can view the RDEIS on the internet at *www.fws.gov/WWFWO/* or at *www.dnr.wa.gov/long-term-conservation-strategy-marbled-murrelet*.
- *Hard Copy:* Contact one of the sources listed in **FOR FURTHER INFORMATION CONTACT** to request hard copies.
- *Email:* Comments may be submitted electronically to WDNR at *sepacenter@dnr.wa.gov*. WDNR will transmit all comments received to the Service.
- *U.S. Mail:* Comments may also be submitted in writing to: Todd Welker, SEPA Center, Washington Department of Natural Resources, P.O. Box 47001, Olympia, WA 98504–7015. WDNR will transmit all comments received to the Service.

FOR FURTHER INFORMATION CONTACT: Please contact either of the following:

- Mark Ostwald, by telephone at 360–753–9564, by email at *Mark_Ostwald@fws.gov,* or by U.S. mail at Washington Fish and Wildlife Office, U.S. Fish and Wildlife Service, 510 Desmond Dr., Suite 102, Lacey, WA 98503; or
- Todd Welker, SEPA Center, WDNR, by telephone at 360–902–2117, or by email at *sepacenter@dnr.wa.gov*.

You may alternatively contact either of the above individuals via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have jointly developed with the Washington State Department of Natural Resources (WDNR) a revised draft environmental impact statement (RDEIS) addressing an amendment to the 1997 WDNR State Lands Habitat Conservation Plan (HCP) to cover the implementation of a Long-Term Conservation Strategy (LTCS) for the marbled murrelet. The RDEIS also addresses an amendment to the Endangered Species Act section 10 incidental take permit (ITP) for take of marbled murrelet resulting from the implementation of the LTCS. The RDEIS is intended to satisfy the requirements of both the National Environmental Policy Act and the Washington State Environmental Policy Act. If approved, the proposed LTCS will replace an interim conservation strategy for the marbled murrelet, which is currently being implemented under the WDNR HCP.

The Service and WDNR have jointly developed a RDEIS for the purpose of analyzing alternatives for the LTCS for the marbled murrelet. The RDEIS analyses seven action alternatives and a no action alternative. If approved, the amended ITP would authorize incidental take of the marbled murrelet that would occur as a result of implementation of the LTCS over the remaining 50-year term of the WDNR HCP. The scope of the proposed amendment to the WDNR HCP and ITP, and thus of the RDEIS, is exclusively limited to consideration of the LTCS for the marbled murrelet.

In addition to this notice, the U.S. Environmental Protection Agency (EPA) is also publishing a notice announcing the availability of the RDEIS, as required under section 309 of the Clean Air Act (42 U.S.C. 7401 *et seq.*). The publication of EPA's notice is the official start of the public comment period for the RDEIS (see EPA's Role in the EIS Process).

Background

The marbled murrelet (*Brachyamphus marmoratus*), a seabird, was listed as threatened in 1992 under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). In 1996, the WDNR released their draft HCP for forest management activities covering 1.6 million acres of forested State trust lands within the range of the northern spotted owl (*Strix occidentalis caurina*) in Washington. A draft EIS dated March 1996 was jointly developed by the Service, National Marine Fisheries Service, and the WDNR to address the issuance of ITPs for the HCP, and was announced in the **Federal Register** on April 5, 1996 (61 FR 15297). The 1996 draft EIS analyzed reasonable alternatives, including the HCP, for forest management activities on forested State trust lands that would be covered by the ITPs. A notice of availability for the final EIS (FEIS) was published in the **Federal Register** on November 1, 1996 (61 FR 56563). On January 30, 1997, the Service issued an ITP (Permit No. 812521) for the WDNR HCP covering multiple species. The Service's ITP decision and the availability of related decision documents were announced in the **Federal Register** on February 27, 1997 (62 FR 8980).

The WDNR HCP (see *www.dnr.wa.gov/programs-and-services/forest-resources/habitat-conservation-state-trust-lands*) commits the WDNR to developing a LTCS for the marbled murrelet (HCP IV. 39). At the time the HCP was prepared, it was determined that development of a LTCS was not possible due to a lack of scientific information. For this reason, the WDNR developed an interim conservation strategy for the marbled murrelet, which is currently being implemented. The proposed amendment to the WDNR HCP is the final step in the process for development of the LTCS.

Briefly, the interim conservation strategy for the marbled murrelet includes the following components:

(1) Identification of blocks of suitable marbled murrelet habitat on which timber harvest would be deferred;

(2) Implementation of a habitat relationship study using marbled murrelet occupancy surveys to determine the relative importance of forested habitats;

(3) Based on the findings of the habitat relationship study, identification of the lowest quality habitat blocks to be made available for timber harvest (these areas were expected to contain about 5 percent of the marbled murrelet-occupied sites on HCP-covered lands);

(4) Implementation of surveys of higher quality habitat blocks identified by the habitat relationship study to determine marbled murrelet occupancy, and protection of murrelet-occupied habitats, along with some unoccupied habitat; and

(5) Development of a LTCS for the marbled murrelet on WDNR lands.

A **Federal Register** notice of availability (81 FR 89135) for a draft environmental impact statement (DEIS) for the LTCS was published for a 90-day comment period on December 9, 2016. The 2016 DEIS did not specify a preferred alternative. The public comment period for the 2016 DEIS was 90 days, and over 5,000 comments were received. In 2017, the WDNR selected a preferred alternative with guidance from the Washington Board of Natural Resources, necessitating development of an RDEIS. This alternative was submitted in an application to the Service requesting a permit amendment in July 2018.

This RDEIS differs from the 2016 DEIS in the following ways: (1) The WDNR has developed and selected a preferred WDNR alternative (alternative H), which was not previously identified; (2) a new alternative (alternative G) has been included in response to specific public comments; (3) the WDNR forest estate model, or large data overlay model, has been rerun with WDNR-identified corrections, resulting in different acreage outputs for all the alternatives; (4) the WDNR and the Service have identified separate purpose and needs statements in Chapter 1; and (5) the marbled murrelet population viability analysis has been rerun with modifications.

Endangered Species Act Compliance

Section 9 of the ESA prohibits take of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. Under the ESA, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term ''harm,'' as defined in our regulations, includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term ''harass'' is defined in our regulations as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns, which include but are not limited to breeding, feeding, or sheltering (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that authorize take of federally listed species, provided the take is incidental to, and not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively. Section 10(a)(1)(B) of the ESA contains provisions for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

(1) The taking will be incidental;

(2) The applicant will prepare a conservation plan that, to the maximum extent practicable, identifies the steps the applicant will take to minimize and mitigate the impact of such taking;

(3) The applicant will ensure that adequate funding for the plan will be provided;

(4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(5) The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the plan.

National Environmental Policy Act Compliance

The proposed amendment of the ITP and the 1997 WDNR HCP to cover the LTCS for the marble murrelet is a Federal action that triggers the need for compliance with NEPA (42 U.S.C. 4321 *et seq.*). We and WDNR have jointly developed the RDEIS for the purpose of analyzing the environmental impacts of different alternatives for the LTCS under the HCP and ITP. The RDEIS analyzes the DNR's preferred alternative, six additional alternatives, and a no-action alternative, for a total of eight alternatives.

WDNR manages approximately 1.38 million acres within 55 miles of marine waters, which is the known inland limit of the nesting range for the marbled murrelet. The RDEIS analyzes Alternative H as DNR's preferred alternative. The Service is not presently identifying a preferred alternative, but will for the final environmental impact statement (FEIS). The no-action alternative involves continuation of the interim conservation strategy for the marbled murrelet under the WDNR HCP. The alternatives in the RDEIS are restricted to implementation within this area.

The alternatives represent a range of approaches to long-term marbled murrelet habitat conservation on WDNR lands. The alternatives differ in the amount and location of WDNR-managed forest land designated for long-term conservation of the murrelet. Alternatives also include a variety of conservation measures proposed to protect marbled murrelet habitat. The alternatives also differ in the amount and quality of marbled murrelet habitat removed through timber harvest.

EPA's Role in the EIS Process

The EPA is charged under section 309 of the Clean Air Act to review all Federal agencies' EISs and to comment on the adequacy and the acceptability of the environmental impacts of proposed actions in the EISs. EPA also serves as the repository (EIS database) for EISs prepared by Federal agencies and provides notice of their availability in the **Federal Register**. The EIS database provides information about EISs prepared by Federal agencies, as well as EPA's comments concerning the EISs. All EISs are filed with EPA, which publishes a notice of availability on Fridays in the **Federal Register**. For more information, see *https://www.epa.gov/nepa*. You may search for EPA comments on EISs, along with EISs themselves, at *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search*.

Public Meetings

We will hold four public meetings during the public comment period, at the following locations in the State of Washington: Ballard, Burlington, Cathlamet, and Forks. The dates, times, and specific locations of the meetings will be posted on the internet at *https://www.dnr.wa.gov/mmltcs*. The public meetings will be physically accessible to people with disabilities. Please direct requests for reasonable accommodations (*e.g.,* auxiliary aids or sign language interpretation) to one of the sources listed in **FOR FURTHER INFORMATION CONTACT**, at least 7 working days prior to the date of the meeting you wish to attend.

Public Comments

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We will also accept written comments at four public meetings, to be announced. We specifically request information on the following:

1. Biological information on the marbled murrelet in the terrestrial and marine environments;

2. Cumulative effects on the environment that might influence the status of the marbled murrelet in the ESA listed range;

3. Resiliency of the alternatives in providing current and future marbled murrelet habitat in relation to climate

change and future natural disturbance events such as fire and windstorms;

4. Adequacy of the distribution of marbled murrelet habitat within the HCP covered area to provide for murrelet conservation over the remaining term of the HCP;

5. Other aspects of the human environment not already identified in the DEIS that may be affected, pursuant to NEPA regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6.

Comments received from the 2016 DEIS public comment period were used to inform the RDEIS. Comments received on the DEIS and this RDEIS will be responded to in the FEIS. If you submitted comments during the comment period for the DEIS, you do not need to resubmit those comments.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information in your comments, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety. Comments and materials we receive, as well as supporting documentation we use in preparing the FEIS, will be available for public inspection by appointment, during normal business hours, at our Washington Fish and Wildlife Office (see **ADDRESSES**).

Next Steps

The HCP amendment for the LTCS is intended to replace the interim conservation strategy for the marbled murrelet. We will evaluate that request, associated documents, and public comments in reaching a final decision on whether the application for a permit amendment meets the requirements of section 10 of the ESA. We will prepare responses to public comments and publish a notice of availability for the FEIS. The FEIS will identify the WDNR preferred alternative for the amendment, and also the Service's preferred alternative. We will also evaluate whether the proposed permit action would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to approve the proposed amendment of the WDNR HCP and ITP. If the ESA section 10 issuance requirements are met, we will approve the amendment of the ITP and HCP. We will issue a record of decision and approve or deny the ITP and HCP amendment request by WDNR no sooner than 30 days after publication of the notice of availability of the FEIS.

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA and its implementing regulations (40 CFR 1506.6).

Theresa E. Rabot,

Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2018–19298 Filed 9–6–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX18GC009PLSG00; OMB Control Number 1028–0088]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; National Cooperative Geologic Mapping Program (EDMAP and STATEMAP)

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 9, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to USGS, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0088 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Darcy McPhee by email at *dmcphee@usgs.gov,* or by telephone at 703–648–6973. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: We, the USGS, in accordance with the Paperwork Reduction Act of 1995, provide the general public and other Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on April 24, 2018 (FR 2018–08458). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: EDMAP is the educational component of the NCGMP that is intended to train the next generation of geologic mappers. The primary objective of the STATEMAP component of the NCGMP is to establish the geologic

framework of areas that are vital to the welfare of individual States.

The NCGMP EDMAP program allocates funds to colleges and universities in the United States and Puerto Rico through an annual competitive cooperative agreement process. Every Federal dollar awarded is matched with university funds. Geology professors, who are skilled in geologic mapping, request EDMAP funding to support undergraduate and graduate students at their college or university in a one-year mentored geologic mapping project that focuses on a specific geographic area.

Only State Geological Surveys are eligible to apply to the STATEMAP component of the NCGMP pursuant to the National Geologic Mapping Act (Pub. L. 106–148). Since many State Geological Surveys are organized under a state university system, such universities may submit a proposal on behalf of the State Geological Survey.

Each fall, the program announcements are posted to the *Grants.gov* website and respondents are required to submit applications (comprising Standard Form 424, 424A, 424B, Proposal Summary Sheet, the Proposal, and Budget Sheets. Additionally, EDMAP proposals must include a Negotiated Rate Agreement and a Support letter from a State Geologist or USGS Project Chief).

Since 1996, more than $5 million from the NCGMP has supported geologic mapping efforts of more than 1,200 students working with more than 260 professors at 161 universities in 44 states, the District of Columbia, and Puerto Rico. Funds for graduate projects are limited to $17,500 and undergraduate project funds limited to $10,000. These funds are used to cover field expenses and student salaries, but not faculty salaries or tuition. The authority for both programs is listed in the National Geologic Mapping Act (Pub. L. 106–148).

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' Responses are voluntary. No questions of a ''sensitive'' nature are asked.

Title of Collection: National Cooperative Geologic Mapping Program (NCGMP–EDMAP and STATEMAP).

OMB Control Number: 1028–0088.

Form Number: None.

Type of Review: Extension without change of a currently approved collection.

Respondents/Affected Public: University or College faculty and State Geological Surveys.

Total Estimated Number of Annual Respondents: Approximately 50 University or College faculty and 45 State Geological Survey respondents.

Total Estimated Number of Annual Responses: Total number of responses is 185. Approximately 95 University or College faculty and 90 State Geological Survey responses.

Estimated Completion Time per Response: 36 hours.

Total Estimated Number of Annual Burden Hours: 5,220 hours total.

Respondent's Obligation: None. Participation is voluntary, though necessary to receive funding.

Frequency of Collection: Annually.

Total Estimated Annual Non-Hour Burden Cost: There are no ''non-hour cost'' burdens associated with this IC.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Darcy McPhee,

Associate Program Coordinator, National Cooperative Geologic Mapping Program.

[FR Doc. 2018–19447 Filed 9–6–18; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[189A2100DD/AAKC001030/A0A501010.999900 253G; OMB Control Number 1076–0020]

Agency Information Collection Activities; Loan Guarantee, Insurance and Interest Subsidy Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Assistant Secretary—Indian Affairs (AS–IA) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before November 6, 2018.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to David Johnson, Acting Chief, Division of Capital Investment, Office of Indian Energy and Economic Development, U.S. Department of the Interior, 1849 C Street NW, MIB 4138, Washington, DC 20240; email: *Davidb.Johnson@bia.gov.* Please reference OMB Control Number 1076–0020 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, please contact David Johnson by telephone at: (202) 208–3026.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the AS–IA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the AS–IA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the AS–IA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you 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.

Abstract: Submission of this information allows the Office of Indian Energy and Economic Development (IEED) to implement the Loan Guarantee, Insurance, and Interest Subsidy Program, 25 U.S.C. 1451 *et seq.,* the purpose of which is to encourage private lending to individual Indians and Indian organizations by providing lenders with loan guarantees or loan insurance to reduce their potential risk.

The information collection allows IEED to determine the eligibility and credit-worthiness of respondents and loans and otherwise ensure compliance with Program requirements. This information collection includes the use of several forms.

Title of Collection: Loan Guarantee, Insurance, and Interest Subsidy.

OMB Control Number: 1076–0020.

Form Numbers: LGA10, LIA10, RGI10, ISR10, NOD10, CFL10, ALD10, NIL10, and LGC10.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Lenders, including commercial banks, and borrowers, including individual Indians and Indian organizations.

Total Estimated Number of Annual Respondents: 295.

Total Estimated Number of Annual Responses: 1.

Estimated Completion Time per Response: 2,654 hours.

Total Estimated Number of Annual Burden Hours: Varies from 0.5 to 2 hours.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Non-hour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2018–19452 Filed 9–6–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

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

Advisory Board for Exceptional Children

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Indian Education (BIE) is announcing that the Advisory Board for Exceptional Children will hold a public meeting. The purpose of the meeting is to meet the requirements of the Individuals with Disabilities Education Act of 2004 (IDEA) for Indian children with disabilities.

DATES: The Advisory Board will meet Saturday, September 22, 2018 from 8 a.m. to 5 p.m. Mountain Time. A public comment period is scheduled from 11:30 a.m. to 12 p.m. Mountain Time. In order for written comments to be considered by the Advisory Board during the meeting, comments must be received by September 17, 2018.

ADDRESSES: The meeting will be held at the 1011 Indian School Rd. NW, Large Conference Room on the 3rd floor in Albuquerque, NM 87104. Telephone number: (480) 777–7986. Those wishing to participate via conference call may do so by calling in to telephone number 1–888–417–0376, passcode 1509140.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis, Designated Federal Officer, Bureau of Indian Education, 2600 N Central Ave. Suite 800, Phoenix, Arizona 85004, telephone number (480) 777–7986; fax number (602) 265–0293 Attention: Jennifer Davis, DFO; or email *Jennifer.davis@bie.edu.*

SUPPLEMENTARY INFORMATION: The Advisory Board was established to advise the Secretary of the Interior, through the Assistant Secretary—Indian Affairs, on the needs of Indian children with disabilities. The meeting is open to the public. During the meeting the Advisory Board will discuss the priorities, advice, and recommendations that will be included in the 2018 Annual Report; there will be an opportunity for public comment; and the Advisory Board will finalize the 2018 Annual Report. Those wishing to make comments during the meeting may do so or can send written comments to the DFO (see **FOR FURTHER INFORMATION CONTACT**). In order for written comments to be considered by the Advisory Board during the meeting, comments must be received by September 17, 2018. In order to accommodate all those wishing to make an oral presentation, comments (both in person and via call-in) may be limited for time depending on the number of participants. Before including your address, phone number, email address, or other personal identifying information in a written 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 view, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 5; 20 U.S.C. 1400 *et seq.*

Dated: August 31, 2018.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2018–19426 Filed 9–6–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2018–0012; 189E1700D2 ET1SF0000.PSB000.EEEE500000; OMB Control Number 1014–0005]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Relief or Reduction in Royalty Rates

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 9, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Kelly Odom; 45600 Woodland Road, Sterling, VA 20166; or by email to *kelly.odom@bsee.gov.* Please reference OMB Control Number 1014–0005 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Kelly Odom by email at *kelly.odom@bsee.gov,* or by telephone at (703) 787–1775. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the

public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on April 17, 2018 (83 FR 16898). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comments addressing the following issues: (1) Is the collection necessary to the proper functions of BSEE; (2) Will this information be processed and used in a timely manner; (3) Is the estimate of burden accurate; (4) How might BSEE enhance the quality, utility, and clarity of the information to be collected; and (5) How might BSEE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. 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.

Abstract: The regulations at 30 CFR part 203, concern relief or reduction in royalty rates and are the subject of this collection. This request also covers any related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The BSEE uses the information to make decisions on the economic viability of leases requesting a suspension or elimination of royalty or net profit share. These decisions have enormous monetary impact on both the lessee and the Federal Government. Royalty relief can lead to increased production of natural gas and oil, creating profits for lessees, and royalty and tax revenues for the Federal Government that they might not otherwise receive. We could not make an informed decision without the collection of information required by 30 CFR part 203.

Title of Collection: 30 CFR part 203, *Relief or Reduction in Royalty Rates.*

OMB Control Number: 1014–0005.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents comprise Federal OCS oil, gas, and sulphur lessees/operators.

Total Estimated Number of Annual Respondents: Varies, not all of the potential respondents will submit information in any given year and some may submit multiple times.

Total Estimated Number of Annual Responses: 28.

Estimated Completion Time per Response: Varies from 1 hour to 200 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 724.

Respondent's Obligation: Most responses are mandatory, while others are required to obtain or retain benefits.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: We have identified application and audit fees; as well as an independent certified public accountant report. The non-hour cost burdens associated with this collection of information amount to $27,950.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: August 9, 2018.

Doug Morris,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2018–19441 Filed 9–6–18; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2018–0014; 189E1700D2 ET1SF0000.PSB000.EEEE500000; OMB Control Number 1014–0019]

Agency Information Collection Activities; Oil and Gas Production Requirements

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before November 6, 2018.

ADDRESSES: Send your comments on this information collection request (ICR) by either of the following methods listed below:

- Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2018–0014 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *kye.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014–0019 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nicole Mason by email at *kye.mason@bsee.gov* or by telephone at (703) 787–1607.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comments addressing the following issues: (1) Is the collection necessary to the proper functions of BSEE; (2) Will this information be processed and used in a timely manner; (3) Is the estimate of burden accurate; (4) How might BSEE enhance the quality, utility, and clarity of the information to be collected; and (5) How might BSEE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time.

While you 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.

Abstract: The regulations at 30 CFR part 250, subpart K, concern Oil and Gas Production Requirements (including the associated forms), and are the subject of this collection. This request also covers any related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The information collected under Subpart K is used in our efforts to conserve natural resources, prevent waste, and protect correlative rights, including the Government's royalty interest. Specifically, BSEE uses the information to:

- Evaluate requests to burn liquid hydrocarbons and vent and flare gas to ensure that these requests are appropriate;
- determine if a maximum production or efficient rate is required; and,
- review applications for downhole commingling to ensure that action does not result in harm to ultimate recovery.

Form BSEE–0126, Well Potential Test Report, BSEE uses this information for reservoir, reserves, and conservation analyses, including the determination of maximum production rates (MPRs) when necessary for certain oil and gas completions. This requirement implements the conservation provisions of the OCS Lands Act and 30 CFR 250. The information obtained from the well potential test is essential to determine if an MPR is necessary for a well and to establish the appropriate rate. It is not possible to specify an MPR in the absence of information about the production rate capability (potential) of the well.

Form BSEE–0128, Semiannual Well Test Report, BSEE uses this information to evaluate the results of well tests to determine if reservoirs are being depleted in a manner that will lead to the greatest ultimate recovery of hydrocarbons. This information is collected to determine the capability of hydrocarbon wells and to evaluate and verify an operator's approved maximum production rate if assigned. The form was designed to present current well data on a semiannual basis to permit the updating of permissible producing rates, and to provide the basis for estimates of currently remaining recoverable gas reserves.

Title of Collection: 30 CFR part 250, subpart K, Oil and Gas Production Requirements.

OMB Control Number: 1014–0019.

Form Number: BSEE–0126—Well Potential Test Report, and BSEE–0128—Semiannual Well Test Report.

Type of Review: Extension without change of a currently approved collection.

Respondents/Affected Public: Potential respondents comprise Federal OCS oil, gas, and sulfur lessees/operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Not all of the potential respondents will submit information in any given year, and some may submit multiple times.

Total Estimated Number of Annual Responses: 10,819.

Estimated Completion Time per Response: Varies from 30 minutes to 100 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 46,136.

Respondent's Obligation: Most responses are mandatory, while others are required to obtain or retain benefits.

Frequency of Collection: On occasion, weekly, monthly, semi-annual, annual, and varies by section.

Total Estimated Annual Nonhour Burden Cost: The Subpart K regulations require four non-hour cost burdens, for a total of $1,361,176. Three are service fees required to recover the Federal Government's processing costs of certain submissions. The fourth cost is an IC equipment expenditure. The details are as follows:

§ 250.1156 requires a service fee when submitting a request for approval to produce within 500 feet of a unit or lease line	$3,892
§ 250.1157 requires a service fee when submitting a request for approval before producing gas-cap gas from each completion in an oil reservoir known to have an associated gas cap, or to continue producing if an oil reservoir is not initially known to have an associated gas cap, but begins to show characteristics of a gas well	4,953
§ 250.1158 requires a service fee for submitting a request for approval to downhole commingle hydrocarbons	5,779
§ 250.1163 requires respondents to purchase and install gas meters to measure the amount of gas flared or vented gas for those that produce more than 2,000 bopd and do not already have a meter or need to replace a meter	77,000

We have not identified any other non-hour cost burden associated with this collection of information.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: July 25, 2018.

Doug Morris,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2018–19440 Filed 9–6–18; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2018–0004; 189E1700D2 ET1SF0000.PSB000.EEEE500000; OMB Control Number 1014–0017]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Safety and Environmental Management Systems (SEMS)

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 9, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166; or by email to *kye.mason@bsee.gov.* Please reference OMB Control Number 1014–0017 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nicole Mason by email at *kye.mason@bsee.gov,* or by telephone at (703) 787–1607. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on March 6, 2018 (83 FR 9541). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comments addressing the following issues: (1) Is the collection necessary to the proper functions of BSEE; (2) Will this information be processed and used in a timely manner; (3) Is the estimate of burden accurate; (4) How might BSEE enhance the quality, utility, and clarity of the information to be collected; and (5) How might BSEE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. 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.

Abstract: The regulations at 30 CFR part 250, subpart S, concern the Safety and Environmental Management Systems (SEMS) (including the associated forms), and are the subject of this collection. This request also covers any related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The Subpart S regulations hold the operator accountable for the overall safety of the offshore facility, including ensuring that all employees, contractors, and subcontractors have safety policies and procedures in place that support the implementation of the operator's SEMS program and align with the principles of managing safety. An operator's SEMS program must describe management's commitment to safety and the environment, as well as policies and procedures to assure safety and environmental protection while conducting OCS operations (including those operations conducted by all personnel on the facility). BSEE will use the information obtained by submittals and observed via SEMS audits to ensure that operations on the OCS are conducted safely, as they pertain to both human and environmental factors, and in accordance with BSEE regulations, including industry practices incorporated by reference within the regulations. Job Safety Analyses (JSA's) and other recordkeeping required by the SEMS regulation will be reviewed diligently by BSEE during inspections and other oversight activities and by SEMS auditors during regulatory required audits, to ensure that industry is using the documentation required by the SEMS regulation to manage their safety and environmental risks.

Information on Form BSEE–0131, which the SEMS regulation requires to be submitted to BSEE annually, includes company identification, number of company/contractor injuries and/or illnesses suffered, company/contractor hours worked, EPA National Pollutant Discharge Elimination System (NPDES) permit non-compliances, and oil spill volumes for spills less than 1 barrel. Such information is reported on a calendar year basis, with data broken out by calendar quarter. The information is used to develop industry average incident rates that help to describe how well the offshore oil and gas industry is performing. Operators use these incident rates to benchmark against their own performance, and to focus on areas that need improvement. Using the produced data allows BSEE to better focus our regulatory and research programs on areas where the performance measures indicate that operators are having difficulty meeting our expectations. BSEE will be more effective in leveraging resources by redirecting research efforts, promoting appropriate regulatory initiatives, and shifting inspection and Directed Audit program emphasis based on performance results.

Title of Collection: 30 CFR part 250, subpart S, *Safety and Environmental Management Systems* (SEMS).

OMB Control Number: 1014–0017.

Form Number: Form BSEE–0131, Performance Measures Data.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents comprise Federal OCS oil, gas, and sulfur lessees, operators, and/or third-party personnel or organization.

Total Estimated Number of Annual Respondents: Not all of the potential respondents will submit information in any given year and some may submit multiple times.

Total Estimated Number of Annual Responses: 686.

Estimated Completion Time per Response: Varies from 39 hours to 11,926 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 1,487,634.

Respondent's Obligation: Responses are mandatory.

Frequency of Collection: Primarily on occasion, and varies by section.

Total Estimated Annual Nonhour Burden Cost: $3,259,727.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: August 16, 2018.

Doug Morris,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2018–19443 Filed 9–6–18; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2018–0010; 189E1700D2 ET1SF0000.PSB000.EEEE500000; OMB Control Number 1014–0008]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Well Control and Production Safety Training

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 9, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166; or by email to *kye.mason@bsee.gov.* Please reference OMB Control Number 1014–0008 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nicole Mason by email at *kye.mason@bsee.gov,* or by telephone at (703) 787–1607. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on April 17, 2018 (83 FR 16899). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comments addressing the following issues: (1) Is the collection necessary to the proper functions of BSEE; (2) Will this information be processed and used in a timely manner; (3) Is the estimate of burden accurate; (4) How might BSEE enhance the quality, utility, and clarity of the information to be collected; and (5) How might BSEE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. 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.

Abstract: The regulations at 30 CFR part 250, subpart O, concern well control and production safety training and are the subject of this collection. This request also covers any related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The BSEE will use the information collected under subpart O regulations to ensure that workers in the OCS are properly trained with the necessary skills to perform their jobs in a safe and pollution-free manner.

In some instances, we may conduct oral interviews of offshore employees to evaluate the effectiveness of a company's training program. The oral interviews are used to gauge how effectively the companies are implementing their own training program.

Title of Collection: 30 CFR 250, Subpart O, *Well Control and Production Safety Training.*

OMB Control Number: 1014–0008.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents comprise Federal OCS oil, gas, and sulphur lessees/operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Varies, not all of the potential respondents will submit information in any given year and some may submit multiple times.

Total Estimated Number of Annual Responses: 5.

Estimated Completion Time per Response: Varies from 4 hour to 69 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 148.

Respondent's Obligation: Responses are mandatory.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: We have not identified any non-hour cost burdens associated with this collection of information.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: August 7, 2018.

Doug Morris,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2018–19439 Filed 9–6–18; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2018–0009; 189E1700D2 ET1SF0000.PSB000.EEEE500000; OMB Control Number 1014–0024]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Plans and Information

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 9, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166; or by email to *kye.mason@bsee.gov.* Please reference OMB Control Number 1014–0024 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nicole Mason by email at *kye.mason@bsee.gov,* or by telephone at (703) 787–1607. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection

requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on May 16, 2018 (83 FR 22711). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comments addressing the following issues: (1) Is the collection necessary to the proper functions of BSEE; (2) Will this information be processed and used in a timely manner; (3) Is the estimate of burden accurate; (4) How might BSEE enhance the quality, utility, and clarity of the information to be collected; and (5) How might BSEE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. 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.

Abstract: The regulations at 30 CFR part 250, subpart B, concern plans and information and are the subject of this collection. This request also covers any related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

Post-Approval Requirements for the Exploration Plans, Development and Production Plans, and Development Operation Coordination Document: While the information is submitted to the Bureau of Ocean Energy Management, BSEE analyzes and evaluates the information and data collected under this section of subpart B to verify that an ongoing/completed Outer Continental Shelf (OCS) operation is/was conducted in compliance with established environmental standards placed on the activity.

Deepwater Operations Plan (DWOP): BSEE analyzes and evaluates the information and data collected under this section of subpart B to ensure that planned operations are safe; will not adversely affect the marine, coastal, or human environment; and will conserve the resources of the OCS. We use the information to make an informed decision on whether to approve the proposed DWOPs, or whether modifications are necessary without the analysis and evaluation of the required information.

Title of Collection: 30 CFR part 250, subpart B, *Plans and Information.*

OMB Control Number: 1014–0024.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents comprise Federal OCS oil, gas, and sulphur lessees/operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Varies, not all potential respondents will submit information in any given year and some may submit multiple times.

Total Estimated Number of Annual Responses: 31.

Estimated Completion Time per Response: Varies from 50 hours to 2,200 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 44,458.

Respondent's Obligation: Most responses are mandatory, while others are required to obtain or retain benefits.

Frequency of Collection: Submissions are generally on occasion.

Total Estimated Annual Nonhour Burden Cost: $68,381. Submission of a DWOP (§ 250.292) requires a cost recovery fee of $3,599.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Dated: August 3, 2018.

Doug Morris,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2018–19438 Filed 9–6–18; 8:45 am]

BILLING CODE 4310–VH–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Sleep-Disordered Breathing Treatment Mask Systems and Components Thereof, DN 3336*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of ResMed Corp, ResMed Inc. and ResMed Ltd. on August 31, 2018. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain sleep-disordered breathing treatment mask systems and components thereof. The complaint names as respondents: Fisher & Paykel Healthcare Limited of New Zealand; Fisher & Paykel Healthcare, Inc. of Irvine, CA and Fisher & Paykel Healthcare Distribution Inc. of Irvine, CA. The complainant requests that the Commission issue a limited exclusion order and a cease and desist order and impose a bond during the 60-day review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the

public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues should be filed no later than by close of business nine calendar days after the date of publication of this notice in the **Federal Register**. Complainant may file a reply to any written submission no later than the date on which complainant's reply would be due under § 210.8(c)(2) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(c)(2)).

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3336'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures.[1]) Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: August 31, 2018.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2018–19386 Filed 9–6–18; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Registration

ACTION: Notice of registration.

SUMMARY: Registrant listed below has applied for and been granted registration by the Drug Enforcement Administration (DEA) as a bulk manufacturer of various classes of schedule I and II controlled substances.

SUPPLEMENTARY INFORMATION: The company listed below applied to be registered as a bulk manufacturer of various basic classes of controlled substances. Information on the previously published notice is listed in the table below. No comments or objections were submitted for this notice.

Company	FR docket	Published
Patheon API Manufacturing, Inc.	83 FR 22516	May 15, 2018.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of this registrant to manufacture the applicable basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the DEA has granted a registration as a bulk manufacturer to the above listed company.

Dated: August 23, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–19444 Filed 9–6–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 8–18]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Tuesday, September 18, 2018: 9:30 a.m.—Issuance of Proposed Decisions in claims against Iraq.

10:30 a.m.—Issuance of Proposed Decisions under the Guam World War II Loyalty Recognition Act, Title XVII, Public Law 114–328.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street NW, Suite 10300, Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 601 D Street NW, Suite 10300, Washington, DC 20579. Telephone: (202) 616–6975.

Brian M. Simkin,

Chief Counsel.

[FR Doc. 2018–19550 Filed 9–5–18; 11:15 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Proposed Revision of a Currently Approved Collection; Request for Comments; H–2B Temporary Non-Agricultural Labor Certification Program Forms (OMB Control Number 1205–0509)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice and Request for Comment.

SUMMARY: The Department of Labor (DOL), as part of its effort to streamline information collection, clarify statutory and regulatory requirements, and provide greater transparency and oversight of the H–2B labor certification program, conducts a preclearance consultation program to provide the 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. This program helps 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 can be properly assessed. In accordance with the Paperwork Reduction Act (PRA), ETA, within DOL, is providing the public notice and opportunity to comment on proposed revisions to the H–2B Foreign Labor Certification Program information collection.

The information collection for each existing form was approved on December 31, 2015 and expires December 31, 2018. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before November 6, 2018.

ADDRESSES: Written comments may be submitted by the following methods:

- *Email (encouraged): ETA.OFLC.Forms@dol.gov.*
- *Mail:* William W. Thompson II, Administrator, Office of Foreign Labor Certification, Box PPII 12–200, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.
- *Fax:* 202–513–7395.

Instructions: Comments which are related to specific forms should identify that form or form instruction using the form number, *e.g.,* Form ETA–9142B or Form ETA–9165, etc., and should identify the particular area of the form for comment. A copy of the proposed information collection request (ICR) can be obtained by contacting the Office of Foreign Labor Certification as listed above.

FOR FURTHER INFORMATION CONTACT: William W. Thompson II, Administrator, Office of Foreign Labor Certification, 202–513–7350 (this is not a toll-free number), or for individuals with hearing or speech impairments, 1–877–889–5627 (this is the TTY toll-free Federal Information Relay Service number), Box PPII 12–200, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

I. Background

The information collection is required by Sections 101(a)(15)(H)(ii)(b) and 214(c) of the Immigration and Nationality Act (INA) (8 U.S.C. 1011(a)(15)(H)(ii)(b) and 1184(c)), as well as 8 CFR 214.2(h)(6), 20 CFR 655, Subpart A, and 29 CFR 503. The H–2B program enables employers to bring nonimmigrant foreign workers to the United States to perform non-agricultural work of a temporary or seasonal nature as defined in 8 U.S.C. 1101(a)(15)(H)(ii)(b). The Department of Homeland Security (DHS) consults with DOL with respect to the H–2B program, and DOL provides advice on whether U.S. workers capable of performing the temporary services or labor are available. *See* 8 U.S.C. 1184(c)(1), INA Section 214(c)(1) (providing for DHS to consult with ''appropriate agencies of the Government''). Under DHS regulations, an H–2B petition for temporary employment must be accompanied by an approved temporary labor certification from DOL, which serves as DOL's consultative advice to DHS regarding whether a qualified U.S. worker is available to fill the petitioning H–2B employer's job opportunity and whether a foreign worker's employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. *See* 8 CFR 214.2(h)(6)(iii)(A), (iv)(A). DHS and DOL jointly promulgated regulations establishing the processes by which an employer must obtain a prevailing wage and temporary labor certification from DOL, and the rights and obligations of workers and employers. 20 CFR 655, Subpart A; 8 CFR 214.2(h)(6)(iii)–(iv).

This ICR, OMB Control No. 1205–0509, includes the collection of information related to the use of employer-provided surveys for determining prevailing wages and the temporary labor certification process in the H–2B program. The Form ETA–9165, *Employer-Provided Survey Attestations to Accompany H–2B Prevailing Wage Determination Request Based on a Non-OES Survey,* is used to collect information that permits ETA to determine whether an employer-provided survey can be used to establish H–2B prevailing wages in the occupational classification in lieu of prevailing wages available under the Bureau of Labor Statistics Occupational Employment Statistics (OES) program. The information contained in the application Form ETA–9142B, *H–2B Application for Temporary Employment Certification,* and corresponding appendices serve as the basis for the Secretary's determination that qualified U.S. workers are not available to perform the services or labor needed by

the employer, and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of H–2B workers. This determination is required before a petition can be approved by DHS. Employers use *Appendix B* of the Form ETA–9142B to attest that they will comply with all of the terms, conditions, and obligations of the H–2B program.

ETA is seeking comments on proposed revisions to the Form ETA–9142B, *H–2B Application for Temporary Employment Certification;* Form ETA–9142B, *Appendix B;* Form ETA–9165, *Employer-Provided Survey Attestations to Accompany H–2B Prevailing Wage Determination Request Based on a Non-OES Survey;* and the instructions accompanying those forms. The proposed revisions will better align information collection requirements with DOL's current regulatory framework, provide greater clarity to employers on regulatory requirements, standardize and streamline information collection to reduce employer time and burden preparing applications, and promote greater efficiency and transparency in ETA's review and issuance of labor certification decisions under the H–2B program.

ETA is also seeking comments on its proposed implementation of three new appendices to the Form ETA–9142B. The proposed *Appendix A* would require an employer to use a standard format to disclose multiple worksites and, if applicable, multiple wage offers for the job opportunity within an area of intended employment. Proposed *Appendix C* would require an employer to use a standard format to disclose the identity and location of all foreign labor recruiters. In order to recruit prospective foreign workers for the job opportunities offered by the employer under the Form ETA–9142B, the employer, and its attorney or agent (as applicable), must provide the identity and location of all persons and entities hired by or working for the recruiter or agent, and any of the agent(s) or employee(s) of those person and entities. 20 CFR 655.9(b). Collection of this information in a standard format will also permit ETA to more effectively comply with 20 CFR 655.9(c), which requires the maintenance of a publicly available list of foreign labor recruiters and the location(s) in which they are operating. Proposed *Appendix D* would require an employer filing as a job contractor to disclose the name and contact information of its employer-client, as required by 20 CFR 655.19(d)(1). These appendices will establish a more efficient and standardized method of collecting information currently submitted by employers to the Department using a variety of paper-based documents that are separately attached to the Form ETA–9142B.

To promote greater efficiency in issuing temporary labor certification decisions and minimize delays associated with employers filing H–2B petitions with DHS, ETA is seeking to eliminate the issuance of paper-based labor certification decisions by proposing the creation of a one-page Form ETA–9142B, *Labor Certification Determination,* which will be issued electronically to employers granted temporary labor certification by DOL. In circumstances where the employer or, if applicable, its authorized attorney or agent, is not able to receive the temporary labor certification documents electronically, ETA will send the certification documents printed on standard paper in a manner that ensures overnight delivery.

Finally, ETA is requesting a three-year extension, without change, of the Form ETA–9142B, *Seafood Industry Attestation* and Form ETA–9155, *H–2B Registration.* Employers in the seafood industry who wish to stagger the entry of H–2B workers into the United States between 90 and 120 days after the certified start date of need will need to complete the Form ETA–9142B, *Seafood Industry Attestation* and provide a copy to each H–2B worker to present, upon request by DHS, when seeking entry into the United States. The information collected on the Form ETA–9155, *H–2B Registration* allows ETA to determine whether the nature and duration of the employer's need for H–2B workers is temporary. Where ETA has not operationalized the registration process through a separate notice in the **Federal Register**, H–2B applications are exempt from the registration requirements under 20 CFR 655.11, and the adjudication of the employer's temporary need will continue to occur based on information collected on the Form ETA–9142B. For complete details regarding this ICR, contact the office listed in the **ADDRESSES** section above.

II. Review Focus

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; and also the agency's estimates associated with the annual burden cost incurred by respondents and the government cost associated with this collection of information;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

This revision request will allow ETA to meet its statutory and regulatory responsibilities pertaining to labor certification applications that are used in the H–2B program and that allow employers to bring foreign labor to the United States on a temporary basis.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid control number. *See* 5 CFR 1320.5(a) and 1320.6. DOL obtains OMB approval for this information collection under control number 1205–0509.

Title of Collection: H–2B Temporary Non-Agricultural Employment Certification Program.

Type of Review: Revision of a Currently Approved Information Collection.

OMB Number: 1205–0509.

Affected Public: Individuals or Households; Private Sector (businesses or other for-profit institutions); Federal Government; and State, Local and Tribal Governments.

Form(s): ETA–9142B, *H–2B Application for Temporary Employment Certification;* ETA–9142B, *Labor Certification Determination;* ETA–9142B—Appendix A; ETA–9142B—Appendix B; ETA–9142B—Appendix C; ETA–9142B—Appendix D; ETA–9142B, *Seafood Industry Attestation;* ETA–9165, *Employer-Provided Survey Attestations to Accompany H–2B Prevailing Wage Determination Request*

Based on a Non-OES Survey; and ETA–9155, *H–2B Registration.*

Total Estimated Number of Annual Respondents: 85,057.

Annual Frequency: On Occasion.

Total Estimated Number of Annual Responses: 286,978.

Estimated Time per Response: Various.

Total Estimated Annual Burden Hours: 80,201.

Total Estimated Annual Burden Cost for Respondents: $705,400.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record. Commenters are encouraged not to submit sensitive information (*e.g.,* confidential business information or personally identifiable information such as a social security number).

Rosemary Lahasky,

Deputy Assistant Secretary, Employment and Training Administration.

[FR Doc. 2018–19459 Filed 9–6–18; 8:45 am]

BILLING CODE 4510–FP–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Committee on National Science and Engineering Policy (SEP), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Tuesday, September 11, 2018 at 2 p.m.–3 p.m. EDT.

PLACE: This meeting will be held by teleconference at the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. An audio link will be available for the public. Members of the public must contact the Board Office to request the public audio link by sending an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference.

STATUS: Open.

MATTERS TO BE CONSIDERED: Chair's opening remarks; discussion of narrative outlines for thematic reports to be included in *Science and Engineering Indicators 2020.*

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Matt Wilson (*mbwilson@nsf.gov*), 703/292–7000.

Meeting information and updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.* Please refer to the National Science Board website *www.nsf.gov/nsb* for additional information.

Christopher Blair,

Executive Assistant, National Science Board Office.

[FR Doc. 2018–19549 Filed 9–5–18; 11:15 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Committee on National Science and Engineering Policy (SEP), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Friday, September 14, 2018 at 4 p.m.–5 p.m. EDT.

PLACE: This meeting will be held by teleconference at the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. An audio link will be available for the public. Members of the public must contact the Board Office to request the public audio link by sending an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference.

STATUS: Open.

MATTERS TO BE CONSIDERED: Chair's opening remarks; continued discussion of narrative outlines for thematic reports to be included in *Science and Engineering Indicators 2020.*

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Matt Wilson, (*mbwilson@nsf.gov*), 703/292–7000.

Meeting information and updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.* Please refer to the National Science Board website *www.nsf.gov/nsb* for additional information.

Christopher Blair,

Executive Assistant, National Science Board Office.

[FR Doc. 2018–19546 Filed 9–5–18; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0035]

Information Collection: NRC Form 664, General Licensee Registration

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''General Licensee Registration.''

DATES: Submit comments by November 6, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0035. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–2 F43, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0035 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0035.

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.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML18135A182. The supporting statement is available in ADAMS under Accession No. ML18135A184.

• *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.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2018–0035 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized in this notice.

1. *The title of the information collection:* NRC Form 664, ''General Licensee Registration.''

2. *OMB approval number:* 3150–0198.

3. *Type of submission:* Revision.

4. *The form number, if applicable:* NRC Form 664.

5. *How often the collection is required or requested:* Annually.

6. *Who will be required or asked to respond:* General Licensees of the NRC who possess certain generally licensed devices subject to annual registration authorized pursuant to section 31.5 of title 10 of the *Code of Federal Regulations* (10 CFR).

7. *The estimated number of annual responses:* 525.

8. *The estimated number of annual respondents:* 525.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 175 hours (525 annual responses × ⅓ hour).

10. *Abstract:* NRC Form 664 is used by NRC general licensees to make reports regarding certain generally licensed devices subject to annual registration. The registration program allows NRC to better track general licensees, so that they can be contacted or inspected as necessary, and to make sure that generally licensed devices can be identified even if lost or damaged. Also, the registration program ensures that general licensees are aware of and understand the requirements for the possession, use, and disposal of devices containing byproduct material. Greater awareness helps to ensure that general licensees will comply with the regulatory requirements for proper handling and disposal of generally licensed devices and would reduce the potential for incidents that could result in unnecessary radiation exposure to the public and contamination of property.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 4th day of September 2018.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2018–19417 Filed 9–6–18; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84011; File No. SR–CboeEDGX–2018–038]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Expand the Types of Messages That Users May Submit Into Bulk Order Ports

August 31, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 24, 2018, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to expand the types of messages that Users may submit into bulk order ports.

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change expands the types of messages that Users may submit into bulk order ports. A bulk order port is a logical port that provides Users with the ability to submit bulk messages to enter, modify, or cancel orders designated as Post Only Orders, provided such orders are entered with a Time-in-Force of Day [5] or GTD [6] with an expiration time on that trading day. Post Only Orders [7] with a Time-in-Force of Day or GTD are orders that will be posted to and displayed by the Exchange, rather than removing liquidity or routing to another options exchange. The Exchange currently limits the use of bulk order ports to these orders to limit the use of these ports to liquidity provision. The primary purpose of bulk order ports is to encourage Users, and Market-Makers in particular, to quote on the Exchange. As a general matter, however, the overall purpose of bulk order ports is to allow Users to bundle multiple instructions in a single message and provide all Users (not just Market-Makers) with an efficient way to provide liquidity on the Exchange.

The proposed rule change permits Users to submit auction responses into bulk order ports, in addition to Post Only Orders with a Time-in-Force of Day or GTD with an expiration time on that trading day. The Exchange offers various auction mechanisms that provide Users with additional execution opportunities and potential price improvement for their orders.[8] When the Exchange initiates an auction, it disseminates messages that contain the relevant information about the auction order.[9] The purpose of these messages is to encourage Users to provide liquidity against which the auctioned orders may trade. Users submit this liquidity in the form of auction responses. Like Post Only Orders with a Time-in-Force of Day or GTD with an expiration time on the applicable trading day, auction responses will not remove liquidity from the Exchange order book or route to another options exchange. Auction responses are similarly available for execution for a limited time period. Unexecuted auction responses are cancelled at the end of the auction, and thus do not last beyond the auction to which they were submitted.[10] Because the purpose of auction responses is to provide liquidity, which is the purpose of bulk order ports, the Exchange believes it is appropriate to permit Users to submit auction responses into bulk order ports.

Orders submitted to the Exchange through all ports are subject to various parameters, such as price reasonability checks and volume restrictions.[11] These parameters may be configured either by the Exchange or the Member. Orders are also subject to other validation checks and processes before execution, entry into the book, or cancellation. Examples of such validation checks include validating an order's Capacity, Time-in-Force, order instructions, and routing options. While orders submitted through bulk order ports pass through these same validation checks and processes, they are not subject to parameters such as routing options and are restricted to one order instruction and two Time-in-Force options. As a result, the System can perform these validation checks with respect to orders submitted through bulk order ports in a more efficient manner.

Pursuant to Exchange technical specifications,[12] the order messages per second that a User may submit through a non-bulk order port is smaller than the order messages per second that a User may submit through a bulk order port. The Exchange understands from certain Members that they may restrict the number of auction response messages they submit to avoid having to obtain additional ports. The Exchange believes permitting Users to submit auction responses through bulk order ports will encourage Users to provide increased liquidity to auction mechanisms in a more cost-efficient manner. While bulk order ports have a higher monthly cost, the higher order message/second rate may ultimately be more cost-efficient than a User having to obtain multiple additional non-bulk ports to accommodate the submission of auction responses. Additionally, Users that have both bulk and non-bulk order ports would be able to increase their submission of auction responses without additional monthly fees.[13]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [15] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and

[5] An order designated as ''Day'' means a limit order to buy or sell that, if not executed expires at market close. *See* Rule 21.1(f)(3).

[6] An order designated as ''GTD'' means an order (or unexecuted portion) that will remain available for potential display and/or execution for the amount of time specified by the entering User unless cancelled by the entering party. *See* Rule 21.1(f)(1).

[7] A ''Post Only Order'' is an order that is to be ranked and executed on the Exchange pursuant to Rule 21.8 (Order Display and Book Processing) or cancelled, as appropriate, without routing away to another options exchange except that the order will not remove liquidity from the EDGX Options Book. A Post Only Order that is not subject to the Price adjust process that would lock or cross a Protected Quotation of another options exchange or the Exchange will be cancelled. *See* Rule 21.1(d)(8).

[8] *See* Rules 21.18 (Step Up Mechanism (''SUM''), pursuant to which eligible marketable orders are auctioned when the Exchange's disseminated quote is not at the national best bid or offer (''NBBO'')); 21.19 (Bats Auction Mechanism (''BAM''), pursuant to which a Member may submit an eligible order paired with contra interest for potential price improvement); and 21.20(d) (Complex Order Auction (''COA''), pursuant to which eligible complex orders are auctioned for execution and potential price improvement).

[9] *See* Rules 21.18(b) (the Exchange exposes orders received by SUM); 21.19(b)(1)(C) (the Exchange sends an auction notification message when it receives an order for BAM processing); and 21.20(d)(2) (the Exchange initiates the COA process by sending a COA auction message).

[10] *See* Rules 21.18(b)(3), 21.19(b)(5), and 21.20(d)(4).

[11] *See, e.g.,* Rules 21.16 and 21.17 and technical specifications available at *http://markets.cboe.com/us/options/support/technical/*.

[12] These technical specifications are available at *http://markets.cboe.com/us/options/support/technical/*.

[13] The Exchange notes certain Market-Makers currently only have bulk order ports, and thus are unable to provide liquidity to auction mechanisms without obtaining additional non-bulk order ports.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [16] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change protects investors and the public interest because it provides all Users with an efficient process to enter and update auction responses. Like quoting, auction responses are a critical form of liquidity on the Exchange. Auction mechanisms and the execution and price improvement opportunities they provide are dependent on auction responses submitted during the auctions. Permitting Users to submit auction responses into bulk order ports is consistent with the purpose of these ports and have a similar purpose as the orders that Users are currently permitted to enter into bulk order ports. The Exchange believes the proposed rule change may encourage the provision of additional liquidity in auctions, which will provide additional execution and price improvement opportunities to auctioned orders, which ultimately benefit investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition, as the use of bulk order ports and the proposed functionality is voluntary and available to all Users of the Exchange. Bulk order entry functionality is available to all Users of the Exchange, as is the proposed functionality to submit auction responses into bulk order ports. Users may already submit auction responses to the Exchange using other types of ports—the proposed rule change merely provides Users of the Exchange with an additional method to submit auction responses to the Exchange. The Exchange does not believe the proposed rule change will have any direct impact on intermarket competition, as the proposed rule change relates solely to the manner in which Users may submit auction responses into auctions occurring on the Exchange.

[16] *Id.*

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [17] and subparagraph (f)(6) of Rule 19b–4 thereunder.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2018–038 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2018–038. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2018–038 and should be submitted on or before September 28, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–19375 Filed 9–6–18; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33216]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

August 31, 2018.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of August 2018. A copy of each application may be obtained via the Commission's website

by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 25, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Branch Chief, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

AIP Long/Short Fund A [File No. 811–22094]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant currently has fewer than 100 beneficial owners, is not presently making an offering of securities and does not propose to make any offering of securities. Applicant will continue to operate as a private investment fund in reliance on Section 3(c)(1) of the Act.

Filing Dates: The application was filed on August 9, 2018, and amended on August 28, 2018.

Applicant's Address: 522 Fifth Avenue, New York, New York 10036.

AIP Long/Short Fund P [File No. 811–22095]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On February 2, 2018 and May 9, 2018, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $1,000 incurred in connection with the liquidation were paid by the applicant.

Filing Dates: The application was filed on August 9, 2018, and amended on August 28, 2018.

Applicant's Address: 522 Fifth Avenue, New York, New York 10036.

BlackRock New Jersey Municipal Bond Trust [File No. 811–21050]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to BlackRock MuniYield New Jersey Fund, Inc., and on July 2, 2018, the acquiring fund made final distributions on behalf of the applicant to its shareholders based on net asset value. Expenses of approximately $223,134 incurred in connection with the reorganization were paid by the applicant.

Filing Date: The application was filed on July 30, 2018.

Applicant's Address: 100 Bellevue Parkway, Wilmington, Delaware 19809.

BlackRock New Jersey Municipal Income Trust [File No. 811–10335]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to BlackRock MuniYield New Jersey Fund, Inc., and on July 2, 2018, the acquiring fund made final distributions on behalf of the applicant to its shareholders based on net asset value. Expenses of approximately $262,733.54 incurred in connection with the reorganization were paid by the applicant.

Filing Date: The application was filed on July 30, 2018.

Applicant's Address: 100 Bellevue Parkway, Wilmington, Delaware 19809.

Claymore Exchange-Traded Fund Trust [File No. 811–21906]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Invesco Exchange-Traded Fund Trust, Invesco Exchange-Traded Fund Trust II, Invesco Actively Managed Exchange-Traded Fund Trust and Invesco Exchange-Traded Self-Indexed Fund Trust, and on April 6, 2018 and May 18, 2018 made final distributions to its shareholders based on net asset value. Expenses of $4,463,723 incurred in connection with the reorganization were paid by the applicant's investment adviser, the acquiring funds' investment adviser, and/or their affiliates.

Filing Dates: The application was filed on June 19, 2018, and amended on July 20, 2018 and August 9, 2018.

Applicant's Address: 227 West Monroe Street, Chicago, Illinois 60606.

Claymore Exchange-Traded Fund Trust 2 [File No. 811–21910]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Invesco Exchange-Traded Fund Trust II, Invesco Actively Managed Exchange-Traded Fund Trust and Invesco Exchange-Traded Self-Indexed Fund Trust, and on April 6, 2018 and May 18, 2018 made final distributions to its shareholders based on net asset value. Expenses of $1,702,022 incurred in connection with the reorganization were paid by the applicant's investment adviser, the acquiring funds' investment adviser, and/or their affiliates.

Filing Dates: The application was filed on June 19, 2018, and amended on July 20, 2018 and August 9, 2018.

Applicant's Address: 227 West Monroe Street, Chicago, Illinois 60606.

Diversified Real Asset Income Fund [File No. 811–22936]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Nuveen Real Asset Income & Growth Fund and, on November 1, 2017, made a final distribution to its shareholders based on net asset value. Expenses of $738,892 incurred in connection with the reorganization were paid by the applicant and the acquiring fund.

Filing Dates: The application was filed on July 25, 2018, and amended on August 21, 2018.

Applicant's Address: 333 West Wacker Drive, Chicago, Illinois 60606.

Nuveen Flexible Investment Income Fund [File No. 811–22820]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Nuveen Preferred & Income Opportunities Fund and, on July 3, 2017, made a final distribution to its shareholders based on net asset value. Expenses of $572,101 incurred in connection with the reorganization were paid by the applicant and the acquiring fund.

Filing Dates: The application was filed on July 25, 2018, and amended on August 21, 2018.

Applicant's Address: 333 West Wacker Drive, Chicago, Illinois 60606.

Rydex ETF Trust [File No. 811–21261]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Invesco Exchange Traded Fund Trust (formerly PowerShares Exchange Traded Fund Trust), Invesco Exchange-Traded Fund Trust II (formerly PowerShares Exchange-Traded Fund Trust II) and Invesco Exchange-Traded Self-Indexed Fund Trust (formerly PowerShares Exchange-Traded Self-Indexed Fund Trust), and on April 6, 2018 made a final distribution to its shareholders based on net asset value. Expenses of approximately $5,200,938 incurred in connection with the reorganization were paid by the applicant's investment adviser, the acquiring funds' investment adviser, and/or their affiliates.

Filing Dates: The application was filed on June 19, 2018, and amended on July 20, 2018 and August 9, 2018.

Applicant's Address: 702 King Farm Boulevard, Suite 200, Rockville, Maryland 20850.

Winton Diversified Opportunities Fund [File No. 811–23028]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On May 29, 2018, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of approximately $79,227 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Dates: The application was filed on July 18, 2018, and amended on August 10, 2018.

Applicant's Address: One Freedom Valley Drive, Oaks, Pennsylvania 19456.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–19377 Filed 9–6–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84012; File No. SR–BX–2018–040]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide New Optional Functionality to Minimum Quantity Orders

August 31, 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 August 20, 2018, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to provide new optional functionality to Minimum Quantity Orders.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to provide a new optional functionality to the Minimum Quantity Order Attribute,[3] which is identical to the optional functionality provided by The Nasdaq Stock Market LLC (''Nasdaq'').[4]

Current Functionality

An Order designated with the Minimum Quantity Order Attribute (''MQ'') allows a market participant to specify a minimum share amount at which it will execute. For example, a market participant seeking to buy or sell a large position may desire to execute only if a large quantity of shares can be traded to reduce the price impact of the security being bought or sold. An Order with MQ will not execute unless the volume of contra-side liquidity available to execute against the order meets or exceeds the designated minimum. When an Order with MQ is received by the Exchange, it will execute immediately[5] if there is sufficient liquidity available on the Exchange within the limit price of the Order with MQ. Specifically, the Order with MQ will execute if the sum of the shares of one or more resting Orders is equal to or greater than its minimum quantity. In the case of multiple resting Orders being aggregated to meet the minimum quantity, each contra-side order creates a separate execution and thus there can be multiple executions that, in aggregate, equal or exceed the minimum quantity. If an Order with MQ does not execute immediately due to lack of contra-side liquidity that is equal to or greater than the designated minimum, the Order will post[6] to the Exchange book as a Non-Displayed Order with the characteristics of its underlying Order Type.[7] Once posted, an Order with MQ will execute only if an incoming Order is marketable against the resting Order with MQ and is equal to or greater than the minimum quantity set on the resting Order with MQ. Multiple potential executions cannot be aggregated to meet the minimum quantity requirement of the posted Order with MQ. If an Order with MQ executes partially and the number

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 4703(e).

[4] *See* Nasdaq Rule 4703(e); *see also* Securities Exchange Act Release No. 73959 (Dec. 30, 2014), 80 FR 582 (Jan. 6, 2015) (SR–NASDAQ–2014–95).

[5] An Order with MQ would satisfy the requirements of Regulation NMS Rule 611 and not trade through a protected quotation. *See* 17 CFR 242.611.

[6] Orders post to the Exchange book only if they are designated with a time in force that allows for posting. For example, an IOC order never posts to the book.

[7] A Non-Displayed Order is an Order Type that is not displayed to other Participants, but nevertheless remains available for potential execution against incoming Orders until executed in full or cancelled. *See* Rule 4702(b)(3). Orders with MQ are always Non-Displayed when posted on the Exchange book.

of shares remaining is less than the minimum quantity of the Order, the minimum quantity of the Order is reduced to the remaining share size. If an Order with MQ is received that is marketable against a resting contra-side Order with size that does not meet the minimum quantity requirement, the Order with MQ will be posted on the Exchange book as a Non-Displayed Order with the characteristics of its underlying Order Type.[8] For example, if an Order with MQ is received to buy 1,000 shares at $10 with a minimum quantity restriction of 500 shares and there is a resting sell order for 300 shares at $10, the Order with MQ will be posted as a Non-Displayed Order at $10. Furthermore, the Exchange notes that a subsequent Order without a minimum quantity restriction that is marketable against the resting contra-side interest will result in an execution because the market participant entering the Order with MQ has expressed its intention not to execute against liquidity below a certain minimum size, and therefore cedes execution priority to any new Orders that would otherwise have a lower priority.

Proposed Functionality

The Exchange is proposing to add a new optional functionality to further enhance the utility of the Minimum Quantity Order Attribute to market participants.[9] As was noted by Nasdaq in proposing the optional functionality proposed herein,[10] some market participants have noted that they avoid sending large Orders with MQ to the Exchange out of concern that such Orders may interact against small Orders entered by professional traders. These market participants are concerned that such interaction may negatively impact the execution of their larger Orders. Often institutional Orders are much larger in size than the average Order in the marketplace. Furthermore, in order to facilitate the liquidation or acquisition of a large position, multiple Orders are submitted into the market, which although larger than the average Order in the market, only represent a small proportion of the overall institutional position to be executed. The various strategies used to execute large size are based on a desire to limit price movement of the stock the institution is pursuing. Executing in small sizes, even if in aggregate it meets a minimum quantity designation, may impact the market such that the additional Orders that the institution has yet to submit to the market may be more costly to execute. If an institution is able to execute in larger sizes, the contra-party to the execution is less likely to be a participant that reacts to short term changes in the stock price and as such the price impact to the stock could be less acute when larger individual executions are obtained by the institution.[11] As a consequence of this concern, these Orders are often executed away from the Exchange in dark pools, at least some of which have the functionality proposed herein,[12] or via broker-dealer internalization.

Accordingly, to attract larger Orders with MQ to the Exchange, it is proposing new optional functionality that will allow a market participant to designate a minimum individual execution size, and thus allow users to avoid interaction with such smaller Orders resting on the book. As discussed above, under the current rule, an incoming Order with MQ will execute against any number of smaller contra-side Orders that, in aggregate, meet the minimum quantity set by the market participant. For example, if a market participant entered an Order with MQ to buy with a price of $10, a size of 1,000 and a minimum quantity of 500, and the order was marketable against two resting sell orders for 300 and 400 shares, the System would aggregate both orders for purposes of meeting the minimum quantity, thus resulting in executions of 300 shares and 400 shares respectively with the remaining 300 shares of the Order with MQ posting to the Exchange book with a minimum quantity restriction of 300 shares. The proposed new optional functionality will not allow aggregation of smaller executions to satisfy the minimum quantity of an incoming Order with MQ. Using the same scenario as above, but with the proposed new functionality and a minimum execution size requirement of 400 shares selected by the market participant, the Order with MQ would not execute against the two sell orders because the order at the top of the Exchange book is less than 400 shares. The new functionality will reprice the Order with MQ to one minimum price increment lower than (higher than) the lowest price (highest price) of the resting contra-side Order, and post the Order to the Exchange book as a Non-Displayed Order when the top of the Exchange book is of insufficient size to satisfy the minimum execution size requirement. Applied to the example above, the Order would post to the Exchange book as a Non-Displayed Order to buy 1,000 shares at $9.99. The Exchange notes that the market participant entering the Order with MQ has expressed its intention not to execute against liquidity below a certain minimum size, and therefore cedes execution priority when it would lock or cross resting Orders against which it would otherwise execute if it were not for the minimum execution size restriction.

The Exchange believes that it is appropriate to adjust the price one minimum price increment lower than (higher than) the lowest price (highest price) of the resting contra-side Order prior to posting on the Exchange book because, by using the minimum execution size option, the submitter of the Order is choosing to reduce the number of situations in which the Order could potentially execute. Thus, an Order without this further restriction provides greater contribution to the price discovery process of the market. All bona fide market participation that results in an execution on a data feed contributes to the price discovery process that is essential to a proper functioning market. However, there are different degrees to which activity within the market contributes to price discovery. A displayed Order at the NBBO of an Exchange, and the subsequent execution thereof, contributes significantly to price discovery because both the Displayed Order prior to execution, and the execution itself, provide a reference price to the market. Further, a non-displayed order on an exchange contributes to price discovery as it is part of the continuous auction on a market with publicly displayed orders and quotes—albeit the contribution of a non-displayed order on an exchange is

[8] SEC Rule 610(d) under Regulation NMS restricts displayed quotations that lock or cross protected quotations in NMS stock, but does not apply to non-displayed trading interest, like a resting Order with MQ. *See* 17 CFR 242.610(d).

[9] The option is available at the port level. Accordingly, all Orders entered through a particular port will receive the selected functionality. All trading ports default to the current functionality.

[10] *See* note 4, *supra.*

[11] The Commission has long recognized this concern: ''Another type of implicit transaction cost reflected in the price of a security is short-term price volatility caused by temporary imbalances in trading interest. For example, a significant implicit cost for large investors (*who often represent the consolidated investments of many individuals*) is the price impact that their large trades can have on the market. Indeed, disclosure of these large orders can reduce the likelihood of their being filled.'' *See* Securities Exchange Act Release No. 42450 (Feb. 23, 2000), 65 FR 10577, 10581 (Feb. 28, 2000) (SR–NYSE–99–48) (emphasis added) (internal citation omitted).

[12] For example, the BIDS Alternative Trading System also has functionality that allows its subscribers to select a minimum size requirement, which prevents a subscriber's interest from interacting with contra-side interest if its size is less than the specified minimum. *See http://www.bidstrading.com/solutions/faqs/.*

less than the contribution of a displayed order on an exchange. Furthermore, a non-displayed order on a dark pool contributes less to price discovery because it is resting in a less transparent trading venue that is not part of the continuous auction of a lit exchange. If one were to rank the contribution to price discovery that different market activity provides, it would include the following (listed from least price discovery contribution to most):

- Order resting in dark pool (no contribution)
- Non-displayed order on exchange (no or very little contribution)
- Order execution in dark pool (some contribution, execution reported publicly via TRF)
- Non-displayed order execution on exchange (contribution as part of continuous auction, execution reported publicly, and priority is behind displayed—*i.e.,* priority is ceded to orders that contribute more to price discovery)
- Displayed order on exchange (significant contribution)
- Displayed order execution on exchange (significant contribution, publicly displayed order + execution reported publicly)

In this sense, the proposed change continues to contribute more meaningfully to price discovery than an order in a dark pool because it is part of the continuous auction market on the exchange but, similar to a regular Non-Displayed Order ceding priority to Displayed Orders on the Exchange, the Order with MQ that uses the proposed functionality will cede price priority to Orders that do not contain the minimum execution size restriction. Also unlike the current process, the proposed new functionality will cancel the remainder of a marketable Order with MQ that is partially filled upon entry if the partially-executed Order with MQ would lock or cross resting contra-side liquidity that does not meet the minimum execution size requirement. Under the current process, an Order with MQ that receives a partial execution has the remainder of the Order posted to the Exchange book as a Non-Displayed Order. The proposed new functionality will, instead, cancel any shares not executed after a partial execution of an Order with MQ if there are more shares that remain resting on the Exchange book at a price that would satisfy the limit price of the Order with MQ but that are not executable against the incoming Order with MQ due to the minimum execution size set on the Order. For example, an Order with MQ to buy priced at $10 with a size of 1,000 and a minimum quantity of 500, that is marketable against two sell orders on the Exchange book, one for 500 shares and one for 400 shares, would result in the execution of 500 shares and the cancellation of the remaining 500 shares. Under the current process, the Order would receive two partial executions of 500 and 400 shares, and the remaining 100 shares would be posted to the Exchange book as a Non-Displayed Order to buy priced at $10.

The Exchange notes that when a non-IOC Order with MQ is partially executed and cancelled in this situation, the contra-side liquidity that is not executed may be Non-Displayed. If an Order with MQ is cancelled due to Non-Displayed contra-side liquidity, the submitter of the Order will know that there may be a resting Order or Orders at the price of the Order with MQ and also that the resting Order or Orders are for fewer shares than the minimum execution size required by the Order. The Exchange believes this is acceptable because the Order with MQ has already partially executed for a size of at least one round lot and thus the Order submitter has taken on risk due to the execution and therefore contributed to price discovery in the market place.

Under the proposed change, a resting Order with MQ will operate the same way as it does currently. When an Order with MQ is posted on the book, it will only execute against incoming Orders if the individual incoming Order is equal to or greater than the minimum designated on the Order. The primary difference between the current functionality and the proposed new functionality is that upon receipt, an incoming Order with MQ will only execute against individual resting Orders if the order at the top of the Exchange book meets or exceeds the minimum on the Order. The Exchange notes that this is no different than Nasdaq's Minimum Quantity Order Attribute, on which the proposed change is based, and is also similar to Cboe BZX Exchange, Inc.'s (''BZX'') Minimum Quantity Order,[13] which allows BZX Users to specify that such an order will not execute against multiple aggregated orders simultaneously and that the minimum quantity condition be satisfied by each individual order resting on the BZX book.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposal will provide market participants, including institutional firms that *ultimately represent individual retail investors in many cases,* with better control over their Orders, thereby providing them with greater potential to improve the quality of their Order executions. Currently, the rule allows the market participant to designate a minimum quantity on an Order that, upon entry, may aggregate multiple executions to meet the minimum quantity requirement. Once posted to the Exchange book, however, the minimum quantity requirement is equivalent to a minimum execution size requirement. The Exchange is now proposing to provide a market participant with control over the execution of their Order with MQ by allowing them an option to designate the minimum individual execution size *upon entry.* The control offered by the proposed change is consistent with the various types of control currently provided by exchange order types. For example, the Exchange, Nasdaq and other exchanges offer limit orders, which allow a market participant control over the price it will pay or receive for a stock.[16] Similarly, exchanges offer order types that allow market participants to structure their trading activity in a manner that is more likely avoid certain transaction cost related economic outcomes.[17] Moreover, and as discussed above, other trading venues provide the very functionality that the Exchange is proposing, with the proposed rule text and operation of the functionality identical to that of Nasdaq.

As discussed above, some market participants have requested the functionality proposed herein so they may avoid transacting with smaller Orders that they believe ultimately increase the cost of the transaction. Market participants, such as large institutions that transact a large number of orders on behalf of retail investors, have noted that because the Exchange does not have this functionality, they avoid sending large orders to the Exchange to avoid potentially more

[13] *See* BZX Rule 11.9(c)(5).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *See, e.g.,* Rule 4703(c).

[17] See, for example, the Exchange's Post-Only Order. *See* Rule 4702(b)(4).

expensive transactions.[18] In this regard, the Exchange notes that proposed new optional functionality may improve the Exchange market by attracting more Order flow, which is currently trading on less transparent venues that contribute less to price discovery and price competition than executions and quotes that occur on lit exchanges. Such new Order flow will further enhance the depth and liquidity on the Exchange, which supports just and equitable principles of trade. Furthermore, the proposed modification to the Minimum Quantity Order Attribute is consistent with providing market participants with greater control over the nature of their executions so that they may achieve their trading goals and improve the quality of their executions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the proposed change allows market participants to condition the processing of their Orders based on a minimum execution size. The changes to the Minimum Quantity Order Attribute will enhance the functionality offered by the Exchange to its members, thereby promoting its competitiveness with other exchanges and non-exchange trading venues that already offer the same or similar functionality. As a consequence, the proposed change will promote competition among exchanges and their peers, which, in turn, will decrease the burden on competition rather than place an unnecessary burden thereon.

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.

[18] As noted, the proposal is designed to attract liquidity to the Exchange by allowing market participants to designate a minimum size of contra-side Order with which to interact, thus providing market participants with functionality that is otherwise available to them on another exchange (*i.e.,* Nasdaq). The designation of a minimum size may reduce the interaction that such new Order flow would have with smaller contra-side Orders on the Exchange, some of which may be retail Order flow. The Exchange notes that since the Order flow attracted by this functionality may also represent retail investors and is in addition to the existing Order flow currently on the Exchange, market quality for retail investors ultimately should not be negatively impacted. Accordingly, the Exchange does not believe that retail Orders will be disadvantaged by the proposed change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20]

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–BX–2018–040 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–BX–2018–040. 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–BX–2018–040 and should be submitted on or before September 28, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–19376 Filed 9–6–18; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84013; File No. SR–BX–2018–025]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Make Permanent the Exchange's Retail Price Improvement Program, Which is Set To Expire on December 31, 2018

August 31, 2018.

On July 9, 2018, Nasdaq BX, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to make permanent the Exchange's Retail Price Improvement Program. The proposed rule change was

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

published for comment in the **Federal Register** on July 26, 2018.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is September 9, 2018.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds it 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 and for the reasons stated above,[5] designates October 24, 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–BX–2018–025).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–19374 Filed 9–6–18; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind a Notice of Intent To Prepare an Environmental Impact Statement for the Southern Evacuation Life Line Project in Georgetown and Horry Counties, SC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to rescind a Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that, effective immediately, we are rescinding a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the proposed Southern Evacuation Life Line (SELL) project in Georgetown and Horry counties, South Carolina.

FOR FURTHER INFORMATION CONTACT: Emily O. Lawton, Division Administrator, Federal Highway Administration, Strom Thurmond Federal Building, 1835 Assembly Street, Suite 1270, Columbia, South Carolina 29201, Telephone: (803) 765–5411, Email: *emily.lawton@dot.gov.*

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the South Carolina Department of Transportation (SCDOT), issued a NOI on March 17, 2006, to prepare an environmental impact statement (EIS) on a proposal for a new alignment roadway, known as the Southern Evacuation Life Line (SELL), located in Georgetown and Horry counties, South Carolina. The purpose of the project was to establish a new alignment hurricane evacuation route for the southeastern portion of Horry County and the northeastern portion of Georgetown County in South Carolina, between U.S. 17 near Garden City, SC, and U.S. 501 near Aynor, SC. The FHWA was initially involved as the lead federal agency for this project as there was a federal earmark of $4 million being used for the project that was being administered by FHWA. A Draft Environmental Impact Statement (DEIS) was prepared and a Notice of Availability was issued on August 15, 2008. However, the proposed project was postponed after the DEIS was published due a lack of funding at that time. The $4 million from the federal earmark that was being administered by FHWA was completely expended for this effort.

In late 2016, Horry County passed the RIDE III Capital Project Sales Tax program, which included an allocation of $25 million for the SELL project to fund preliminary engineering (including the preparation of a new environmental impact statement), as well as right-of-way acquisition, should a build alternative be selected for the project.

Since the federal earmark has been completely expended, and no new federal-aid highway program funding has been identified for the project, FHWA no longer has a federal action per Title 23 of the U.S. Code. In addition, given the amount of time that has passed since the DEIS was completed, SCDOT and Horry County will essentially need to restart the NEPA process for the project. Due to this, the FHWA is issuing a Notice to Rescind the Notice of Intent to prepare and EIS for the SELL project that was initially issued March 17, 2006.

Dated: August 31, 2018.

Emily O. Lawton,

Division Administrator, Columbia, South Carolina.

[FR Doc. 2018–19445 Filed 9–6–18; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0128]

Pipeline Safety: Meeting of the Voluntary Information-Sharing System Working Group

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting of the Voluntary Information-sharing System (VIS) Working Group. The VIS Working Group will convene to discuss and identify recommendations to establish a voluntary information-sharing system.

DATES: The public meeting will be held on October 3, 2018, from 8:30 a.m. to 5:00 p.m. ET. Members of the public who wish to attend in person should register no later than September 26, 2018. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, may notify PHMSA by September 26, 2018. For additional information, see the **ADDRESSES** section.

ADDRESSES: The meeting will be held at U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590. The meeting agenda and additional information will be published on the following VIS Working Group registration page at: *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=139.*

The meetings will not be webcast; however, presentations will be available on the meeting website and posted on the E-Gov website, *https://www.regulations.gov/,* under docket number PHMSA–2016–0128 within 30 days following the meeting.

Public Participation: This meeting will be open to the public. Members of the public who attend in person will also be provided an opportunity to make a statement during the meetings.

Written comments: Persons who wish to submit written comments on the

[3] *See* Securities Exchange Act Release No. 83681 (July 20, 2018), 83 FR 35516.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

meetings may submit them to the docket in the following ways:

E-Gov Website: https://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on Federal holidays.

Instructions: Identify the docket number PHMSA–2016–0128 at the beginning of your comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, consider reviewing DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19477), or view the Privacy Notice at *https://www.regulations.gov* before submitting comments.

Docket: For docket access or to read background documents or comments, go to *https://www.regulations.gov* at any time or to Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on PHMSA–2016- 0128.'' The docket clerk will date stamp the postcard prior to returning it to you via the U.S. mail.

Privacy Act Statement

DOT may solicit comments from the public regarding certain general notices. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For information about the meeting, contact Dr. Christie Murray by phone at 202–366–4996 or by email at *christie.murray@dot.gov.*

Services for Individuals with Disabilities: The public meeting will be physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Christie Murray at *christie.murray@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The VIS Working Group is an advisory committee established in accordance with Section 10 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (Pub. L. 114–183), the Federal Advisory Committee Act of 1972 (5 U.S.C., App. 2, as amended), and 41 CFR 102–3.50(a).

II. Meeting Details and Agenda

The VIS Working Group agenda will include briefings on topics such as mandate requirements, subcommittee considerations, lessons learned, examples of existing information-sharing systems, and proposed subcommittee recommendations. As part of its work, the committee will ultimately provide recommendations to the Secretary, as required and specifically outlined in Section 10 of Public Law 114–183, addressing:

(a) The need for, and the identification of, a system to ensure that dig verification data are shared with in-line inspection operators to the extent consistent with the need to maintain proprietary and security-sensitive data in a confidential manner to improve pipeline safety and inspection technology;

(b) Ways to encourage the exchange of pipeline inspection information and the development of advanced pipeline inspection technologies and enhanced risk analysis;

(c) Opportunities to share data, including dig verification data between operators of pipeline facilities and in-line inspector vendors to expand knowledge of the advantages and disadvantages of the different types of in-line inspection technology and methodologies;

(d) Options to create a secure system that protects proprietary data while encouraging the exchange of pipeline inspection information and the development of advanced pipeline inspection technologies and enhanced risk analysis;

(e) Means and best practices for the protection of safety and security-sensitive information and proprietary information; and

(f) Regulatory, funding, and legal barriers to sharing the information described in paragraphs (a) through (d).

The Secretary will publish the VIS Working Group's recommendations on a publicly available DOT website and in the docket. The VIS Working Group will fulfill its purpose once its recommendations are published online.

PHMSA will publish the agenda on the PHMSA meeting page *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=139,* once it is finalized.

Issued in Washington, DC, on September 4, 2018, under authority delegated in 49 CFR 1.97.

Linda Daugherty,

Deputy Associate Administrator for Field Operations.

[FR Doc. 2018–19453 Filed 9–6–18; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0128]

Pipeline Safety: Meeting of the Voluntary Information-Sharing System Working Group

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting of the Voluntary Information-sharing System (VIS) Working Group. The VIS Working Group will convene to discuss and identify recommendations to establish a voluntary information-sharing system.

DATES: The public meeting will be held on November 9, 2018, from 8:30 a.m. to 5 p.m. ET. Members of the public who wish to attend in person should register no later than November 1, 2018. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, may notify PHMSA by November 1, 2018. For additional information, see the **ADDRESSES** section.

ADDRESSES: The meeting will be held at U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590. The meeting agenda and additional information will be published on the following VIS Working Group registration page at: *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=138.*

The meetings will not be webcast; however, presentations will be available

on the meeting website and posted on the E-Gov website, *https://www.regulations.gov/,* under docket number PHMSA–2016–0128 within 30 days following the meeting.

Public Participation: This meeting will be open to the public. Members of the public who attend in person will also be provided an opportunity to make a statement during the meetings.

Written comments: Persons who wish to submit written comments on the meetings may submit them to the docket in the following ways:

E-Gov Website: https://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on Federal holidays.

Instructions: Identify the docket number PHMSA–2016–0128 at the beginning of your comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, consider reviewing DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19477), or view the Privacy Notice at *https://www.regulations.gov* before submitting comments.

Docket: For docket access or to read background documents or comments, go to *https://www.regulations.gov* at any time or to Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on PHMSA–2016- 0128.'' The docket clerk will date stamp the postcard prior to returning it to you via the U.S. mail.

Privacy Act Statement

DOT may solicit comments from the public regarding certain general notices. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Services for Individuals With Disabilities: The public meeting will be physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Christie Murray at *christie.murray@dot.gov.*

FOR FURTHER INFORMATION CONTACT: For information about the meeting, contact Dr. Christie Murray by phone at 202–366–4996 or by email at *christie.murray@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The VIS Working Group is an advisory committee established in accordance with Section 10 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (Pub. L. 114–183), the Federal Advisory Committee Act of 1972 (5 U.S.C., App. 2, as amended), and 41 CFR 102–3.50(a).

II. Meeting Details and Agenda

The VIS Working Group agenda will include briefings on topics such as mandate requirements, integrity management, data types and tools, in-line inspection and other direct assessment methods, geographic information system implementation, subcommittee considerations, lessons learned, examples of existing information-sharing systems, safety management systems, and more. As part of its work, the committee will ultimately provide recommendations to the Secretary, as required and specifically outlined in Section 10 of Public Law 114–183, addressing:

(a) The need for, and the identification of, a system to ensure that dig verification data are shared with in-line inspection operators to the extent consistent with the need to maintain proprietary and security-sensitive data in a confidential manner to improve pipeline safety and inspection technology;

(b) Ways to encourage the exchange of pipeline inspection information and the development of advanced pipeline inspection technologies and enhanced risk analysis;

(c) Opportunities to share data, including dig verification data between operators of pipeline facilities and in-line inspector vendors to expand knowledge of the advantages and disadvantages of the different types of in-line inspection technology and methodologies;

(d) Options to create a secure system that protects proprietary data while encouraging the exchange of pipeline inspection information and the development of advanced pipeline inspection technologies and enhanced risk analysis;

(e) Means and best practices for the protection of safety and security-sensitive information and proprietary information; and

(f) Regulatory, funding, and legal barriers to sharing the information described in paragraphs (a) through (d).

The Secretary will publish the VIS Working Group's recommendations on a publicly available DOT website and in the docket. The VIS Working Group will fulfill its purpose once its recommendations are published online.

PHMSA will publish the agenda on the PHMSA meeting page *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=138,* once it is finalized.

Issued in Washington, DC, on September 4, 2018, under authority delegated in 49 CFR 1.97.

Linda Daugherty,

Deputy Associate Administrator for Field Operations.

[FR Doc. 2018–19429 Filed 9–6–18; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0208]

Agency Information Collection Activity: Department of Veterans Affairs Acquisition Regulation; Architect-Engineer Fee Proposal; Contractor Production Report; Daily Log and Contract Progress Report

AGENCY: The Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information,

including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 6, 2018.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Rafael Taylor, Office of Acquisition and Logistics (003A2A), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Rafael.Taylor@va.gov.* Please refer to ''OMB Control No. 2900–0208'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OM functions, including whether the information will have practical utility; (2) the accuracy of OM estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Department of Veterans Affairs Acquisition Regulation (VAAR): VA Form 6298 (formerly 10–6298), Architect-Engineer Fee Proposal; VA Form 10101, Contractor Production Report (formerly VA Form 10–6131, Daily Log and VA Form 10–6001a, Contract Progress Report).

OMB Control Number: 2900–0208.

Type of Review: Renewal with changes of a currently approved collection.

Abstract: This Paperwork Reduction Act (PRA) submission seeks renewal with changes of Office of Management and Budget (OMB) approval No. 2900–0208 as follows:

- Replace both existing VA forms 10–6131 (Daily Log (Contract Progress Report—Formal Contract)) and 10–6001a (Contract Progress Report) with one new form, which combines the intended purpose for VA Form 10–6131 and VA Form 10–6001a. The new combined form is now read: ''VA Form 10101, Contractor Production Report.''
- Renumber VA Form 10–6298 Architect-Engineer Fee Proposal, to ''VA Form 6298,'' and revise the contents in the form with updated thresholds and FAR citations.

The above proposed revisions do not change the currently approved burden hours. The actual VA forms 10101 and 6298 can be located at VA Forms website (*http://vaww.va.gov/vaforms/.*)

The Department of Veterans Affairs' Office of Construction and Facilities Management (CFM) manage a multi-million-dollar construction program that involves the design and construction of medical centers, and other VA facilities including building improvements and conversions. The actual construction work is contracted out to private construction firms.

VA Form 6298 (formerly 10–6298), Architect-Engineer Fee Proposal: The use of this form is mandatory for obtaining the proposal and supporting cost or pricing data from the contractor and subcontractor in the negotiation of all architect-engineer contracts for design services when the contract price is estimated to be $50,000 or more. In obtaining architect-engineer services for research study, seismic study, master planning study, construction management and other related services contracts. A Contractor Production Report is also used but supplemented or modified as needed for the particular project type. (VA Acquisition Regulation 836.606–71, Architect-engineer's proposal, and VAAR 853.236–70.)

VA Form 10101, Contractor Production Report (formerly VA Form 10–6131), Daily Log—Formal Contract, and VA Form 10–6001a, Contract Progress Report, depending on the size of the contract: Is used to record the data necessary to ensure the contractor provides sufficient labor and materials to accomplish the contract work. Contractors are required to guarantee the performance of the work necessary to complete the project. VAAR 852.236–79 details what needs to be addressed by the contractor on the Contractor Production Report. Failure to complete Contractor Production Report could result in a claim for non-performance and construction delays against the Government if we were unable to collect this information to administer the contract.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Annual Burden: VA Form 6298—1,000 Burden Hours. VA Form 10101—4,341 Burden Hours.

Estimated Average Burden per Respondent: VA Form 6298—4 Hours. VA Form 10101—24 Minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: VA Form 6298—250. VA Form 10101—10,853.

By direction of the Secretary.

Cynthia D. Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–19400 Filed 9–6–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the Advisory Committee on Former Prisoners of War (FPOW) will meet September 20–23, 2018, from 8 a.m.–5:30 p.m. PDT at the Loma Linda VA Medical Facility located at 11201 Benton Street, Loma Linda, CA 92357. Sessions are open to the public, except when the Committee is conducting a tour of VA facilities. Tours of VA facilities are closed, to protect Veterans' privacy and personal information.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits for Veterans who are FPOWs, and to make recommendations on the needs of such Veterans for compensation, health care, and rehabilitation.

On Thursday, September 20th, the Committee will assemble in open session from 8 a.m. to 5:30 p.m. for discussion and briefings from Veterans Benefits Administration (VBA) and Veterans Health Administration (VHA) officials.

On Friday, September 21st, the Committee will convene an open session to hear briefings from 8 a.m. to 11 a.m. From 11:10 a.m. to 2:30 p.m., the Committee will convene a to travel to and tour the National POW/MIA Memorial. From 2:30 p.m. to 5:30 p.m., the Committee will convene a closed session-to meet at the subcommittee level where they will perform prepatory work covering research areas and

distribution of work load. Under 5 U.S.C. 552b(c) under (9)(B), the meeting is closed because it would reveal information the disclosure of which would, ''in the case of an agency, be likely to significantly frustrate implementation of a proposed agency action.'' Any precipitous release of those discussions through an open session will frustrate implementation and potentially our Veterans who we consider our greatest customer/benefactor of the commission.

On Saturday, September 22nd from 8 a.m. to 9:30 a.m., the Committee will continue its closed session of those discussions items from the previous afternoon meeting. At 10 a.m., the Committee will take part in a National POW/MIA Recognition Day Ceremony at the Loma Linda VA medical center. At 12 p.m., the committee meeting will be formally adjourned. Public participation will commence as follows:

Date	Time	Open session
September 20, 2018.	8 a.m.–5:30 p.m	Yes.
September 21, 2018.	8 a.m.–11 a.m	Yes.
September 21, 2018.	11:10 a.m.–5:30 p.m.	No.
September 22, 2018.	8 a.m.–9:30 a.m	No.
September 22, 2018.	10 a.m.–12 p.m	Yes.

FPOWs who wish to speak at the public forum are invited to submit a 1–2-page commentary for inclusion in official meeting records. Any member of the public may also submit a 1–2-page commentary for the Committee's review.

Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Leslie N. Williams, Designated Federal Officer, Advisory Committee on Former Prisoners of War at *Leslie.Williams1@va.gov* or via phone at (202) 530–9219.

Dated: August 31, 2018.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–19373 Filed 9–6–18; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 83 Friday,
No. 174 September 7, 2018

Part II

Department of Homeland Security

8 CFR Parts 212 and 236

Department of Health and Human Services

45 CFR Part 410

Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 212 and 236

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 410

[DHS Docket No. ICEB–2018–0002]

RIN 1653–AA75, 0970–AC42

Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children

AGENCY: U.S. Immigration and Customs Enforcement (ICE), U.S. Department of Homeland Security (DHS); U.S. Citizenship and Immigration Services (USCIS), DHS; U.S. Customs and Border Protection (CBP), DHS; Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Homeland Security (DHS) and the Department of Health and Human Services (HHS) (''the Departments'') propose to amend regulations relating to the apprehension, processing, care, custody, and release of alien juveniles. In 1985, plaintiffs in a class action lawsuit, Flores v. Reno, challenged the policies of the legacy Immigration and Naturalization Service (INS) relating to the detention, processing, and release of alien juveniles. The parties reached a settlement agreement, referred to as the *Flores* Settlement Agreement (FSA). The FSA, as modified in 2001, provides that it will terminate forty-five days after publication of final regulations implementing the agreement. The rule would adopt in regulations provisions that parallel the relevant and substantive terms of the FSA, consistent with the HSA and TVPRA, with some modifications discussed further below to reflect intervening statutory and operational changes while still providing similar substantive protections and standards. It therefore would terminate the FSA. The rule would satisfy the basic purpose of the FSA in ensuring that all juveniles in the government's custody are treated with dignity, respect, and special concern for their particular vulnerability as minors, while doing so in a manner that is workable in light of subsequent changes. The rule would also implement closely related provisions of the HSA and TVPRA.

Most prominently, the rule would create an alternative to the existing licensed program requirement for family residential centers, so that ICE may use appropriate facilities to detain family units together during their immigration proceedings, consistent with applicable law.

DATES: Written comments and related material must be submitted on or before November 6, 2018.

ADDRESSES: You may submit comments on the entirety of this proposed rule package identified by DHS Docket No. ICEB–2018–0002, by any *one* of the following methods:

- *Federal eRulemaking Portal (preferred): https://www.regulations.gov.* Follow the website instructions for submitting comments.
- *Email: ICE.Regulations@ice.dhs.gov.* Include DHS Docket No. ICEB–2018–0002 in the subject line of the message.
- *Mail:* Debbie Seguin, Assistant Director, Office of Policy, U.S. Immigration and Customs Enforcement, Department of Homeland Security, 500 12th Street SW, Washington, DC 20536. To ensure proper handling, include DHS Docket No. ICEB–2018–0002 in your correspondence. Mail must be postmarked by the comment submission deadline.
- *Hand Delivery/Courier:* Visitor Entrance, U.S. Immigration and Enforcement, Department of Homeland Security, 500 12th Street SW, Washington, DC 20536.

Instructions: All comments submitted outside of the Federal eRulemaking Portal must include the docket number for this rulemaking. All comments received may be posted without change to the Federal eRulemaking Portal at *https://www.regulations.gov,* including any personal or commercial information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

For DHS: Debbie Seguin, Assistant Director, Office of Policy, U.S. Immigration and Enforcement, Department of Homeland Security, 500 12th Street SW, Washington, DC 20536. Telephone 202–732–6960 (not a toll-free number).

For HHS: Division of Policy, Office of the Director, Office of Refugee Resettlement, Administration for Children and Families, by email at *UACPolicy@acf.hhs.gov.* Do not email comments on the proposed rule to this address. Office of Refugee Resettlement, 330 C Street SW, Washington, DC 20201. Telephone 202–401–9246.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Public Participation

We encourage all interested parties to participate in this rulemaking by submitting written comments, views, and data on all aspects of this proposed rule. The Departments also invite comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. All comments received will be posted, without change, to *https://*

www.regulations.gov as part of the public record and will include any personal or commercial information you provide.

A. Submitting Comments

All comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to the Departments will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. If you submit comments, please indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. As this rule is being promulgated by two Departments, it is especially helpful if your comment, and each relevant part of that comment, indicates a specific section to which it applies, or at a minimum each specific Department or Departments to which it is addressed. In this way, the comment may be better understood and distributed to the appropriate Department for response. You may submit your comments and materials online or by mail, but please use only one of these means. If you submit a comment online via *https://www.regulations.gov,* it will be considered received when it is received at the Docket Management Facility.

Instructions: To submit your comments online, go to *https://www.regulations.gov,* and insert ''ICEB–2018–0002'' in the ''Search'' box. Click on the ''Comment Now!'' box and input your comment in the text box provided. Click the ''Continue'' box, and if you are satisfied with your comment, follow the prompts to submit it. If you submit your comments by mail, you must include DHS Docket No. ICEB–2018–0002, and submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic scanning and filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal or commercial information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal or commercial information that you provide in any voluntary public comment submission you make to the Departments. The Departments may withhold information provided in comments from public viewing that is determined may impact the privacy of an individual or is offensive. For additional information, please read the ''Privacy and Security Notice'' that is available via the link in the footer of *https://www.regulations.gov.*

We will consider all comments and materials received during the comment period and may change this rule based on your comments.

Note: The Departments will only consider comments timely submitted to the docket for this rulemaking. In light of the period of time that has elapsed since the 1998 DOJ proposed rule on this topic, the Departments have established a new docket for this rulemaking. Comments submitted to the Departments on this topic prior to opening of the docket for this proposed rule will *not* be incorporated into the docket for this rulemaking; commenters should resubmit those comments, with necessary updates, as appropriate.

B. Viewing Comments and Documents

Docket: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov* and insert ''ICEB–2018–0002'' in the ''Search'' box. Click on the ''Open Docket Folder,'' and you can click on ''View Comment'' or ''View All'' under the ''Comments'' section of the page. Individuals without internet access can make alternate arrangements for viewing comments and documents related to this rulemaking by contacting ICE through the **FOR FURTHER INFORMATION CONTACT** section above. *You may also sign up for email alerts on the online docket to be notified when comments are posted or a final rule is published.*

C. Privacy Act

As stated in the Submitting Comments section above, please be aware that anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

II. Table of Abbreviations

ACF—Administration for Children and Families
BPA—U.S. Border Patrol Agent
CBP—U.S. Customs and Border Protection
CBPO—U.S. Customs and Border Protection Officer
DHS—U.S. Department of Homeland Security
DOJ—U.S. Department of Justice
EOIR—Executive Office for Immigration Review
FRC—Family Residential Center
FSA—*Flores* Settlement Agreement
HHS—U.S. Department of Health and Human Services
HSA—Homeland Security Act of 2002
ICE—U.S. Immigration and Customs Enforcement
IIRIRA—Illegal Immigration Reform and Immigrant Responsibility Act of 1996
INA—Immigration and Nationality Act
INS—Immigration and Naturalization Service
JFRMU—Juvenile and Family Residential Management Unit
OFO—U.S. Customs and Border Protection, Office of Field Operations
OMB—Office of Management and Budget
ORR—Office of Refugee Resettlement, U.S. Department of Health and Human Services
TVPRA—William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008
UAC(s)—Unaccompanied Alien Child(ren)
USCIS—U.S. Citizenship and Immigration Services
USBP—U.S. Border Patrol, U.S. Customs and Border Protection

III. Executive Summary

A. Purpose of the Regulatory Action

This rulemaking would implement the relevant and substantive terms of the *Flores* Settlement Agreement (FSA), with such limited changes as are necessary to implement closely-related provisions of the Homeland Security Act of 2002 (HSA), Public Law 107–296, sec. 462, 116 Stat. 2135, 2202, and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110–457, title II, subtitle D, 122 Stat. 5044. The proposed regulations would take account of certain changed circumstances, ensure that the regulations accomplish a sound and proper implementation of governing federal statutes, and set forth a sustainable operational model of immigration enforcement. For example, one operational shift under the FSA has been the extension of the agreement to apply to accompanied minors, *i.e.,* juveniles who arrive at the border with their parents or legal guardians. That has created a series of operational difficulties, most notably with respect to a state-licensing requirement for a family residential center (FRC) in which such parents/legal guardians and children may be placed during immigration proceedings. Additionally, changes to the operational environment since 1997, as well as the enactment of the HSA and the TVPRA, have rendered some of the substantive terms of the FSA outdated, similarly making compliance with the HSA, the TVPRA, other immigration laws, and the FSA problematic without some modification of the literal text of the FSA. These provisions are designed, however, so that they still implement the substantive

and underlying purpose of the FSA, by ensuring that juveniles are provided materially identical protections as under the FSA itself. Therefore, the Departments are proposing these regulations to allow the public to comment on our proposed framework for compliance with the FSA, consistent with current law.

From a practical perspective, one of the most important changes from the literal text of the FSA would be the licensing requirement that applies to programs in which minors may be detained during immigration proceedings. Under the FSA, such facilities must be licensed ''by an appropriate State agency . . . for dependent children.'' FSA paragraph 6. That requirement is sensible for unaccompanied alien children, because all States have licensing schemes for the housing of unaccompanied juveniles who are by definition ''dependent children,'' and accordingly the rule would not change that requirement for those juveniles. But the need for the license to come specifically from a ''state agency'' (rather than a federal agency) is problematic now that the FSA has been held to apply to accompanied minors, including those held at FRCs, because States generally do not have licensing schemes for facilities to hold minors who are together with their parents or legal guardians, and therefore are by definition not ''dependent children.'' The application of the FSA's requirement for ''state'' licensing to accompanied minors can effectively require DHS to release minors from detention in a non-state-licensed facility even if the parent/legal guardian and child would otherwise continue to be detained together during their removal proceedings, consistent with applicable law. The rule here would eliminate that barrier to the continued use of FRCs, by creating an alternative federal licensing scheme for such facilities. The goal is to provide materially identical assurances about the conditions of such facilities, and thus to implement the underlying purpose of the FSA's licensing requirement, and in turn to allow families to remain together during their immigration proceedings.

B. Legal Authority

The Secretary of Homeland Security derives her authority to promulgate these proposed regulatory amendments primarily from the Immigration and Nationality Act (INA or Act), as amended, 8 U.S.C. 1101 *et seq.* The Secretary may ''establish such regulations'' as she deems necessary for carrying out her authorities under the INA. INA sec. 103(a)(3), 8 U.S.C. 1103(a)(3). In addition, section 462 of the HSA and section 235 of the TVPRA prescribe substantive requirements and procedural safeguards to be implemented by DHS and HHS with respect to unaccompanied alien children (UACs). There have also been a series of court decisions arising out of the FSA. *See, e.g., Flores* v. *Sessions,* 862 F.3d 863 (9th Cir. 2017); *Flores* v. *Lynch,* 828 F.3d 898 (9th Cir. 2016); *Flores* v. *Sessions,* No. 2:85–cv–04544 (C.D. Cal. June 27, 2017).

Section 462 of the HSA also transferred to the Office of Refugee Resettlement (ORR) Director ''functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Commissioner of Immigration and Naturalization.'' 6 U.S.C. 279(a). The ORR Director may, for purposes of performing a function transferred by this section, ''exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function'' immediately before the transfer of the program. 6 U.S.C. 279(f)(1).

Consistent with provisions in the HSA, the TVPRA places the responsibility for the care and custody of all UACs who are not eligible to be repatriated to a contiguous country with the Secretary of Health and Human Services.[1] Prior to the transfer of the program, the Commissioner of Immigration and Naturalization, through a delegation from the Attorney General, had authority ''to establish such regulations . . . as he deems necessary for carrying out his authority under the provisions of this Act.'' INA sec. 103(a)(3), 8 U.S.C. 1103(a)(3) (2002); 8 CFR 2.1 (2002). In accordance with the relevant savings and transfer provisions of the HSA, *see* 6 U.S.C. 279, 552, 557; *see also* 8 U.S.C. 1232(b)(1), the ORR Director now possesses the authority to promulgate regulations concerning ORR's administration of its responsibilities under the HSA and TVPRA, and the FSA at paragraph 40, as well, specifically envisions promulgation of such regulations.

C. Costs and Benefits

This proposed rule would implement the FSA by putting in regulatory form measures that materially parallel its standards and protections, and also by codifying the current requirements for complying with the FSA, the HSA, and TVPRA. U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) encounter minors and UACs in different manners. CBP generally encounters UACs and minors at the border. In Fiscal Year (FY) 2017, CBP apprehended 113,920 juveniles.[2] Generally, ICE encounters minors either upon transfer from CBP to a family residential center (FRC), or during interior enforcement actions. In FY 2017, 37,825 family members were booked into ICE's three FRCs, 20,606 of whom were minors. ICE generally encounters UACs when it transports UACs who are transferred out of CBP custody to ORR custody, as well as during interior enforcement actions.

The Departments consider their current operations and procedures for implementing the terms of the FSA, the HSA, and the TVPRA to be the baseline for the analysis of costs and benefits. DHS already incurs the costs for these operations; therefore, they are not costs of this proposed rule. A primary source of new costs for the proposed rule would be a result of the proposed alternative licensing process, which would allow ICE to continue detaining some minors along with their accompanying parent or legal guardian in FRCs. ICE also is proposing changes to its current practice for parole determinations to align them with applicable statutory and regulatory authority, which may result in fewer minors or their accompanying parent or legal guardian released on parole. These changes may increase variable annual FRC costs paid by ICE. While DHS acknowledges that this rule may result in additional or longer detention for certain minors, DHS is unsure how many individuals will be detained at FRCs after this rule is effective or for how much longer individuals may be detained because there are so many other variables to consider. Therefore, DHS is unable to provide a quantified estimate of any increased FRC costs. DHS is also unable to provide an estimate of the cost of any increased detention on the individuals being detained. HHS does not anticipate significant new costs associated with this rule, although it will assume some costs from the Department of Justice related to hearings for UACs, with potential associated start-up costs.

[1] Some UACs from contiguous countries may be permitted to withdraw their application for admission and be repatriated. These UACs are not referred to HHS. 8 U.S.C. 1232(a)(2).

[2] Throughout this Notice of Proposed Rulemaking, the Departments generally use the term ''juvenile'' to refer to any alien under the age of 18. For further explanation, see below for discussion of the terms ''juvenile,'' ''minor,'' and ''unaccompanied alien child (UAC).''

The primary benefit of the proposed rule would be to implement the FSA in regulations, and in turn to terminate the agreement as contemplated by the FSA itself. The result would be to provide for the sound administration of the detention and custody of alien minors and UACs to be carried out fully, pursuant to the INA, HSA, TVPRA, and existing regulations issued by the Departments responsible for administering those statutes, rather than partially carried out via a decades-old settlement agreement. The rule would ensure that applicable regulations reflect the Departments' current operations with respect to minors and UACs in accordance with the relevant and substantive terms of the FSA and the TVPRA, as well as the INA. Further, by modifying the literal text of the FSA in limited cases to reflect and respond to intervening statutory and operational changes, DHS will ensure that it retains discretion to detain families, as appropriate and pursuant to its statutory and regulatory authorities, to meet its enforcement needs, but while still providing similar protections to minors. HHS was not an original party to the FSA and instead inherited administration of some of its provisions. The proposed rule similarly benefit HHS as it clearly delineates ORR's responsibilities from that of other Federal partners. Additionally, the proposed implementation of the FSA's substantive provisions, specifically the minimum standards for licensed facilities and the release process, would provide clear standards for the program's network of state licensed facilities.

IV. Background and Purpose

A. History

Prior to the enactment of the HSA, the Attorney General and the legacy INS had the primary authority to administer and enforce the immigration laws. In the period leading up to the *Flores* litigation in the mid-1980s, the general nationwide INS policy, based on regulations promulgated in 1963 and the Juvenile Justice and Delinquency Prevention Act of 1974, was that alien juveniles could petition an immigration judge for release from INS custody if an order of deportation was not final. *See Reno* v. *Flores,* 507 U.S. 292, 324–25 (1993). In 1984, the Western Region of the INS implemented a different release policy for juveniles, and the INS later adopted that policy nationwide. Under that policy, juveniles could only be released to a parent or a legal guardian. The rationale for the policy was two-fold: (1) To protect the juvenile's welfare and safety, and (2) to shield the INS from possible legal liability. The policy allowed alien juveniles to be released to other adults only in unusual and extraordinary cases at the discretion of the District Director or Chief Patrol Agent. *See Flores* v. *Meese,* 942 F.2d 1352 (9th Cir. 1991) (en banc).

On July 11, 1985, four alien juveniles filed a class action lawsuit in the U.S. District Court for the Central District of California, *Flores* v. *Meese,* No. 85–4544 (C.D. Cal. filed July 11, 1985). The case ''ar[ose] out of the INS's efforts to deal with the growing number of alien children entering the United States by themselves or without their parents (unaccompanied alien minors).'' *Flores* v. *Meese,* 934 F.2d 991, 993 (9th Cir. 1990). The class was defined to consist of ''all persons under the age of eighteen (18) years who have been, are, or will be arrested and detained pursuant to 8 U.S.C. 1252 by the INS within the INS' Western Region and who have been, are, or will be denied release from INS custody because a parent or legal guardian fails to personally appear to take custody of them.'' *Id.* at 994.). The *Flores* litigation challenged ''(a) the [INS] policy to condition juveniles' release on bail on their parents' or legal guardians' surrendering to INS agents for interrogation and deportation; (b) the procedures employed by the INS in imposing a condition on juveniles' bail that their parents' or legal guardians' [sic] surrender to INS agents for interrogation and deportation; and (c) the conditions maintained by the INS in facilities where juveniles are incarcerated.'' *See Flores* Compl. paragraph 1. The plaintiffs claimed that the INS's release and bond practices and policies violated, among other things, the INA, the Administrative Procedure Act, and the Due Process Clause and Equal Protection Guarantee under the Fifth Amendment. *See id.* paragraphs 66–69.

Prior to a ruling on any of the issues, on November 30, 1987, the parties entered into a Memorandum of Understanding (MOU) on the conditions of detention. The MOU stated that minors in INS custody for more than 72 hours following arrest would be housed in facilities that met or exceeded the standards set forth in the April 29, 1987, U.S. Department of Justice Notice of Funding in the **Federal Register** and in the document ''Alien Minors Shelter Care Program—Description and Requirements.'' *See* Notice of Availability of Funding for Cooperative Agreements; Shelter Care and Other Related Services to Alien Minors, 52 FR 15569, 15570 (Apr. 29, 1987). The Notice provided that eligible grant applicants for the funding described in the Notice included organizations that were ''appropriately licensed or can expeditiously meet applicable state licensing requirements for the provision of shelter care, foster care, group care and other related services to dependent children . . . .'' *Id.*

At approximately the same time that the MOU was executed, the INS published a proposed rule on the Detention and Release of Juveniles to amend 8 CFR parts 212 and 242. *See* 52 FR 38245 (Oct. 15, 1987). The stated purpose of the rule was ''to codify the [INS] policy regarding detention and release of juvenile aliens and to provide a single policy for juveniles in both deportation and exclusion proceedings.'' The INS issued a final rule in May 1988. 53 FR 17449 (May 17, 1988). The rule provided for release to a parent, guardian, or other relative, and discretionary release to other adults. *See* 53 FR at 17451. It also provided that when adults are in detention, INS would consider release of the adult and parent. *Id.*

On May 24, 1988, the district court where the original *Flores* case was filed held that the recently codified INS regulation, 8 CFR 242.24 (1988), governing the release of detained alien minors, violated substantive due process, and ordered modifications to the regulation. The district court also held that INS release and bond procedures for detained minors in deportation proceedings fell short of the requirements of procedural due process, and therefore ordered the INS ''forthwith'' to provide to any minor in custody an ''administrative hearing to determine probable cause for his arrest and the need for any restrictions placed upon his release.'' *Flores* v. *Meese,* 934 F.2d 991, 993 (9th Cir. 1990) (quoting the district court). The INS appealed, and the Ninth Circuit reversed the district court's holdings that the INS exceeded its statutory authority in promulgating 8 CFR 242.24 and that the regulation violated substantive due process. The Ninth Circuit also reversed the district court's procedural due process holding, identified the legal standard that the district court should have applied, and remanded the issue for the district court to further explore the issue. *Id.* at 1013. On rehearing en banc, however, the Ninth Circuit vacated the original panel's opinion, affirmed the district court's holding, and held that INS's regulation was invalid because the regulation violated the alien child's due process and habeas corpus rights, and detention where the alien child was otherwise eligible for release on bond or recognizance to a custodian

served no legitimate purpose of the INS. *Flores* v. *Meese,* 942 F.2d 1352 (9th Cir. 1991) (en banc) (''The district court correctly held that the blanket detention policy is unlawful. The district court's order appropriately requires children to be released to a responsible adult where no relative or legal guardian is available, and mandates a hearing before an immigration judge for the determination of the terms and conditions of release.'').

The INS appealed, and in 1993, the U.S. Supreme Court rejected Plaintiffs' facial challenge to the constitutionality of the INS's regulation concerning the care of alien juveniles. *Reno* v. *Flores,* 507 U.S. 292 (1993). The Supreme Court held that the regulations did not violate any substantive or procedural due process rights or equal protection principles. *Id.* at 306, 309. According to the Court, the regulations did not exceed the scope of the Attorney General's discretion under the INA to continue custody over arrested aliens, because the challenged regulations rationally pursued the lawful purpose of protecting the welfare of such juveniles. *Id.* at 315.

The regulations promulgated in 1988 have remained in effect since publication, but were moved to 8 CFR 236.3 in 1997. *See* 62 FR 10312, 10360 (Mar. 6, 1997). They were amended in 2002 when the authority to decide issues concerning the detention and release of juveniles was moved to the Director of the Office of Juvenile Affairs from the District Directors and Chief Patrol Agents. *See* 67 FR 39255, 39258 (June 7, 2002).

The Supreme Court decision in *Reno* v. *Flores* only resolved one of the issues in the case. The district court approved the FSA on January 28, 1997. In 1998, the INS published a proposed rule having a basis in the substantive terms of the FSA, entitled Processing, Detention, and Release of Juveniles. *See* 63 FR 39759 (July 24, 1998). In 2001 the parties added a stipulation in the FSA, which terminates the FSA ''45 days following defendants' publication of final regulations implementing t[he] Agreement.'' Stipulated Settlement Agreement paragraph 40 [hereinafter FSA], *Flores* v. *Reno,* No. CV 85–4544–RJK(Px) (C.D. Cal. Dec. 7, 2001). In January 2002, the INS reopened the comment period on the 1998 proposed rule, 67 FR 1670 (Jan. 14, 2002), but the rulemaking was ultimately abandoned. The U.S. District Court for the Central District of California has continued to rule on various motions filed in the case and oversee enforcement of the MOU and later the FSA.

Whereas only one Department was involved in the creation of the FSA, three Departments now implement the FSA's substantive terms. After the 2001 Stipulation, Congress enacted the HSA and the TVPRA, both of which impact the treatment of alien juveniles. Among other changes, the HSA created DHS and, along with the TVPRA, transferred the functions under the immigration laws with respect to the care and then custody of UACs referred by other Federal agencies to HHS ORR. The TVPRA also further regulated the Departments' respective roles with respect to UACs. *See* 6 U.S.C. 111(a), 279; 8 U.S.C. 1232(b)(1).

To summarize those roles under the current statutory framework: DHS apprehends, provides care and custody for, transfers, and removes alien minors; DHS apprehends, transfers, and removes UACs; and ORR provides for care and custody of UACs who are in federal custody (other than those permitted to withdraw their application for admission) referred to ORR by other Departments. DHS and HHS are therefore now proposing to issue regulations implementing the relevant and substantive terms of the FSA, consistent with the HSA and TVPRA, and in turn to terminate the FSA.

B. Authority

1. Statutory and Regulatory Authority

a. Immigration and Nationality Act and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996

The INA, as amended, provides the primary authority for DHS to detain certain aliens for violations of the immigration laws. Congress expanded legacy INS's detention authority in IIRIRA, Public Law 104–208, 110 Stat. 3009. In that legislation, Congress amended the INA by providing that certain aliens were subject to either mandatory or discretionary detention by the INS. This authorization flowed to DHS after the reorganization under the HSA. Specifically, DHS's authority to detain certain aliens comes from sections 235, 236, and 241 of the INA, 8 U.S.C. 1225, 1226, and 1231. Section 235 of the INA, 8 U.S.C. 1225, provides that applicants for admission to the United States, including those subject to expedited removal, shall be detained during their removal proceedings, although such aliens may be released on parole in limited circumstances, consistent with the statutory standard set forth in 8 U.S.C. 1182(d)(5) and standards set forth in the regulations. Section 236 of the INA, 8 U.S.C. 1226, provides the authority to arrest and detain an alien pending a decision on whether the alien is to be removed from the United States, and section 241, 8 U.S.C. 1231, authorizes the detention of aliens during the period following the issuance of a final order of removal. Other provisions of the INA also mandate detention of certain classes of individuals, such as criminal aliens.

b. Homeland Security Act of 2002

As noted, the HSA, Public Law 107–296, 116 Stat. 2135, transferred most of the functions of the INS from DOJ to the newly-created DHS. DHS and its various components are responsible for border security, interior immigration enforcement, and immigration benefits adjudication, among other duties. DOJ's EOIR retained its pre-existing functions relating to the immigration and naturalization of aliens, including conducting removal proceedings and adjudicating defensive filings of asylum claims.

The functions regarding care of UACs were transferred from the INS to ORR. The HSA states ORR shall be responsible to coordinate and implement the care and placement of UACs who are in Federal custody by reason of their immigration status. ORR was also tasked with identifying a sufficient number of qualified individuals, entities, and facilities to house UACs, and with ensuring that the interests of the child are considered in decisions and actions relating to his or her care and custody.

c. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008

Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110–457, Title II, Subtitle D, 122 Stat. 5044 (codified in principal part at 8 U.S.C. 1232), then stated that consistent with the HSA, and except as otherwise provided with respect to certain UAC from contiguous countries (*see* 8 U.S.C. 1232(a)), the care and custody of all UAC, including responsibility for their detention, where appropriate, shall be the responsibility of HHS. The TVPRA, among other things, requires federal agencies to notify HHS within 48 hours of apprehending or discovering a UAC, or receiving a claim or having suspicion that an alien in their custody is an unaccompanied minor under 18 years of age. 8 U.S.C. 1232(b)(2). The TVPRA further requires that, absent exceptional circumstances, any federal agency transfer a UAC to the care and custody of HHS within 72 hours of determining that an alien in its custody is a UAC. 8 U.S.C. 1232(b)(3).

The Secretary of HHS delegated the authority under the TVPRA to the

Assistant Secretary for Children and Families, 74 FR 14564 (2009), who in turn delegated the authority to the ORR Director, 74 FR 1232 (2009).

2. *Flores* Settlement Agreement Implementation

As discussed above, in 1996 the U.S. Government and *Flores* plaintiffs entered into the FSA to resolve nationwide the ongoing litigation concerning the INS's detention regulations for alien minors. The FSA was executed on behalf of the Government on September 16, 1996. The U.S. District Court for the Central District of California approved the FSA on January 28, 1997. The FSA became effective upon its approval by the district court, and provided for continued oversight by that court.

Paragraph 9 of the FSA explains its purpose: To establish a ''nationwide policy for the detention, release, and treatment of minors in the custody of the INS.'' Paragraph 4 defines a ''minor'' as ''any person under the age of eighteen (18) years who is detained in the legal custody of the INS,'' but the definition excludes minors who have been emancipated or incarcerated due to a criminal conviction as an adult. The FSA established procedures and conditions for processing, transportation, and detention following apprehension, and set forth the procedures and practices that the parties agreed should govern the INS's discretionary decisions to release or detain minors and to whom they should or may be released.

The FSA was originally set to expire within five years, but on December 7, 2001, the Parties agreed to a termination date of ''45 days following defendants' publication of final regulations implementing this Agreement.'' A copy of the FSA and the 2001 Stipulation is available in the docket for this rulemaking. The primary purpose of the regulations is to ''implement[] the Agreement,'' and in turn to terminate the FSA.

3. Recent Court Orders

a. Motion To Enforce I

On January 26, 2004, Plaintiffs filed their first motion to enforce the agreement, alleging, among other things, that CBP and ICE: (1) Regularly failed to release class members [3] to caregivers other than parents when parents refuse to appear; (2) routinely failed to place detained class members in the least restrictive setting; (3) failed to provide class members adequate education and mental health services, and (4) exposed class members to dangerous and unhealthy conditions. Ultimately, after a lengthy discovery process in which the government provided Plaintiffs numerous documents related to the government's compliance with the FSA, Plaintiffs filed a Notice of Withdrawal of Motion to Enforce Settlement on November 14, 2005. The court dismissed the matter on May 10, 2006.

b. Motion To Enforce II

On February 2, 2015, Plaintiffs filed a second motion to enforce the agreement, alleging that CBP and ICE were in violation of the FSA because: (1) ICE's supposed no-release policy—*i.e.,* an alleged policy of detaining all female-headed families, including children, for as long as it takes to determine whether they are entitled to remain in the United States—violated the FSA; (2) ICE's routine confinement of class members in secure, unlicensed facilities breached the Agreement; and (3) CBP exposed class members to harsh and substandard conditions, in violation of the Agreement.

On July 24, 2015, the district court granted Plaintiffs' second motion to enforce and denied Defendant DHS's contemporaneous motion to modify the agreement. *Flores* v. *Johnson,* 212 F. Supp. 3d 864 (C.D. Cal. 2015). The court found: (1) The FSA applied to all alien minors in government custody, including those accompanied by their parents or legal guardians; (2) ICE's blanket no-release policy with respect to minors accompanied by their mothers was a material breach of the FSA; (3) the FSA requires Defendant DHS to release minors with their accompanying parent or legal guardian unless this would create a significant flight risk or a safety risk; (4) DHS housing minors in secure and non-licensed FRCs violated the FSA; and (5) CBP violated the FSA by holding minors and UACs in facilities that were not safe and sanitary. *Id.*

On August 21, 2015, the court denied the Government's motion to reconsider and issued a subsequent remedial order for DHS to implement six remedies. *Flores* v. *Lynch,* 212 F. Supp. 3d 907 (C.D. Cal. 2015). In the decision, the court clarified that, as provided in FSA paragraph 12(A), in the event of an emergency or influx, DHS need not transfer minors to a ''licensed program'' pursuant to the 3- and 5-day requirements of paragraph 12(A), but must transfer such minors ''as expeditiously as possible.'' In the decision, the court referenced the Government's assertion that DHS, on average, would detain minors who are not UACs for 20 days—the general length of time required to complete credible and reasonable fear processing at that time for aliens in expedited removal. The court agreed that if 20 days was ''as fast as [the Government] . . . can possibly go,'' the Government's practice of holding accompanied minors in its FRCs, even if not ''licensed'' and ''non-secure'' per FSA paragraph 19, may be within the parameters of FSA paragraph 12(A). *Id.* at 914. In a decision issued on July 6, 2016, the Ninth Circuit agreed with the district court that during an emergency or influx, minors must be transferred ''as expeditiously as possible'' to a non-secure, licensed facility. *Flores* v. *Lynch,* 828 F.3d. 898, 902–03 (9th Cir. 2016). The Ninth Circuit affirmed the district court's holding that the FSA ''unambiguously'' applies to all alien minors and UACs in government custody [4] and concluded the district court did not abuse its discretion in denying the Government's motion to modify the FSA. The Ninth Circuit, however, reversed the district court's determination that the FSA required the release of accompanying parents. *Id.*

c. Motion To Enforce III

On May 17, 2016, plaintiffs filed a third motion to enforce the agreement, claiming that DHS continued to violate the agreement by: (1) Holding class members in CBP facilities that did not meet the requirements of the FSA; (2) failing to advise class members of their rights under the FSA; (3) making no efforts to release or reunify class members with family members; (4) holding class members routinely with unrelated adults; (5) detaining class members for weeks or months in secure, unlicensed facilities in violation of the FSA; and (6) interfering with class members' right to counsel. The Government filed a response on June 3, 2016.

On June 27, 2017, the district court issued an opinion concluding that ICE had not complied with the FSA because it had failed to advise class members of their rights under the FSA, failed to make continuous efforts to release class

[3] In this context, ''class members'' means minors (as defined in the FSA), including both UACs and accompanied minors.

[4] DHS continues to maintain that the terms of the FSA were intended to apply only to those alien children who were unaccompanied. In its brief opposing the Plaintiffs' Motion to Enforce II, DHS pointed out that the FSA was entered into for the purpose of settling a lawsuit challenging the constitutionality of the Government's policies, practices, and regulations regarding the detention and release of unaccompanied minors. *See* Def.'s Resp. in Opp'n to Mot. To Enforce Settlement of Class Action at 11, *Flores* v. *Lynch,* 212 F. Supp. 3d 907 (C.D. Cal. 2015) (No. CV 58–4544). This proposed rule, however, covers both accompanied and unaccompanied minors.

members, and failed to release class members as required by FSA paragraphs 12(A) and 14. The Court also found that FRCs were unlicensed and secure. *Flores* v. *Sessions,* No. 2:85–cv–04544 (C.D. Cal. June 27, 2017). The district court, however, rejected the claims that ICE had impermissibly detained class members with unrelated adults and interfered with class members' right to counsel.

The district court also concluded that CBP acted in violation of the FSA in the Rio Grande Valley Border Patrol Sector. The court pointed to allegations that CBP failed to provide class members adequate access to food and water, detained class members in conditions that were not safe and sanitary, and failed to keep the temperature of the holding cells within a reasonable range. The court ordered the appointment of a Juvenile Coordinator for ICE and CBP, responsible for monitoring the agencies' compliance with the Agreement. The Government's appeal of that decision remains pending. *See Flores* v. *Sessions,* No. 17–56297 (9th Cir.) (docketed Aug. 28, 2017). On July 27, 2018, the district court ordered the appointment of an independent monitor to oversee compliance with the June 27, 2017 Order.

d. Motion To Enforce IV

On August 12, 2016, Plaintiffs filed a fourth motion to enforce the agreement, claiming that ORR violated the agreement by failing to provide UACs in ORR custody with a bond redetermination hearing by an immigration judge. The Government argued that the HSA and the TVPRA effectively superseded the FSA's bond-hearing requirement with respect to UACs, that only HHS could determine the suitability of a sponsor (thus determining release), and that immigration judges lacked jurisdiction over UACs in ORR custody. The district court agreed that only HHS could determine the suitability of a sponsor, but disagreed that subsequent laws fully superseded the FSA.

On January 20, 2017, the court found that HHS breached the FSA by denying UACs the right to a bond hearing as provided for in the FSA. *Flores* v. *Lynch,* No. 2:85–cv–04544, 2017 WL 6049373 (C.D. Cal. Jan. 20, 2017). The Government appealed to the Ninth Circuit. On July 5, 2017, the Ninth Circuit affirmed the district court's ruling. The Ninth Circuit reasoned that if Congress had intended to terminate the settlement agreement in whole or in part through passage of the HSA or TVPRA, it would have said so specifically. *Flores* v. *Sessions,* 862 F.3d 863 (9th Cir. 2017). The Government did not seek further review of this decision.

e. Motion To Enforce V

On April 16, 2018, Plaintiffs filed a fifth motion to enforce the agreement, claiming ORR unlawfully denied class members licensed placements, unlawfully medicated youth without parental authorization, and peremptorily extended minors' detention on suspicion that available custodians may be unfit. On July 30, 2018, the district court issued an Order. *Flores* v. *Sessions,* 2:85–cv–04544–DMG–AGR (ECF No. 470, Jul. 30, 2018).[5] The Order discussed the Shiloh Residential Treatment Center and placement therein, as well as informed consent for psychotropic drugs in such Center; placement in secure facilities; notice of placement in secure and staff-secure facilities; Director-level review of children previously placed in secure or staff-secure facilities and other issues. Readers should refer to the full Order for details.

f. Motion for Relief

On June 21, 2018, in accordance with the President's June 20, 2018, Executive Order ''Affording Congress an Opportunity to Address Family Separation,'' the Government sought limited emergency relief from two provisions of the FSA—the release provision of Paragraph 14, as well as the licensing requirements of Paragraph 19. This relief was sought in order to permit DHS to detain alien family units together for the pendency of their immigration proceedings. The court denied this motion on July 9, 2018.

This Motion to Modify sought relief consistent with this proposed rule, although this rule includes some affirmative proposals (like the federal-licensing regime) that were not at issue in that motion. For example, as discussed below, by creating a federal licensing scheme for FRCs, the proposed rule would eliminate a barrier to keeping family units in detention during their immigration proceedings, consistent with all applicable law while still providing similar substantive protections to minors.[6]

[5] The Department of Justice has not yet decided whether to appeal the July 30 order.

[6] At the time of the publication of this proposed rule, the issue of family separation and reunification is the subject of litigation in multiple jurisdictions. This proposed rule is not intended to directly address matters related to that litigation. A significant purpose of the proposed rule with regard to accompanied minors is to allow decisions regarding the detention of families to be made together as a unit, under a single legal regime, and without having a disparate legal regime applicable to the parent versus the child.

C. Basis and Purpose of Regulatory Action

1. Need for Regulations Implementing the Relevant and Substantive Terms of the FSA

Under the requirements of the FSA, when DHS apprehends an alien parent or legal guardian with his or her child(ren) either illegally entering the United States between the ports of entry or found inadmissible at a port of entry, it has, following initiation of removal proceedings, three primary options for purposes of immigration custody: (1) Parole all family members into the United States; (2) detain the parent(s) or legal guardian(s) and either release the juvenile to another parent or legal guardian or transfer them to HHS to be treated as an UAC; or (3) detain the family unit together by placing them at an appropriate FRC during their immigration proceedings. The practical implications of the FSA, including the lack of state licensing for FRCs, have effectively prevented the Government from using the third option for more than a limited period of time. This rule would, when finalized, eliminate that barrier and allow for the full range of options at each stage of proceedings.

On June 20, 2018, the President issued Executive Order 13841 specifying that ''[i]t is . . . the policy of this Administration to maintain family unity, including by detaining alien families together where appropriate and consistent with law and available resources.'' E.O. 13841 sec. 1, 83 FR 29435. The President further provided that the Secretary of Homeland Security (Secretary), shall, to the extent permitted by law and subject to the availability of appropriations, maintain custody of alien families during the pendency of any . . . immigration proceedings involving their members.'' *Id.* sec. 3. The President further directed agency components to make available additional facilities for housing families. *Id.* sec. 3(c), (d). And the President provided that the Attorney General ''shall, to the extent practicable, prioritize the adjudication of cases involving detained families.'' *Id.* sec. 4.

There are several advantages to maintaining family unity during immigration proceedings. Those include the interest in the child being with and under the considerate care of the parent, the strong interest parents have in caring for their children, the guidance parents can provide to children during immigration proceedings and the manner in which keeping families together facilitates communications among family members, the consolidation of the family members'

removal proceedings, and to facilitate the physical removal of a family together as a unit if immigration relief is unavailable. But the practical implications of the FSA, and in particular the lack of state licensing for FRCs and the release requirements for minors, have effectively prevented the Government from using family detention for more than a limited period of time, and in turn often led to the release of families. That combination of factors may create a powerful incentive for adults to bring juveniles on the dangerous journey to the United States and then put them in further danger by illegally crossing the United States border—in the hope, whether correct or not, that having a juvenile will result in an immediate release into the United States. At the same time, the second choice—that of separating family members so the adult may be held in detention pending immigration proceedings—is to be avoided when possible, and has generated significant litigation. *See Ms. L* v. *ICE,* No. 18–428 (S.D. Cal.).

This rule serves to clear the way for the sensible use of family residential centers when it is lawful and appropriate. In particular, it would create a federal licensing process to resolve the current problem caused by a state-licensing requirement that is ill-suited to family detention, and it would allow for compatible treatment of a family unit in immigration custody and proceedings by eliminating barriers to that compatibility imposed by the FSA. Further, it would eliminate the disparate legal regime that currently applies to decisions to detain a family unit, with one regime applying to the minor (the FSA, including the state-licensing requirement and release provisions under FSA paragraph 14) and another regime applying to the parent (the existing statutes and regulations governing release on bond or parole under the relevant circumstances). That disparate regime creates problems for maintaining family unity while also enforcing the immigration laws. Instead, the proposed rule would ensure that a single regime applies to the family unit, namely, the existing statutes and regulations governing release on bond or parole.

This rule would allow for detention at FRCs for the pendency of immigration proceedings (subject to all applicable statutes and regulations governing their detention or release) in order to permit families to be detained together and parents not be separated from their children. It is important that family detention be a viable option not only for the numerous benefits that family unity provides for both the family and the administration of the INA, but also due to the significant and ongoing influx of adults who have made the choice to enter the United States illegally with juveniles or make the dangerous overland journey to the border with juveniles, a practice that puts juveniles at significant risk of harm. The expectation that adults with juveniles will remain in the United States outside of immigration detention may incentivize these risky practices.

In the summer of 2014, an unprecedented number of family units from Central America illegally entered or were found inadmissible to the United States. In Fiscal Year 2013, the total number of family units apprehended entering the United States illegally on the Southwest Border was 14,855. By Fiscal Year 2014, that figure had increased to 68,445. *See https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Total%20Monthly%20Family%20Units%20by%20Sector%2C%20FY13-FY17.pdf.*

TABLE 1—FAMILY UNIT APPREHENSIONS AT THE SOUTHWEST BORDER BY FISCAL YEAR [7]

Fiscal Year	Family unit apprehensions at the Southwest Border
2013	14,855
2014	68,445
2015	39,838
2016	77,674
2017	75,622
2018*	77,802

*Partial year data for FY 2018; does not include August and September.

Prior to 2014, the only option available to the Government for the large majority of family units entering the United States was the first option described above—*i.e.,* to issue the family a Notice to Appear and release the alien family to temporarily remain in the United States pending their removal proceedings. Thus, when an unprecedented number of families decided to undertake the dangerous journey to the United States in 2014, DHS officials faced an urgent humanitarian situation. DHS encountered numerous alien families and juveniles who were hungry, thirsty, exhausted, scared, vulnerable, and at times in need of medical attention, with some also having been beaten, starved, sexually assaulted or worse during their journey to the United States.

DHS mounted a multi-pronged response to this situation. As one part of this response, DHS placed families at existing FRCs and oversaw the construction of appropriate facilities to detain family units together, in a safe and humane environment, during the pendency of their immigration proceedings, which typically involved expedited removal. Although it is difficult to definitively prove a causal link given the many factors that influence migration, DHS's assessment is that this change helped stem the border crisis, as it correlated with a significant drop in family migration: Family unit apprehensions on the Southwest Border dropped from 68,445 in Fiscal Year 2014 to 39,838 in Fiscal Year 2015.

Although the border crisis prompted DHS to hold family units together, DHS quickly faced legal challenges asserting that the FSA applied to accompanied minors and that family detention did not comply with the provisions of the FSA. In July 2015, a federal court rejected the Government's interpretation of the FSA to permit family residential centers, and declined to modify the FSA to allow DHS to address this significant influx of family units crossing the border and permit family detention. *See Flores* v. *Lynch,* 828 F.3d 898, 909–10 (9th Cir. 2016). The Government had explained to the court that doing so would ''mak[e] it impossible for ICE to house families at ICE [FRCs], and to instead require ICE to separate accompanied children from their parents or legal guardians.'' *Flores* v. *Lynch,* No. 85–4544, Defendants' Opposition to Motion to Enforce, ECF 121 at 17 (C.D. Cal. Feb. 27, 2015).

When the FSA was found to apply to accompanied minors—an interpretation with which the Government continues to disagree—the agencies faced new practical problems. The FSA requires DHS to transfer minors to a non-secure, licensed facility ''as expeditiously as possible,'' and further provides that a ''licensed'' facility is one that is ''licensed by a State agency.'' FSA paragraphs 6, 12(A). That prompted significant and ongoing litigation regarding the ability to obtain state licensing of FRCs, as many States did not have, and have not succeeded in putting in place, licensing schemes governing facilities that hold family units together. That litigation severely limited the ability to maintain detention of families together. Again, although it

[7] *See https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Total%20Monthly%20Family%20Units%20by%20Sector%2C%20FY13-FY17.pdf* (last visited August 17, 2018) *See* also *https://www.cbp.gov/newsroom/stats/sw-border-migration* (last visited August 17, 2018).

is difficult to definitively prove the causal link, DHS's assessment is that the link is real, as those limitations correlated with a sharp increase in family migration: The number of family unit apprehensions by CBP again spiked—from 39,838 in Fiscal Year 2015 to the highest level ever, 77,674 in Fiscal Year 2016. The number of such apprehensions along the Southwest Border has continued to rise, and has now reached 77,802 in Fiscal Year 2018, with two months remaining in the fiscal year and a rate of nearly 10,000 per month for the past four months. *See Southwest Border Migration 2018, https://www.cbp.gov/newsroom/stats/sw-border-migration*.

As long as the licensing must come from a state specifically (rather than from the federal government), DHS's ability to effectively use family detention is limited. A federal program (especially immigration enforcement) that the Constitution and Congress commit to federal discretion should not depend on state licensing, particularly when a well-established state licensing scheme does not already exist. In order to avoid separating family units, DHS needs to release adult family members in cases where detention would otherwise be mandatory and DHS determines parole is not appropriate, or in cases where DHS and/or immigration courts believe detention of the parent is needed to ensure appearance at future removal proceedings or to prevent danger to the community.[8] Because of ongoing litigation concerning state licensure for FRCs, ICE rarely is able to hold family units for longer than approximately 20 days. The result is that many families are released in the interior of the United States. While statistics specific to family units have not been compiled, the reality is that a significant number of aliens who are not in detention either fail to appear at the required proceedings or never actually seek asylum relief, thus remaining illegally in the United States. *See https://www.justice.gov/eoir/file/1083096/download* (in FY 2018 to date, 26 percent of case completions for individual case completions are in absentia orders, and 53 percent of case completions for unaccompanied minors are in absentia orders).

As described above, there have been several important changes in law and circumstance since FSA was executed: (1) A significantly changed agency structure addressing the care and custody of juveniles, including the development of FRCs that provide appropriate treatment for minors while allowing them to be held together with their families; (2) a new statutory framework that governs the treatment of UACs; (3) significant increases in the number of families and UACs crossing the border since 1997, thus affecting immigration enforcement priorities and national security; and (4) further recognition of the importance of keeping families together during immigration proceedings when appropriate and the legal and practical implications of not providing uniform proceedings for family units in these circumstances. The agencies have thus determined that it is necessary to put into place regulations that comply with the relevant and substantive terms of the FSA regarding the conditions for custodial settings for minors, but, through federal licensing, will provide the flexibility necessary to protect the public safety and enforce the immigration laws given current challenges that did not exist when the FSA was executed. This proposed rule will provide DHS with the option of keeping families who must or should be detained together at appropriately licensed FRCs for the time needed to complete immigration proceedings, subject to the sound implementation of existing statutes and regulations governing release on parole or bond.

2. Purpose of the Regulations

The primary purpose of this action is to promulgate regulations that would ultimately lead to the termination of the FSA, as provided for in FSA paragraph 40. This proposed rule would implement the relevant and substantive terms of the FSA and provisions of the HSA and TVPRA where they necessarily intersect with the FSA's provisions. The rule would also make some modifications to the literal text of the FSA, but while providing similar substantive protections to juveniles. For example, the rule would allow for detention of families together in federally-licensed programs (rather than facilities licensed specifically by a state). States generally do not have licensing schemes for family residential centers. Thus, the literal text of the FSA currently imposes a limitation on DHS's ability to detain family units together in a FRC during their immigration proceedings, consistent with applicable law. The federal licensing scheme in turn would provide similar substantive protections regarding the conditions of such facilities, and thus implement the underlying purpose of the state-licensing requirement.

This rule is proposed under the FSA's guiding principle that the Government treats, and shall continue to treat, all juveniles in its custody with dignity, respect, and special concern for their particular vulnerability as minors.

The current DHS regulations on the detention and release of aliens under the age of 18 found at 8 CFR 236.3 have not been substantively updated since their promulgation in 1988.[9] DHS therefore proposes to revise 8 CFR 236.3 to promulgate the relevant and substantive terms of the FSA as regulations. In addition, there are currently no HHS regulations on this topic. HHS proposes a new 45 CFR part 410 for the same reason.

As noted, the proposed regulations would implement the relevant and substantive terms of the FSA and related statutory provisions. Separate from the FSA, DHS has over time developed various policies and other sub-regulatory documents that address issues related to DHS custody of minor aliens and UACs.[10] In considering these proposed regulations, DHS reviewed such policies, and determined that the proposed regulations are compatible with them. Current policies on the detention, apprehension, and transportation of minors and UACs generally would not, therefore, need to be altered to bring them into conformity with the proposed rule. This rule is not, however, intended to displace or otherwise codify such policies and procedures.

Finally, this proposed rule excludes those provisions of the FSA that are

[8] Current parole regulations address parole, including for juveniles in custody as well as parole for aliens subject to expedited removal. *See* 8 CFR 212.5(b)(3) (parole for juveniles); 8 CFR 235.3(b)(2)(iii), (b)(4)(ii) (limiting parole for those in expedited removal proceedings). While DHS proposes amendments to section 212.5(b) as a part of this regulation, this regulation is not intended to address or alter the standards contained in sections 212.5(b) or 235.3(b). To the extent that paragraph 14 of the FSA has been interpreted to require application of the juvenile parole regulation to release during expedited removal proceedings, *see Flores* v. *Sessions,* Order at 23–27 (June 27, 2017), this regulation is intended to permit detention in FRCs in lieu of release (except where parole is appropriate under 8 CFR 235.3(b)(2)(iii) or (b)(4)(ii)) in order to avoid the need to separate or release families in these circumstances.

[9] *See* Detention and Release of Juveniles, 53 FR 17449 (May 17, 1998). When published as a final rule, the provisions applying to the detention and release of juveniles were originally placed in 8 CFR 242.24. After Congress passed IIRIRA, the former INS published a final rule updating several immigration-related provisions of the CFR and moved these provisions from section 242.24 of Title 8 to § 236.3. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum proceedings, 62 FR 10312 (Mar. 6, 1997).

[10] *See, e.g.,* ICE, Family Residential Standards, *https://www.ice.gov/detention-standards/family-residential* (last visited May 1, 2018); CBP, National Standards on Transport, Escort, Detention, and Search (Oct. 2015), *https://www.cbp.gov/sites/default/files/assets/documents/2017-Sep/CBP%20TEDS%20Policy%20Oct2015.pdf* (last visited May 1, 2018).

relevant solely by virtue of the FSA's existence as a settlement agreement. For instance, the FSA contains a number of special provisions that relate specifically to class counsel and the supervising court with respect to the Departments' compliance with the FSA. Following termination of the FSA, such provisions will no longer be necessary, because compliance with the published regulations will replace compliance with the settlement agreement. As a result, they are not included in this proposed rule.[11]

V. Discussion of Elements of the Proposed Rule

As stated above, the purpose of this rule is to terminate the FSA by to promulgating regulations that implement it, with minor modifications to reflect changes in governing law and the operational realities on the ground. These proposed regulations, therefore, largely replicate the language of the FSA for publication in the Code of Federal Regulations. The Departments propose some modifications to the literal text of the FSA, however, to ensure the Government continues to comply with the underlying goals of the FSA in a legal and operational environment that has significantly changed since the FSA was signed over 20 years ago.

The Departments have different responsibilities vis-à-vis implementation of the FSA, and so each Department's proposed regulatory text seeks to address these various responsibilities. DHS's proposed regulations seek to establish procedures for the apprehension, processing, care, custody, and release of alien minors, consistent with its obligations under the FSA. While the following sections explain why the proposed regulations do not adopt the literal text of the FSA in certain circumstances, one notable change is the proposal for an alternative licensing process that would allow FRCs to be considered ''licensed programs'' under FSA paragraph 6, and thus suitable for the detention of non-UAC minors, along with their accompanying parents or legal guardians, for longer periods of time than they are currently used. DHS proposes these changes to allow the Department to fully and consistently apply the law to all aliens who are subject to detention, so that aliens do not have the opportunity to abscond from DHS custody simply because they were encountered with children.

HHS's proposed regulations seek to establish procedures for the processing, care, custody, and release of certain UACs that by law are subject to the care and custody of ORR.

A. DHS Regulations

DHS proposes to make edits to current section 212.5 primarily to ensure that the terminology used in that section is consistent with the language used in the additional proposed amendments codifying the FSA, explained below. DHS proposes to remove the term ''juvenile'' from 8 CFR 212.5(b) and replace it with ''minor in DHS custody,'' as the proposed amendments to 8 CFR 236.3 remove the term ''juvenile,'' from its definitions section.

DHS also proposes to remove the words ''relative,'' ''brother,'' ''sister,'' ''aunt,'' ''uncle,'' ''or grandparent,'' and replace these terms with ''parent or legal guardian.'' Given that, pursuant to the HSA and TVPRA, DHS does not have the legal authority to release a juvenile in its custody to anyone other than a parent or legal guardian,[12] allowing these terms to remain in the regulatory text improperly implies that DHS will engage in an activity not authorized by statute, *i.e.* releasing a minor on parole into the custody of someone other than a parent or legal guardian. Further, DHS is proposing to remove paragraph (b)(3)(iii) in its entirety due to the same constraints on its legal authority to release minors to individuals who are not parents or legal guardians. DHS is also proposing to replace the term ''Director, Deportation and Removal,'' with ''Executive Assistant Director, Enforcement and Removal Operations,'' to reflect the current title of the position used within DHS.

DHS is also proposing to remove the cross-reference to section 235.3(b) as it currently appears in section 212.5(b), to eliminate an ambiguity and to codify its longstanding understanding of how certain provisions in section 235.3(b) relating to parole of aliens in expedited removal proceedings apply to minors. In particular, eliminating that cross reference would make it clear that the provisions in section 235.3(b) governing parole of an aliens in expedited removal apply to all such aliens, and not merely adults. The current cross-reference to section 235.3(b) is confusing, however, because it suggests that the more flexible standard in section 212.5(b) might override those provisions when a minor is in expedited removal. DHS disagrees with that interpretation of its current regulations, which, among other things, is in tension with the text of the relevant statutory provision. See 8 U.S.C. 1225(b)(1)(B)(iii)(IV) (''Any alien subject to [expedited removal] shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.''). DHS is accordingly amending section 212.5(b) to codify its understanding and to eliminate the ambiguity and any potential tension with the statute. This change is discussed more fully below.'' DHS proposes to revise its current regulations on the detention and release of minor aliens by replacing section 236.3 in its entirety. Proposed paragraph 236.3(a)(1) codifies the FSA's general policy statement, found in paragraph 11 of the FSA, that minors and UACs in DHS custody shall be treated with dignity, respect, and special concern for their particular vulnerability.

Current section 236.3 on the ''Detention and release of juveniles'' is silent with respect to whether its provisions apply to aliens detained under mandatory or discretionary legal authorities. This distinction is often meaningful in immigration law because the authority under which aliens are detained may dictate which regulations apply to those detained aliens. However, the FSA does not distinguish the applicability of its provisions as between aliens held under mandatory or discretionary legal authorities. Proposed § 236.3(a)(2), therefore, provides that the provisions of the section apply equally to those minors who are subject to mandatory detention as those subject to discretionary detention, to the extent authorized by law.

Proposed 8 CFR 236.3(b)—Definitions

The current regulations at section 236.3(a) contain a single definition of the term ''juvenile,'' which is defined as any alien under the age of 18. The FSA does not use the term ''juvenile,'' but it contains several other terms of art that must be defined in DHS regulations to parallel the terms of the agreement. This proposed rule, therefore, removes the term ''juvenile'' from the definitions in section 236.3 and adds several other definitions that are either explicitly written into the FSA or are necessary to understanding the FSA's provisions, given the changes in law that have occurred since the FSA's signing.

Minor and UAC. Proposed § 236.3(b) removes the definition of ''juvenile,'' because the term, defined as any alien under the age of 18, is too broad to be

[11] For instance, paragraphs 32(A), (B), and (D), and 33 of the FSA grants *Flores* class counsel special access to covered minors and to certain facilities that hold such minors; it is unnecessary to codify these provisions in regulation. Similarly, paragraphs 29 to 31 include special reporting requirements with respect to class counsel and the supervising court; reporting to these entities would be unnecessary following termination of the FSA.

[12] See further explanation *infra* under discussion of proposed 236.3(g), including note 20.

a useful definition for the purposes of this proposed rule. Instead, proposed § 236.3(b) replaces the term ''juvenile'' with two definitions: ''minor,'' as it is defined in the FSA, and unaccompanied alien child (UAC), as it is defined in 6 U.S.C. 279(g)(2). The distinction between these two groups of juveniles became legally relevant for DHS's actions because the TVPRA authorizes only ORR to be responsible for the care and custody of UACs. *See* 6 U.S.C. 279(b)(1); 8 U.S.C. 1232(b)(1).

The definitions of minor and UAC are not mutually exclusive, because although most UACs will also meet the definition of minor, some will not. For instance, an alien juvenile who has been legally emancipated does not meet the definition of a minor as set out in the FSA, so the provisions of this proposed rule would not apply to that juvenile. The definition of UAC, however, does not exclude emancipated juveniles. Thus, if an immigration officer encounters any alien juvenile (regardless of whether such juvenile has been emancipated) who has no lawful immigration status, has not attained 18 years of age, and has no parent or legal guardian present in the United States or no parent or legal guardian is available to provide care and physical custody for that juvenile, the juvenile meets the definition of a UAC, and the immigration officer must transfer the juvenile to HHS as set forth under this rule. While the proposed rule does not include a definition of juvenile, this preamble uses the term juvenile to mean any alien under the age of 18.

Emergency and Influx. The FSA also includes definitions of ''emergency'' and ''influx,'' to explain the circumstances under which the FSA permits the Government more than three or five days to transfer juveniles to licensed programs. The proposed rule would add definitions of both ''emergency'' and ''influx'' to the regulations in the definitions section at 236.3(b), capturing the relevant and substantive terms of paragraph 12(B) of the FSA. The proposed definition of emergency largely tracks the existing text of the FSA, except that it reflects DHS's recognition that emergencies may not only delay placement of minors, but could also delay compliance with other provisions of this proposed rule, or excuse noncompliance on a temporary basis. For example, access to a snack or meal may be delayed if a minor is being transported from a facility in the path of a major hurricane to another facility in a safer location and that transportation happens during a time when the minor would have access to a snack or meal. Once at a safe location or the emergency otherwise abates, the schedule would return to normal for those minors. Under current procedures, the disruption of the scheduled items due to the emergency, and the cause of the delay, would be noted in the applicable system of records for those minors who were impacted.

The impact, severity, and timing of a given emergency situation dictate the operational feasibility of providing certain items to minors, and thus the regulations cannot contain every possible reality DHS will face. Thus, the definition of ''emergency'' is flexible and designed to cover a wide range of possible emergencies.

The FSA defines an influx as a situation where legacy ''INS has, at any given time, more than 130 minors eligible for placement in a licensed program under Paragraph 19, including those who have been so placed or are awaiting such placement.'' Accordingly, as proposed, DHS would adopt this definition of ''influx'' without change, except to reflect the transfer of responsibilities from legacy INS to DHS and ORR, and to reflect that DHS maintains custody of minors, as defined in this section, and, for the short period pending their transfer to ORR, UACs.

However, DHS regularly has more than 130 minors and UACs in custody who are eligible for placement in a licensed program, and for years has been operating at the current FSA definition of ''influx.'' DHS nonetheless believes that this defined term continues to be useful in the context in which it is used. As reflected in the discussion of proposed § 236.3(e) below, the main implication of the threshold for an ''influx'' is that in general, under the FSA, DHS is required to transfer non-UAC minors to licensed facilities ''as expeditiously as possible'' rather than within either a 3- or a 5-day timeframe, because DHS is currently operating under an influx. Notably, the FSA's transfer timeframes no longer control for DHS operations with respect to UACs—the TVPRA requires that UACs be transferred out of DHS custody within 72 hours of determining that the alien is a UAC, absent exceptional circumstances. As a result, although the number of UACs in custody could impact whether DHS is operating under an ''influx,'' the transfer of UACs to ORR remains governed by the requirements of the TVPRA at all times. Given current operational realities, the ''as expeditiously as possible'' timeframe contained in the FSA remains appropriate and consistent with DHS's goal to expeditiously transfer minors who are not UACs. DHS also notes that even under this standard, *i.e.,* even in current ''influx'' conditions, CBP generally transfers minors who are not UACs out of its facilities within 3 to 5 days.

DHS nonetheless welcomes public comment on whether it would be appropriate to revise the definition of influx to better reflect current operational realities. For instance, DHS could define an influx as a situation in which DHS determines that significantly more minors or UACs are awaiting transfer than facility space is available to accommodate them, which prevents or delays timely transport or placement of minors or impacts other conditions provided by the regulations. This definition may effectively codify the relevant and substantive terms of the FSA in today's context. It would also allow for flexibility across the national operations of DHS, without imposing a hard numerical trigger for when the definition of ''influx'' applies. Under this option, DHS would not be operating under an ''influx'' as a steady state, as the FSA's definition of influx currently requires; instead, an influx would only exist when there is a significant number of minors or UACs compared to available bed space in licensed facilities, and that the surrounding circumstances prevent or delay the timely transport or placement of minors or impact other conditions provided by the regulations. A single factor alone would not trigger such a provision.

Licensed Facility and Non-Secure. Paragraph 6 of the FSA defines ''licensed program'' as a program, agency, or organization that is ''licensed by a State agency to provide residential, group, or foster care services for dependent children.'' Under paragraph 6, a ''licensed program'' as used in the agreement must generally be ''non-secure,'' except in certain cases for special needs minors. The proposed rule in section 236.3(b)(9) & (b)(11) includes definitions of ''licensed facility'' and ''non-secure'' to conform as closely as possible to the terms and purpose of the FSA while responding to operational realities of ICE's temporary detention of minors. To parallel the provisions of FSA paragraph 6, DHS is proposing that facilities that temporarily detain minors obtain licensing where appropriate licenses are available from a state, county, or municipality in which the facility is located.

However, most states do not offer licensing for facilities like these FRCs, *i.e.,* locations that house minors together with their parents or legal guardians. And those states that have previously offered licensing for FRCs have had their licensing schemes challenged (and in at least one case invalidated) through

litigation.[13] That has imposed a barrier to the continued use of FRCs: It is difficult to continue to detain a family in a state-licensed facility, so continued application of a state-licensing requirement can effectively require DHS to release children (but not their parents) from the FRC. The proposed rule would eliminate that barrier to the continued use of FRCs by creating an alternative federal licensing scheme for such detention. The goal is to provide materially identical assurances about the conditions of confinement at that facility, and thus to implement the underlying purpose of the FSA's licensing requirement. It would in turn allow decisions regarding the detention of families to be made together as a unit, under a single legal regime (the background rules regarding detention and release), rather than under two different regimes (one applicable to the parent and another to the child).

Specifically, DHS proposes that if no such licensing scheme is available in a given jurisdiction, a facility will be considered licensed if DHS employs an outside entity to ensure that the facility complies with family residential standards established by ICE. This alternative licensing process is being proposed to enable DHS to house minors together with their parents or legal guardians in FRCs, subject to appropriate standards and oversight, even in jurisdictions in which an applicable licensing regime is unavailable. By providing an alternative to state licensure where such licensure is unavailable, DHS would appropriately preserve its ability to detain minors together with their parents or legal guardians throughout the removal process, if DHS decides, consistent with the standards in the proposed rule and applicable statutes and regulations, that it is necessary or appropriate to maintain custody for more than a brief period. Moreover, the alternative federal licensing scheme would provide effectively the same substantive protections that the state-licensing requirement exists to provide, and accordingly fulfill the underlying purpose of the state-licensing requirement under the FSA. And by requiring DHS to hire an auditor to ensure compliance with ICE's detention standards, DHS's alternative licensing process would mirror analogous state licensure processes for detention centers and achieve the goals of state licensure by providing third-party oversight of a facility's compliance with an established set of standards.

Finally, while the FSA uses the term ''non-secure,'' as a part of the definition of a licensed program, the FSA does not define this term. The proposed rule provides a definition of non-secure to provide clarity on the use of this term in the immigration detention context. Like the availability of a license for FRCs, the definition of a non-secure facility may vary by state or locality. Accordingly, DHS proposes that a facility will be deemed non-secure if it meets its state's or locality's definition, but if no such definition is provided by the state or locality, the proposed rule provides that a facility will be deemed non-secure if it meets an alternative definition derived from Pennsylvania's definition of secure care.[14]

Other definitions. The FSA also contains definitions of the terms ''special needs minor'' and ''escape-risk,'' which DHS proposes to adopt.[15] DHS does not propose to adopt the FSA's term ''medium security facility'' because DHS does not maintain any medium security facilities for the temporary detention of minors, and the definition is now unnecessary. The proposed rule does, however, add definitions of the terms ''custody,'' ''family unit,'' and ''family residential center'' because the enactment of the TVPRA and current DHS detention practices require the use of these terms to accurately describe the requirements and processes necessary in the apprehension, processing, care, and custody of alien juveniles.

Proposed 8 CFR 236.3(c)—Age Determination

Determining the age of an alien is not discussed in the current regulations, but is essential for DHS to apply the appropriate provisions of the FSA and the TVPRA to an alien in its custody. Paragraph 13 of the FSA provides a ''reasonable person'' standard for determining whether a detained alien is an adult or a minor. Paragraph 13 also allows medical or dental examinations by a medical professional, or other appropriate procedures, for purposes of age verification. Proposed 8 CFR 236.3(c) would incorporate the FSA's ''reasonable person'' standard and the FSA's standards with respect to medical and dental examinations, and would also be consistent with the TVPRA's standards for determining whether an alien is under or over the age of 18. The proposed rule would add that age determinations must be based on the totality of the evidence and circumstances.

Proposed 8 CFR 236.3(d)—Determining Whether an Alien Is a UAC

The current regulations make no distinction between UACs and other minors. While no distinction is included in the language of the FSA, such a distinction is made necessary by the HSA and TVPRA, as explained above. Accordingly, proposed 8 CFR 236.3(d) would explain when DHS makes a determination whether an alien juvenile is a UAC. Under the proposed rule, immigration officers will make a determination of whether an alien meets the definition of a UAC each time they encounter the alien. Therefore, even though an alien may have been previously determined to be a UAC, the alien may no longer meet the statutory definition of a UAC if the alien reaches the age of 18, acquires legal status, or if a parent or legal guardian is available in the United States to provide care and physical custody. The proposed paragraph also highlights that, once an alien no longer meets the definition of a UAC, the legal protections afforded only to UACs under the law cease to apply.

Proposed 8 CFR 236.3(e)—Transfer of Minors Who Are Not UACs From One Facility to Another

This section of the proposed rule would address the FSA's requirement that minors and UACs be transferred to and placed in ''licensed programs.'' Paragraph 12(A) of the FSA requires DHS to place in a licensed program those minors who are not released. As mentioned above, the FSA defines a licensed program as a program, agency, or organization that is ''licensed by a State agency to provide residential, group, or foster care services for dependent children.'' Facilities operated by licensed programs must be non-

[13] *See, e.g., Grassroots Leadership, Inc.* v. *Tex. Dep't of Family and Protective Servs.,* No. D–1–GN–15–004336 (Tex. Dist. Ct. amended final judgment Dec. 2, 2016) (finding regulatory scheme for FRCs invalid); *Commonwealth of Pa., Dep't of Human Servs.,* Adjudication and Order, Pa. Dep't of Human Servs., Bureau of Hearings and Appeals, BHA Docket No. 061–16–0003 (Apr. 20, 2017) (ordering the Pennsylvania Department of Human Services to rescind its revocation of the license for Berks).

[14] *See* Pa. Code 3800.5 (describing ''secure care'' as that which is provided in a 24-hour living setting for delinquent children from which ''voluntary egress'' is prohibited from the building through internal or exterior locks or from the premises through secure, perimeter fencing). DHS chose to use Pennsylvania's definition as a starting point for this proposed definition because of the three family residential centers (FRCs) currently in operation, the facility located in Berks County, PA, is the longest operating of the FRCs.

[15] The FSA's definition of ''escape-risk'' allows consideration of, *inter alia,* whether ''the minor has previously absconded or attempted to abscond from INS custody.'' This proposed rule would specifically identify absconding from any federal *or* state custody as a relevant factor, not just the custody of INS or its successor agencies. This change is consistent with the FSA, which provides only a non-exhaustive list of considerations.

secure, unless it is appropriate to house such minors in secure detention facilities. Currently, the only non-secure facilities in which ICE detains minors who are not UACs are the FRCs.[16] When appropriate, ICE places minors in FRCs together with their parents or legal guardians until ICE can release the minor.

As discussed above in connection with the proposed definition of ''licensed facility'' in proposed § 236.3(b)(9), this proposed rule would create an alternative system of regulating facilities, in lieu of state licensure. This system would allow ICE to make decisions regarding the detention of families together as a unit, under the applicable legal standard, while fulfilling the goals of state licensure by ensuring independent oversight of FRCs.

FSA paragraph 12(A) provides that legacy ''INS will transfer a minor from a placement under this paragraph to a placement under Paragraph 19 [*i.e.,* a licensed program] . . . within three (3) days, if the minor was apprehended in an INS district in which a licensed program is located and has space available; or (ii) within five (5) days in all other cases; except'' in certain circumstances, including ''in the event of an emergency or influx of minors into the United States, in which case the INS shall place all minors pursuant to Paragraph 19 as expeditiously as possible.'' As noted in the discussion above regarding the FSA's definition of ''influx,'' DHS has continuously been dealing with an ''influx'' of minors, as that term is defined in the FSA. Accordingly, the proposed transfer provision in section 236.3(e) would make ''as expeditiously as possible'' the default for transferring minors who are not UACs to a licensed facility, but notes that if an emergency or influx, as defined in the regulations, does not exist, the FSA's ''default'' 3- and 5-day timeframes apply.

The revised order of the text (*i.e.,* making clear that in general the ''as expeditiously as possible'' standard applies, except where an emergency or influx does not exist) is consistent with the goal of DHS operational offices to transfer all minors who are not UACs as expeditiously as possible, given operational realities. This proposed amendment adds clarity, but does not change the timeframes that have applied with respect to non-UAC minors for two decades under the FSA.

This provision would not retain two additional exceptions to the 3-day transfer timeframe. First, the exception at Paragraph 12(A)(2), requiring transfer in the timeline provided by ''any court decree or court-approved settlement,'' is not needed, as a court order would govern in any event. Second, the exception at paragraph 12(A)(4) of the FSA, allowing transfer within 5 days instead of 3 days in cases involving transport from remote areas or where an alien speaks an ''unusual'' language that requires the Government to locate an interpreter, is not included. DHS has matured its operations such that these factors no longer materially delay transfer.

Proposed § 236.3(e) would apply only to the transfer of non-UAC minors to licensed facilities because, following passage of the TVPRA, DHS transfers to ORR UACs who are not able to withdraw their application for admission in accordance with that Act. *See* 8 U.S.C. 1232(a)–(b). Therefore, the timeline of the transfer of UACs from DHS to HHS is governed exclusively by the TVPRA.

Finally, under the proposed rule, as under FSA paragraph 12(c), DHS would continue to maintain a written plan describing the reasonable efforts it will take to place all minors who are not UACs as expeditiously as possible pursuant to FSA paragraph 12(C). (This would include placement in a federally-licensed FRC.) CBP and ICE have maintained such a plan through internal guidance for law enforcement operations.

Proposed 8 CFR 236.3(f)—Transfer of UACs From DHS to ORR

The current regulations also do not address the transfer of UACs from DHS to ORR care and custody under the TVPRA. The FSA is also silent on this topic because the FSA does not distinguish between minors and UACs. Given the passage of the TVPRA and its specific requirements related to the transfer of UACs, the proposed regulations at section 236.3(f) track the TVPRA requirements. Specifically, the proposed regulations at section 236.3(f) prescribe procedures for transferring UACs to the care and custody of ORR within 72 hours (absent exceptional circumstances) of determining that an alien is a UAC. *See* section 235(b)(3) of the TVPRA, 8 U.S.C. 1232(b)(3). Section 236.3(f) would also reflect the general requirement under section 235(b)(2) (8 U.S.C. 1232(b)(2)) that DHS notify ORR within 48 hours that an apprehended individual is a UAC. While these timelines differ from those provided in the FSA, and differ from those applicable to minors who are not UACs, as described in paragraph 236.3(e), these timelines implement DHS's specific requirements applicable to UACs, as provided in the TVPRA.

Pursuant to the FSA, UACs, like accompanied minors, must be transferred to a licensed program within the 3- and 5-day timeframes provided by Paragraph 12(A), or, in an emergency or influx, ''as expeditiously as possible.'' The TVPRA timeline for the transfer of UACs to HHS does not address the requirements of Paragraph 12(A) with respect to the transfer of UACs to licensed programs. However, HHS now has the authority to provide care and custody of UACs referred to it, and thus, HHS ensures that a referred UAC is placed in an appropriate licensed program, when required under the TVPRA and the FSA. *See* 8 U.S.C. 1232(c)(2)(A) (requiring HHS to ''promptly'' place UACs ''in the least restrictive setting that is in the best interest of the child''). Accordingly, HHS has addressed this requirement in its proposed rule. In this rule, DHS addresses only the transfer of UACs to HHS, which is governed exclusively by the TVPRA.

The current regulations do not speak to the necessary conditions during the transfer of UACs between DHS and HHS facilities, although such conditions are addressed by paragraph 25 of the FSA. Consistent with paragraph 25 of the FSA, the proposed regulations stipulate that UACs will not be transported with unrelated detained adults except upon initial apprehension when being transferred to a DHS facility, or if separate transportation is impractical or unavailable.[17] In such cases, precautions will be taken to ensure the safety, security, and well-being of the UAC.

For the safety and security of UACs and whenever operationally feasible, ICE and CBP currently make every attempt to transport and hold UACs separately from unrelated adults. As an example, CBP's U.S. Border Patrol (USBP) strives to transport UACs and unrelated adults in separate vehicles. However, given the various environments in which USBP operates, such as remote desert locations, separate transportation for UACs from place of apprehension to a USBP station is not always feasible or practical. In these cases, USBP strives to transport the UAC in a manner where she or he can be monitored. There are numerous

[16] The *Flores* district court has held that ICE FRCs are secure; the Government has appealed that decision. *See Flores* v. *Sessions,* No. 2:85–cv–04544 (C.D. Cal. June 27, 2017), *appeal pending,* No. 17–56297 (9th Cir.) (docketed Aug. 28, 2017).

[17] The FSA includes ''impractical'' but not ''unavailable.'' DHS considers the addition of ''or unavailable'' to be a clarification of the current standard, and not a substantive change.

factors that dictate the way in which a UAC will be transported with unrelated adults. However, at a minimum CBP always assesses the mental capacity, age, and gender of the UAC to ensure that the most safe and secure setting is available.

Proposed 8 CFR 236.3(g)—DHS Procedures in the Apprehension and Processing of Minors or UACs

Current section 236.3(g) provides that each juvenile apprehended in the immediate vicinity of the border who permanently resides in Mexico or Canada shall be informed, prior to the presentation of the voluntary departure form or being allowed to withdraw his or her application for admission, that he or she may make a telephone call to a parent, close relative, a friend, or organization on the free legal services list. The current regulation also provides that if the juvenile does not reside in Mexico or Canada, that juvenile must in fact communicate with a parent, adult relative, friend, or with an organization found on the free legal services list prior to presentation of the voluntary departure form.

In addition, the current regulations at 8 CFR 236.3(h) provide for alien juveniles to be given a Form I–770 Notice of Rights and Disposition, which will be read and explained to the juvenile in a language the juvenile understands if he or she is less than 14 years of age. This paragraph further provides that, in the event that a juvenile who has requested a hearing pursuant to the Form I–770 subsequently decides to accept voluntary departure or is allowed to withdraw his or her application for admission, a new Form I–770 shall be given to, and signed by the juvenile.

The former INS promulgated much of 8 CFR 236.3 to implement the U.S. District Court for the Central District of California's order in *Perez-Funez* v. *Dist. Dir., INS,* 619 F. Supp. 656 (C.D. Cal. 1985), which required INS to afford certain procedural safeguards to unaccompanied juveniles who are taken into immigration custody prior to permitting voluntary departure. *See* 53 FR 17449 (May 17, 1988).

Paragraph 12(A) of the FSA provides that whenever the Government takes a minor or UAC into custody, it shall expeditiously process the minor or UAC and shall provide the minor or UAC with a notice of rights, including the right to a bond redetermination hearing, if applicable. Under paragraph 24(D) of the FSA, DHS promptly provides all non-UAC minors who are not released with a Form I–770, an explanation of the right of judicial review, and a list of free legal services. The proposed rule's section 236.3(g) would retain the provisions related to the presentation of the Form I–770, explanation of the right of judicial review, and the list of free legal services, as set out in current regulations and the FSA.

The proposed regulations at 8 CFR 236.3(g)(1) would change the regulatory text to reflect current operations, but also preserve the intent of these regulations and FSA paragraphs 12(A) and 24(D), and would continue to comply with *Perez-Funez.* Specifically, proposed § 236.3(g)(1)(i) would update the requirements related to the Form I–770 to reflect Paragraph 12(A) and current operational realities. It also would make minor clarifications to the current regulatory language by adding that the Form I–770 can be provided in a language ''and manner'' the minor or UAC understands. FSA Paragraph 12(A) requires that *all* minors in DHS custody, even those who request to withdraw their application for admission or request voluntary departure (which includes voluntary departure, as described at 8 CFR 240.25(a), sometimes referred to as a ''voluntary return''), will be provided with a notice of rights.

Pursuant to the requirements of the current regulations and FSA Paragraph 12(A), CBP currently provides an I–770 to each minor or UAC during processing. If, after processing, CBP determines that a minor or UAC who was processed for a voluntary departure or a withdrawal of his or her application for admission is no longer amenable to such a disposition because, for instance, the minor or UAC is no longer eligible for voluntary departure, CBP will re-process the minor or UAC for a more appropriate disposition, such as the issuance of a Notice to Appear before an immigration judge. When the minor or UAC is reprocessed, the minor or UAC is issued a new I–770, or the original one is updated accordingly. By issuing a new I–770, or updating the original one, CBP ensures that, in situations in which it is appropriate to change a minor or UAC's immigration disposition, the minor or UAC continues to remain aware of his or her rights. In addition, CBP generally provides a minor or UAC who is being processed for a Notice to Appear with the list of free legal service providers.

Proposed 8 CFR 236.3(g) would provide that minors or UACs who enter DHS custody will be provided an I–770 that will include a statement that the minor or UAC may make a telephone call to a parent, close relative, or friend. The proposed rule would specifically address the list of free legal service providers at proposed § 236.3(g)(1)(iii), which would apply to every minor who is not a UAC who is transferred to or remains in a DHS detention facility.

In addition, pursuant to the TVPRA, DHS currently screens all UACs from contiguous countries to determine whether such a UAC may be permitted to withdraw his or her application for admission. As part of this screening, the UAC is provided with an I–770 Notice of Rights. UACs from non-contiguous countries are not permitted to withdraw their application for admission, but are similarly provided with the I–770 Notice of Rights. These TVPRA requirements similarly ensure that the due process concerns identified by the court in *Perez-Funez* are adequately addressed.

Proposed § 236.3(g)(1)(i) also does not include the requirement in current section 8 CFR 236.3(g) that a juvenile who does not reside in Mexico or Canada must in fact communicate with a parent, adult relative, friend, or with an organization found on the free legal services list prior to presentation of the voluntary departure form. However, the passage of the TVPRA has made this requirement no longer necessary. Specifically, pursuant to the TVRPA, only UACs who reside permanently in Mexico or Canada are permitted to withdraw their application for admission. 8 U.S.C. 1232(a)(2). Additionally, any minor who is not a UAC, but who is accompanied by a parent or legal guardian who is permitted to voluntarily depart the United States or withdraw his or her application for admission as a member of a family unit would, in general, be undertaking such action along with his or her accompanying parent or legal guardian. Therefore, the minor would, by default, have an opportunity to communicate with his or her parent or legal guardian at that time.

Proposed § 236.3(g)(1)(i) relates only to situations in which DHS processes a minor or UAC. Thus, it does not address situations in which a minor or UAC is in immigration proceedings before an immigration judge. For example, this regulation does not address a situation in which a minor or UAC has been granted voluntary departure by an immigration judge, but then subsequently requests to proceed to a hearing. In such a situation, DHS envisions that, consistent with current practice, the immigration judge would provide the minor or UAC with an appropriate advisal of rights.

Similarly, proposed §§ 236.3(g)(1)(ii) and (g)(1)(iii) would reflect the requirements in Paragraph 24(D) of the FSA related to the provision of the notice of judicial review and the notice

of free legal service providers. Specifically, proposed § 236.3(g)(1)(ii) would provide that every minor who is not a UAC who remains in or is transferred to a DHS detention facility will be provided with the Notice of Right to Seek Judicial Review, as is provided in FSA Paragraph 24(D) and Exhibit 6. Similarly, proposed § 236.3(g)(1)(iii) would provide that such minors will be provided with the list of free legal service providers, as provided in FSA Paragraph 24(D).

Proposed § 236.3(g)(2) discusses DHS's custodial care of a minor or UAC immediately following apprehension. Therefore, this paragraph applies, in general, to the time that a minor or UAC remains in a CBP facility prior to being transferred to ICE or to HHS. This paragraph parallels the requirements of FSA paragraphs 11 and 12(A). For instance, paragraph (g)(2), like the FSA, would require that minors and UACs shall be held in the least restrictive setting appropriate to the minor or UAC's age and special needs, provided that such setting is consistent with the need to protect the minor or UAC's well-being and that of others, as well as with any other laws, regulations, or legal requirements. The proposed rule would also include a cross-reference to DHS's regulations at 6 CFR 115.114, dealing specifically with sexual abuse and assault prevention for juvenile and family detainees in DHS's short-term holding facilities.

Proposed paragraph (g)(2), like the FSA, would require that minors and UACs be housed in facilities that are safe and sanitary, and that the facilities provide access to toilets and sinks, drinking water and food as appropriate, access to emergency medical assistance as needed, and adequate temperature and ventilation.

Consistent with FSA paragraphs 11 and 12(A), proposed paragraph (g)(2)(i) provides for contact between a minor or UAC and family members arrested with the minor or UAC. Following arrest of a minor or UAC and accompanying family members, CBP transports all individuals to a CBP facility for processing. During the time that the family group spends at the facility, CBP provides contact between the minor or UAC and all accompanying family members, absent concerns about the safety of the minor or UAC. This paragraph, therefore, addresses only the issue of contact between family members while they remain in CBP custody. The proposed rule is more detailed than FSA paragraph 12(A), insofar as it states, consistent with FSA paragraph 11, that the safety and well-being of the minor or UAC and operational feasibility are relevant considerations when allowing such contact. This is consistent with FSA paragraph 11, which requires that the setting of a juvenile's detention or holding be consistent with a range of factors, including the need to protect the juvenile's well-being or that of others. It is also consistent with DHS's regulations on the prevention of sexual abuse and assault in its facilities. *See* 6 CFR 115.14, 115.114.

DHS's use of the term ''operationally feasible'' in this paragraph does not mean ''possible,'' but is intended to indicate that there may be limited short-term circumstances in which, while a minor or UAC remains together with family members in the same CBP facility, providing such contact would place an undue burden on agency operations. For instance, if a family member arrested with a minor or UAC requires short-term, immediate medical attention, CBP may be required to temporarily limit contact between that family member and the minor or UAC, in order to provide appropriate medical treatment. Or, CBP may have a legitimate law enforcement reason to temporarily limit contact between a minor or UAC and accompanying family members, such as when CBP decides it is in the minor or UAC's best interest to interview all family members separately. However, CBP will provide contact with family members arrested with the minor or UAC, and/or will hold accompanied minors in the same hold rooms as their accompanying family members, if doing so is consistent with the minor or UAC's safety and well-being and does not place an undue burden on agency operations.

Similarly, the proposed regulations would contain the same limit as the FSA on the amount of time UACs can be housed with an unrelated adult (no more than 24 hours), but the proposed regulations would explicitly allow DHS to depart from this standard in emergencies or other exigent circumstances, to the extent consistent with 6 CFR 115.14(b) and 115.114(b). For example, it may be necessary to house UACs with unrelated adults for more than 24 hours during a weather-related disaster such as hurricanes in southern Texas, or if an outbreak of a communicable disease such as scabies or chicken pox at a facility requires the temporary commingling of the detainee population. Appropriate consideration is given to age, mental condition, physical condition, and other factors when placing UACs into space with unrelated adults.

Where a juvenile is apprehended with his or her parent or legal guardian, the current regulations indicate that such parent or legal guardian may swear out an affidavit designating a person to whom the juvenile may be released. 8 CFR 236.3(b)(3). Since the passage of the TVPRA, however, DHS no longer has the authority to release a juvenile to someone who is not a parent or legal guardian, so this provision must be amended.[18] If a parent or legal guardian is unavailable to provide care and physical custody for an alien under the age of 18, and the alien has no lawful status in the United States, the alien meets the definition of a UAC. 6 U.S.C. 279(g). Under section 235(b)(3) of the TVPRA (8 U.S.C. 1232(b)(3)), DHS must transfer UACs to HHS custody within 72 hours of determining that a juvenile is a UAC, absent exceptional circumstances. Thus, a parent or legal guardian must be available for a minor without lawful status in DHS custody for DHS to release that minor. The proposed rule would therefore remove the current regulatory language at 8 CFR 236.3(b)(3) authorizing a parent or legal guardian to swear an affidavit authorizing the release of the minor to anyone who is not also a parent or legal guardian.

Proposed 8 CFR 236.3(h)—Detention of Family Units

DHS's policy, consistent with E.O. 13841, is to maintain family unity, including by detaining families together where appropriate and consistent with law and available resources. The current regulations, however, do not address the detention of non-UAC minors together with their parents or legal guardians as ''family units'' while in the custody of DHS. Similarly, while the FSA considers that juveniles may be initially held with related family members, the FSA does not address whether the Government may continue to hold minors together with their parents or legal guardians after transfer to a ''licensed program.'' The proposed regulations in the new section 236.3(h) would set out requirements that must be met for a family to be detained together in an FRC. Per the definitions in proposed paragraph (b), and in accordance with the TVPRA, only minors, not UACs, would be held in DHS custody at an FRC.

The intention of this proposed paragraph is to clarify that DHS may, pursuant to its existing legal authorities, *see, e.g.,* INA sec. 235(b), (b)(1)(B), (b)(1)(B)(iii)(I); 236; 241(a), detain

[18] Pursuant to the requirements of the HSA and TVPRA, only HHS has the authority to release a minor to a non-parent or legal guardian, through the process of finding a sponsor for a UAC. *See* 8 U.S.C. 1232.

members of a family unit together. Nothing in this proposed rule impacts DHS's existing detention authority. Because the current regulations do not address detaining non-UAC minors together with their parents or legal guardians as family units, the current regulations also do not explicitly consider what may happen when DHS continues to detain a parent or legal guardian, but could otherwise release a non-UAC minor. Current immigration law describes several situations in which an individual alien may not be released from detention, regardless of whether that alien is part of a family unit. *See, e.g.,* INA sec. 235(b), (b)(1)(B), (b)(1)(B)(iii)(IV); 241(a).

If the parent or legal guardian of a family unit is subject to mandatory detention, but the non-UAC minor of the family unit is otherwise eligible for release, DHS must continue to detain the parent or legal guardian, consistent with applicable law and policy.

Proposed 8 CFR 236.3(i)—Detention of Minors Who Are Not UACs in DHS Custody

The current regulations contain one short paragraph about juvenile detention, stating that DHS may detain a juvenile if such detention is ''necessary, for such interim period of time as is required to locate suitable placement for the juvenile'' either with a parent, legal guardian, adult relative, or other suitable custodian or custodial facility. 8 CFR 236.3(d). As explained several times throughout this preamble, the FSA contains significant detail about requirements for DHS to detain juveniles, including a list of requirements for conditions of detention in the FSA's Exhibit 1. The proposed regulations at section 236.3(i) would completely replace the current regulations at section 236.3(d) with respect to the detention of minors who are not UACs.

The current regulations require that juveniles who are detained by DHS be housed in detention facilities that have separate accommodations for juveniles. *See* 8 CFR 236.3(d). In addition, 6 CFR 115.14, first promulgated in 2014, provides that minors are detained in the least restrictive setting appropriate for the minor's age and needs. That regulation tracks FSA paragraph 11. Accordingly, this proposed rule would cross-reference that regulation and expand on it. Additionally, the proposed regulations would make clear that minors are placed temporarily in a licensed facility, as defined in paragraph (b) of proposed § 236.3, until release can be effectuated as described in proposed § 236.3(j).

The proposed regulations at § 236.3(i)(1) would provide, like paragraph 21 of the FSA, that minors who are not UACs must be transferred to state or county juvenile detention facilities, a secure DHS detention facility, or a DHS-contracted facility having separate accommodations for minors if they meet certain criteria. A non-UAC minor may be placed in one of these facilities because the minor is charged with, is chargeable with, or convicted of a crime or has been charged with, is chargeable with, is the subject to delinquency proceedings or has been adjudicated as delinquent. There is an exception for petty offenses, and another exception for when the offense is isolated, not within a pattern or practice of criminal activity, does not involve violence against a person, and does not involve the use or carrying of a weapon. DHS has retained these exceptions in the proposed rule, but has reworded them in the affirmative for clarity. Rather than explain when DHS *would not use* secure detention (such as the exception to secure detention for petty offenses in paragraph 21(A)(ii) of the FSA), the proposed rule would more clearly explain when DHS *would use* secure detention. As a consequence of these changes, there may be some isolated, non-violent offenses that, although not ''petty'' as defined in paragraph 21(A)(ii) of the FSA, are insufficient cause to place a minor in secure detention. These clarifications are consistent with DHS's current practice, and are consistent with the intent underlying FSA paragraph 21.

Also included in the FSA's list of reasons to house a minor in a secure facility are committing, or making credible threats to commit, a violent or malicious act while in custody or while in the presence of an immigration officer; engaging, while in a licensed facility, in certain conduct that is unacceptably disruptive of the normal functioning of the licensed facility; being an escape risk; or for the minor's own security. DHS chose not to include in the proposed regulatory text the specific examples of behavior or offenses that could result in the secure detention of a minor, as they appear in FSA paragraph 21, because the examples are non-exhaustive and imprecise. For instance, examples listed in paragraph 21 of what may be considered nonviolent, isolated offenses (*e.g.,* breaking and entering, vandalism, or driving under the influence) may be classified as violent offenses in some states. Including these examples as part of codified regulatory text may inadvertently lead to more confusion than clarity.

Under proposed § 236.3(i)(2), consistent with FSA paragraph 23, DHS would place a minor in a less restrictive alternative if such an alternative is available and appropriate in the circumstances, even if the provisions of section 236.3(i)(1) apply. Finally, as provided under paragraph 6 of the FSA, proposed § 236.3(i)(3) would provide that, unless a secure facility is appropriate pursuant to proposed § 236.3(i)(1) and (2), DHS facilities used for the detention of minors would be non-secure facilities. This proposed paragraph, like FSA paragraph 32(C), provides that agreements for the placement of minors in non-INS facilities shall permit attorney-client visits. Proposed § 236.3(i)(2) explains that the secure facilities used by DHS to detain non-UAC minors will also permit attorney-client visits pursuant to applicable facility rules and regulations.

Proposed § 236.3(i)(3) sets forth concepts also articulated in FSA paragraphs 12, 14, and 19, that unless a detention in a secure facility is otherwise required, facilities used for the detention of minors shall be non-secure.

Proposed § 236.3(i)(4) would set out the standards for ''licensed programs,'' as in paragraphs 6 and 19 of the FSA. While the proposed rule would not define ''licensed program,'' DHS proposes that all non-secure facilities used for the detention of non-UAC minors would abide by these standards. These standards mirror the requirements of Exhibit 1 of the FSA and the current ICE Family Residential Standards. In addition, the standards in proposed paragraph (i)(4) would serve as a baseline of what would be required of a facility audited by a third-party when licensing by the state, county, or municipality is otherwise unavailable, pursuant to proposed paragraph (b)(9) of this section. At a minimum, these standards must include, but are not limited to, proper physical care, including living accommodations, food, clothing, routine medical and dental care, family planning services, emergency care (including a screening for infectious disease) within 48 hours of admission, a needs assessment including both educational and special needs assessments, educational services including instruction in the English language, appropriate foreign language reading materials for leisure time reading, recreation and leisure time activities, mental health services, group counseling, orientation including legal assistance that is available, access to religious services of the minor's choice,

visitation and contact with family members, a reasonable right to privacy of the minor, and legal and family reunification services. Finally, these standards, like FSA paragraph 32(C), require that agreements for placement of minors in non-INS facilities shall permit attorney-client visits. Proposed paragraph 236.3(i)(4) makes clear that DHS permits attorney-client visits pursuant to applicable facility rules and regulations in all licensed, non-secure facilities in which DHS places non-UAC minors.

Related to the requirements placed on facilities used for the detention of minors, but not included in the Exhibit 1 standards, is the requirement found at FSA paragraph 19. FSA paragraph 19 permits ''licensed programs'' to transfer temporary physical custody of minors prior to securing permission from the Government in the event of an emergency, provided that they notify the Government as soon as practicable, but in all cases within 8 hours. Proposed paragraph 236.3(i)(5) does the same, although applies it to ''licensed, non-secure facilities,'' instead of ''licensed programs,'' for reasons explained above.

Proposed 8 CFR 236.3(j)—Release of Minors From DHS Custody

The current regulations at § 236.3(b) address the release of juveniles when a determination is made that such juveniles may be released on bond, parole, or on their own recognizance. Provided detention of a juvenile is not required to secure the juvenile's appearance before DHS or the immigration court, and is not necessary to ensure the juvenile's safety or that of others, the current regulations allow a juvenile to be released to a parent, legal guardian, or an adult relative who is not currently in immigration detention. Current paragraph (b) goes on to state that if the parent, legal guardian, or relative is located at a place far from the current location of the juvenile, the relative can secure the release of the juvenile at the closest DHS office to that relative. The issue of transportation of the juvenile to the relative once release is secured is not discussed in the current regulation.

FSA paragraph 14 requires DHS to release a minor without unnecessary delay when DHS determines that the detention of the minor is not required either to secure timely appearance before DHS or an immigration judge, or to ensure the minor's safety or that of others. FSA paragraph 14 also provides a list of custodians to whom a minor may be released: A parent; legal guardian; adult relative (brother, sister, aunt, uncle, or grandparent); an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being; a licensed program; or an adult individual or entity seeking custody when it appears that no other likely alternative to long term detention is available and family reunification is not a reasonable possibility. FSA paragraph 26 states that the Government shall assist in making transportation arrangements to the office nearest the location of the person or facility to whom a minor is to be released pursuant to paragraph 14. Despite the language of the current regulations and the FSA, pursuant to the TVPRA and the HSA, DHS does not have the authority to release a minor to anyone other than HHS or a parent or legal guardian. Therefore, in order to comply with both paragraph 14 and the TVPRA, DHS may be required, in some situations, to transfer a child to HHS when it is necessary to continue to detain a parent or legal guardian. DHS typically has discretion under existing authorities to simultaneously parole the child and the parent or legal guardian, which would remain unchanged.[19]

The proposed regulation at § 236.3(j) would amend the approach laid out in current § 236.3(b), and make it consistent with the requirements of the TVPRA and the HSA (enacted after the regulation was originally promulgated), and executive orders, as well as with the current operational environment, which has also changed since the provision's original promulgation. With the exception of removing the list of individuals to whom a minor may be released, as described above, the rule largely incorporates the text of paragraph 14. However, the proposed rule would align the FSA paragraph 14 standards with existing statutes and regulations, and thus permit DHS to exercise its existing discretionary authorities governing release.

Aliens, including minors in family units, who are subject to expedited removal and who have not been found to have a credible fear or are still pending a credible fear determination are subject to mandatory detention. 8 U.S.C. 1225(b)(1)(B)(iii)(IV). DHS, however, retains the discretion to release such aliens on parole, based on a case-by-case determination that parole is for an ''urgent humanitarian need or significant public benefit.'' *Id.* 1182(d)(5)(A). Pursuant to the regulations, aliens who are in expedited removal proceedings and are pending a credible fear determination or who have been found not to have such fear, release on parole can only satisfy this standard when there is a medical necessity or a law enforcement need. 8 CFR 235.3(b)(4)(ii), (b)(2)(iii). Nothing indicates that, by entering into the FSA, the Government intended to subvert the intent of Congress with regard to the detention of minors in family units, allowing for their release into the United States simply based on consideration of those factors listed in paragraph 14 of the FSA.[20]

The intended effect of the draft rule is to change current practice and the text of FSA paragraph 14 to affirm that parole is within the discretion of DHS as intended by statute. For example, minors in expedited removal will be subject to the heightened standard in the 8 CFR 235.3(b). As indicated above, DHS is proposing to remove the reference to 8 CFR 235.3(b) in section 212.5(b) to make clear that the parole standard that applies to those in expedited removal is found in section 235.3 and not 212.5. Moreover, DHS will not make universal parole determinations for all minors placed into FRCs.

For individuals not in expedited removal proceedings, parole is available subject to the generally applicable parole regulation. *See* 8 CFR 212.5(b); *see also* 62 FR 10312, 10320 (1997). For those aliens in expedited removal who are found to have a credible fear and referred for proceeding under section 240 of the INA, parole, bond, or release on recognizance or other conditions are available, depending on the particular circumstances of the alien's entry.

Aliens who are eligible for release on bond, or release on their own recognizance or other conditions, the availability of such release depends on whether the alien can establish he or she is not a flight risk or a danger to the community. *Matter of Patel,* 15 I&N Dec.

[19] This rule would delete a reference to such discretion at current 8 CFR 236.3(b)(2), but such reference is unnecessary to ensure DHS discretion to effect simultaneous release. For instance, in the expedited removal context, DHS may parole the parent or legal guardian pursuant to the standards at 8 CFR part 235. And other parole standards are contained at 8 CFR 212.5. There are also other tools available to effect simultaneous release, such as bond.

[20] The U.S. District Court for the Central District of California has rejected this argument, but in doing so, it did not consider the regulatory provisions at 8 CFR 235.3. *Flores* v. *Sessions,* No. 2:85–cv–04544, at 25 n.18 (C.D. Cal. June 27, 2017). That decision requires that ICE must ignore Congress's plain intent with regard to the availability of parole for aliens in expedited removal proceedings and in some instances must consider parole for individuals subject to final orders of removal. The appeal from this decision is currently pending before the U.S. Court of Appeals for the Ninth Circuit. *See Flores* v. *Sessions,* No. 17–56297 (9th Cir.) (docketed Aug. 28, 2017).

666 (BIA 1976). Paragraph 14 similarly states that DHS makes a determination that detention of a minor is not ''required to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others.'' FSA paragraph 14. Both the FSA and custody standards applicable to aliens eligible for release on bond or on recognizance have a preference for release if an alien makes the requisite showing that they are not a flight risk or a danger to the community. *Id.; see also Matter of Patel.* 15 I&N Dec at 666. (''An alien generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security, or that he is a poor bail risk.''). This is the same standard used under paragraph 14 of the FSA; thus the text in proposed paragraph (j) would not reflect a substantive change in the initial custody determinations made by DHS for those minors eligible for such determinations.

Once it is determined that the applicable statutes and regulations permit release, proposed § 236.3(j) would permit release of a minor only to a parent or legal guardian who is available to provide care and custody, in accordance with the TVPRA, using the same factors for determining whether release is appropriate as are contained in paragraph 14. Included in the relevant factors would typically be consideration of whether detention is ''required either to secure his or her timely appearance before [DHS] or the immigration court, or to ensure the minor's safety or that of others.'' DHS also considers family unity when evaluating whether release of a minor is appropriate. This approach is consistent with the President's June 20, 2018, Executive Order 13841, ''Affording Congress an Opportunity to Address Family Separation,'' which identifies a policy of ''maintain[ing] family unity, including by detaining alien families together where appropriate and consistent with law and available resources.'' [21] Moreover, in most cases, the parent is in the best position to represent the minor's rights and wishes and can help the minor to prepare his or her case. It is also more expedient for the family, if the cases are interrelated, to have a single proceeding adjudicated in the same location, by the same adjudicator.

When determining whether an individual is a parent or legal guardian, DHS would use all available evidence, such as birth certificates or other available documentation, to ensure the parental relationship or legal guardianship is bona fide. If the relationship cannot be established, the juvenile would be treated as a UAC and would be transferred into HHS custody. If the relationship is established, but the parent or legal guardian lives far away, the proposed regulations use the FSA paragraph 26 language, stating that DHS shall assist with making arrangements for transportation and maintains the discretion to actually provide transportation to the DHS office nearest the parent or legal guardian.

Finally, the proposed rule would not include provisions parallel to the requirements in paragraphs 15 or 16 related to release from custody. These requirements have been superseded in part by the TVPRA, under which DHS cannot release a juvenile to anyone other than a parent or legal guardian. Further, parents have no affirmative right of release under the provisions of the FSA. Therefore, if DHS determines that the accompanying parent should be detained, releasing a minor under these circumstances would be either a release to a parent who is not currently in detention, or, in all other cases, a transfer to HHS custody, rather than a release from custody as envisioned under the FSA. In addition, the requirements of paragraphs 15 and 16, which are primarily for the Government's benefit, are not currently implemented.

Proposed 8 CFR 236.3(k)—Procedures Upon Transfer

Current 8 CFR 236.3 does not set out any procedures to specifically govern the transfer of minors. FSA paragraph 27 provides that a minor who is transferred from a placement in one ''licensed program'' to another shall be transferred with his/her possessions and legal papers, unless the possessions exceed the amount permitted by carriers, in which case the possessions will be shipped to the minor in a timely manner. The proposed regulations at § 236.3(k) include the same requirement for the transfer of possessions when a minor who is not a UAC is transferred between licensed, non-secure facilities. While DHS understands paragraph 27 of the FSA to, in practice, refer to transfer between ICE facilities (the only DHS facilities that qualify as ''placements'' in ''licensed programs,'' under the meaning of the FSA), minors are generally transferred with their possessions if they are moving between CBP facilities, or from a CBP facility to an ICE facility.

Paragraph 27 of the FSA also provides that no minor represented by counsel shall be transferred without advance notice to such counsel except in unusual and compelling circumstances. The proposed regulations also provide that if a minor or UAC is represented by counsel, notice to counsel will be provided prior to any transfer of a minor or UAC from one ICE placement to another, or from an ICE placement to an ORR placement, unless unusual and compelling reasons, such as safety or escape-risk, exist, in which case counsel will receive notification within 24 hours of transfer.

Proposed 8 CFR 236.3(l)—Notice to Parent of Refusal of Release or Application for Relief

The current regulations provide that if a parent of a detained juvenile can be located, and is otherwise suitable to receive custody of the juvenile, and the juvenile indicates a refusal to be released to his or her parent, the parent(s) shall be notified of the juvenile's refusal to be released to the parent(s), and the parent(s) shall be afforded the opportunity to present their views before a custody determination is made (§ 236.3(e)). Similarly, the current regulations provide that if a juvenile seeks release from detention, voluntary departure, parole, or any form of relief from removal, where it appears that the grant of such relief may effectively terminate some interest inherent in the parent-child relationship and/or the juvenile's rights and interests are adverse to those of the parent, and the parent is presently residing in the United States, the parent shall be given notice of the juvenile's application for relief, and shall be afforded an opportunity to present his or her views and assert his or her interest before a determination is made as to the merits of the request for relief (§ 236.3(f)). In both instances, the parents are given an opportunity to present their views to the district director, Director of the Office of Juvenile Affairs, or an immigration judge.

The FSA does not discuss any necessary notification to parents of a juvenile's refusal to be released to a parent or a juvenile's application for relief from removal. DHS has reviewed the current regulatory provision and is proposing amendments to this paragraph to maintain the goals of this type of notification while reflecting the current distribution of responsibilities vis-à-vis juveniles between DHS components and DOJ EOIR. The language of the current and proposed regulation appropriately protects parental rights while balancing a juvenile's potential desire to take an action adverse to the wishes of his/her parent.

[21] E.O. 13841 (June 20, 2018), 83 FR 29435.

Given the current legal environment and operational practices, ICE and CBP would seldom, if ever, be responsible for providing any type of parental notification as required by 236.3(e) or (f). For instance, if a minor seeks release from ICE detention, ICE would only be required to notify that minor's parent if the parent is presently residing in the United States and the minor's release would terminate some interest inherent in the parent-child relationship. Yet even in this scenario, because DHS cannot release a minor to anyone other than a parent or legal guardian as discussed above, it seems unlikely that such release would ''terminate some interest inherent in the parent-child relationship'' as described in current § 236.3(f). In practice, USCIS and EOIR are the entities most likely to be required to provide parental notification due to a potential termination of an interest inherent in the parent-child relationship, because USCIS adjudicators and EOIR immigration judges more frequently grant relief from removal that could impact a parent-child relationship. The proposed DHS regulations at 236.3(l) would remove language authorizing parents to present their views to immigration judges if their child refuses to be released into their custody, because currently immigration judges do not set conditions of release, and therefore do not decide to whom a minor or UAC will be released. However, the change does not prevent parents from presenting their views to DHS. Refusal of release is primarily an issue that affects DHS and HHS, rather than DOJ. In addition, certain types of requests listed in proposed 236.3(l) (*i.e.,* parole) would be addressed to DHS alone, and an immigration judge would not have jurisdiction over such requests.

The proposed changes to current sections 236(e) and (f) (in proposed § 236.3(l)) would clarify the actual scope of DHS's regulations, but would not represent a change in practice. The proposed rule would maintain parents' right to be notified and present their views to DHS (but not an immigration judge) if a minor or UAC in DHS custody refuses to be released to that parent, if a grant of relief might terminate some parent-child relationship interests, or where the child's interests are adverse to those of the parent.

In addition, the proposed rule would not affect the EOIR notice requirement currently contained at 8 CFR 1236.3(f) for applications for relief.

Proposed 8 CFR 236.3(m)—Bond Hearings

The current regulations make no provision for bond hearings by immigration judges for minors as FSA paragraph 24(A) has been interpreted to require. Paragraph 24(A), states that a minor in ''deportation proceedings'' shall be afforded a bond redetermination unless he or she refuses such a determination. The proposed regulations at § 236.3(m) provide for review of DHS bond determinations by immigration judges to the extent permitted by 8 CFR 1003.19, but only for those minors: (1) Who are in removal proceedings under INA section 240, 8 U.S.C. 1229a; and (2) who are in DHS custody. Those minors who are not in section 240 proceedings are ineligible to seek review by an immigration judge of their DHS custody determination.

DHS proposes this paragraph to provide for bond hearings as under FSA paragraph 24(A), while updating the language to be consistent with developments in immigration law since the FSA was signed, including the TVPRA. FSA paragraph 24(A) refers to minors in ''deportation proceedings.'' The term ''deportation proceedings,'' however, is no longer used in immigration law due to the enactment of IIRIRA in 1996. Prior to IIRIRA's enactment, the INS conducted two types of proceedings for aliens: ''exclusion'' proceedings and ''deportation'' proceedings. Section 304 of IIRIRA, however, changed the types of proceedings available to aliens under the INA, and what were previously known as ''deportation'' proceedings became ''removal'' proceedings. *See* INA sec. 240, 8 U.S.C. 1229a. IIRIRA also amended INA section 235 to provide for expedited removal proceedings for certain applicants for admission who would have previously been subject to ''exclusion'' proceedings. *See* INA sec. 235(b), 8 U.S.C. 1225(b). Thus, DHS has proposed to update this language. Additionally, the proposed rule would clarify that this provision applies only to minors in DHS custody, in accordance with the TVPRA.

Proposed 8 CFR 236.3(n)—Retaking Custody of a Previously Released Minor

The current regulations have no provisions for reassuming custody of previously released minors if they become an escape-risk, become a danger to the community, or are issued a final order of removal after being released. The proposed regulations at § 236.3(n) would provide for this scenario. The regulations also explain that DHS may take a minor into custody if there is no longer a parent or legal guardian available to care for the minor, at which point the minor will be treated as a UAC and DHS will transfer him or her to HHS.

Proposed 8 CFR 236.3(o)—Monitoring

The current regulations at § 236.3(c) describe the duties of the Juvenile Coordinator, including the responsibility of locating suitable placements for juveniles. Paragraph 28(A) of the FSA also includes a provision for a Juvenile Coordinator, but places more reporting and monitoring obligations on the Coordinator than currently exist in the regulations. The proposed regulations eliminate the requirement in the current regulations that the Juvenile Coordinator locate a suitable placement for minors, as these duties are generally exercised by immigration officers and other employees at DHS. Section 236.3(o), however, is being proposed to provide for monitoring, as under paragraph 28(A) of the FSA, by proposing two Juvenile Coordinators—one for ICE and one for CBP—and charges each with monitoring statistics about UACs and minors who remain in DHS custody for longer than 72 hours. The statistical information may include, but would not be limited to, biographical information, dates of custody, placement, transfers, removals, or releases from custody. This information does not include immigration status or hearing dates, as referenced in FSA paragraph 28(A), because the import of this data for monitoring purposes is not immediately apparent. The plain language meaning of ''immigration status'' of particular aliens in DHS custody is not relevant to monitoring compliance with detention or holding condition requirements. It is only relevant to whether DHS is able to detain an individual. It is unclear what other meaning of the term ''immigration status'' could be relevant to monitoring compliance with these regulations. The hearing dates for aliens in DHS custody, which are not set by DHS and are frequently subject to change, are also not directly relevant to the monitoring of the conditions of detention for a minor alien. The juvenile coordinators may collect such data, if appropriate. The juvenile coordinators may also review additional data points should they deem it appropriate given operational changes and other considerations.

B. HHS Regulations

Proposed 45 CFR Part 410, Subpart A—Care and Placement of Unaccompanied Alien Children

This subpart states the purpose of this regulation and the general principles behind it, and sets standards for the care and placement of UACs as discussed below. ORR uses the term ''placement'' to refer to assigning UACs to facilities that ORR operates or arranges through a grant or contract, or assigning them to ORR-funded foster care. ORR uses the term ''release'' to refer to the release of UACs from ORR custody into the custody of an approved sponsor.

Proposed 45 CFR 410.100—Scope of This Part

Section 410.100 discusses what is covered under this part. Specifically, it states that this part covers the care, custody, and placement of UACs pursuant to section 462 of the HSA and section 235 of the TVPRA, and in light of the FSA. The proposed rule would make clear that the purpose of this rule is not to govern or describe the entire program, nor is it to implement either the HSA or the TVPRA in their entirety. Rather, the purpose of this rule is to implement the relevant and substantive terms of the FSA, and this rulemaking will apply provisions of the HSA and TVPRA only where such authorities would supersede or alter an FSA provision.

Proposed 45 CFR 410.101—Definitions

Section 410.101 states the definitions that apply to this part. Notably, the definition of UAC is from the HSA. *See* 6 U.S.C. 279(g)(2); 8 U.S.C. 1232(g). The regulation uses the term ''staff secure facility'' in the same sense as the FSA uses the term ''medium security facility.'' ''Shelter'' includes facilities defined as ''licensed facilities'' under the FSA, and also includes staff secure facilities, *i.e.,* medium security facilities as defined by the FSA. Other types of shelters might also be licensed, such as long term and transitional foster care facilities. The FSA does not define ''secure facility,'' but this regulation proposes a definition consistent with the provisions of the FSA applying to secure facilities. These facilities may be a state or county juvenile detention facility or another form of secure ORR detention facility (such as a Residential Treatment Center), or a facility with an ORR contract or cooperative agreement having separate accommodations for minors. The definition uses the term ''cooperative agreement,'' as ORR uses cooperative agreements for the majority of its shelters, pursuant to 8 U.S.C. 1232(i). The definition recognizes that under the FSA, a secure facility does not need to meet the licensed facility provisions that would apply to other shelters.

Section 410.101 defines unaccompanied alien child according to the definition set forth in the HSA. It, as well as the TVPRA, only gives ORR authority to provide care and custody of individuals who meet that definition. The statutes, however, do not set forth a process for determining whether an individual meets the definition of a UAC. Similar to proposed 8 CFR 236.3(d), § 410.101 would make clear that ORR's determination of whether a particular person is a UAC is an ongoing determination that may change based on the facts available to ORR.

Proposed 45 CFR 410.102—ORR Care and Placement of Unaccompanied Alien Children

Section 410.102 specifies the children for whom ORR provides care, custody, and placement. The regulation specifies that DHS handles immigration benefits and enforcement. The INS entered into the FSA prior to the enactment of the HSA and TVPRA, which transferred the care, and then custody, of the majority of UACs to ORR. The HSA recognizes that ORR does not have responsibility for adjudicating benefit determinations under the INA. This part recognizes the general principles of the FSA that while in custody, UACs shall be treated with dignity, respect, and special concern for their particular vulnerability.

Proposed 45 CFR Part 410, Subpart B—Determining the Placement of an Unaccompanied Alien Child

Proposed 45 CFR 410.200—Purpose of This Subpart

As stated in§ 410.200, this subpart sets forth factors that ORR considers when placing UACs.

Proposed 45 CFR 410.201—Considerations Generally Applicable to the Placement of an Unaccompanied Alien Child

Section 410.201 addresses the considerations that generally apply to the placement of UAC. The provision generally parallels the FSA requirements. The provision notes that ORR makes reasonable efforts to provide placements in the geographic areas where DHS apprehends the majority of UACs. ORR complies with this provision, as ORR maintains the highest number of UAC beds in the state of Texas where most UACs are currently apprehended.

Proposed 45 CFR 410.202—Placement of an Unaccompanied Alien Child in a Licensed Program

Section 410.202 states that ORR places a UAC into a licensed program promptly after a UAC is referred to ORR legal custody, except in certain enumerated circumstances. *See* 8 U.S.C.1232(c)(2)(A). The FSA also recognizes circumstances where a UAC is not promptly, or is not at all, placed in a licensed program. These circumstances include emergencies or an influx as defined in § 410.101 (in which case the UAC shall be placed in a licensed program as expeditiously as possible); where the UAC meets the criteria for placement in a secure facility; and as otherwise required by any court decree or court-approved settlement. Like the DHS portion of this proposed rule, proposed § 410.202 does not include the exception, which appears at paragraph 12(A)(4) of the FSA, that allows transfer within 5 days instead of 3 days in cases involving transport from remote areas or where an alien speaks an ''unusual'' language that requires the Government to locate an interpreter. As noted above, DHS has matured its operations such that these factors no longer materially delay transfer.

Proposed 45 CFR 410.203—Criteria for Placing an Unaccompanied Alien Child in a Secure Facility

Section 410.203 sets forth criteria for placing UACs in secure facilities. This part is consistent with the FSA criteria, except that under the TVPRA, ''[a] child shall not be placed in a secure facility absent a determination that the child poses a danger to self or others or has been charged with having committed a criminal offense.'' 8 U.S.C. 1232(c)(2)(A). With respect to these regulations, therefore, the TVPRA removes the factor of being an escape risk, which is permissible grounds under the FSA, as a ground upon which ORR may place a UAC in a secure facility.

In addition, HHS chose not to include in the proposed regulatory text the specific examples of behavior or offenses that could result in the secure detention of a UAC, as they appear in paragraph 21 of the FSA, because the examples are non-exhaustive and imprecise. For instance, examples listed in paragraph 21 of what may be considered nonviolent, isolated offenses (*e.g.,* breaking and entering, vandalism, or driving under the influence) could be violent offenses in certain circumstances depending upon the actions accompanying them. In

addition, state law may classify these offenses as violent. Including these examples as part of codified regulatory text may inadvertently lead to more confusion rather than clarity, and eliminate the ability to make case-by-case determinations of the violence associated with a particular act.

Under the proposed regulations, a UAC may be placed in a secure facility if ORR determines that the UAC:

- Has been charged with, is chargeable, or has been convicted of a crime; or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act; and where ORR assesses that the crimes or delinquent acts were not:
  - Isolated offenses that (1) were not within a pattern or practice of criminal activity and (2) did not involve violence against a person, or the use or carrying of a weapon; or
  - petty offenses, which are not considered grounds for a stricter means of detention in any case.

''Chargeable'' means that ORR has probable cause to believe that the UAC has committed a specified offense.

- While in DHS or ORR's custody or while in the presence of an immigration officer, has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself/herself or others.). *Note:* that because the FSA states that such acts would have occurred ''while in INS custody'' or ''in the presence of an INS officer,'' we propose that such activities in either DHS or HHS custody or in the presence of an ''immigration officer'' would be evaluated.
- Has engaged while in a licensed program in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which the UAC is placed such that transfer is necessary to ensure the welfare of the UAC or others, as determined by the staff of the licensed program.

In addition, ORR proposes the following as warranting placement in a secure facility, even though the FSA does not specifically mention such criteria.

- First, if a UAC engages in unacceptably disruptive behavior that interferes with the normal functioning of a ''staff secure'' shelter, then the UAC may be transferred to secure facility. As written, the FSA looks only to such disruptive behavior when it occurs in a ''licensed'' facility—which under the FSA does not include in its definition staff-secure facilities—even though the vast majority of such facilities receive the same licenses as non-secure shelters. However, under this rule, UACs could be immediately transferred to a secure facility for disruptive behavior in a non-secure shelter, without the means to evaluate further disruption in a staff secure setting. In addition, allowing for evaluation while in staff-secure care allows HHS to protect the other children residing within such shelter; it allows HHS to move one UAC who is disrupting the operations of the staff secure facility and transfer him or her to a more restrictive level of care.
- Second, the proposed rule adds to the list of behaviors that may be considered unacceptably disruptive. Examples provided in the FSA at paragraph 21 are: Drug or alcohol abuse, stealing, fighting, intimidation of others, etc. The agreement specifically says that the list is not exhaustive. Therefore, we propose to add to this list ''displays sexual predatory behavior.''
- Finally, in keeping with the July 30 Order in *Flores* v. *Sessions,* the proposed rule states that placement in a secure RTC may not occur unless a licensed psychologist or psychiatrist determines that the UAC poses a risk of harm to self or others.

Section 410.203 also sets forth review and approval of the decision to place a UAC in a secure facility consistent with the FSA. The FSA states that the determination to place a minor in a secure facility shall be reviewed and approved by the ''regional juvenile coordinator.'' This proposed rule uses the term ''Federal Field Specialist,'' as this is the official closest to such juvenile coordinator for ORR. (*Note:* Although not covered in this proposed rule, ORR also recognizes that the TVPRA at 8 U.S.C. 1232(c)(2)(A) delegates to the Secretary of HHS the requirement for prescribing procedures governing agency review, on a monthly basis, of secure placements. ORR directs readers to sections 1.4.2. and 1.4.7 of the ORR Policy Guide (available at: *https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied*) for these procedurals under the TVPRA.)

Proposed 45 CFR 410.204—Considerations When Determining Whether an Unaccompanied Alien Child is an Escape Risk

Section 410.204 describes the considerations ORR takes into account when determining whether a UAC is an escape risk. This part is consistent with how the term ''escape risk'' is used in the FSA. The TVPRA removes the factor of being an escape risk as a ground upon which ORR may place a UAC in a secure facility, even though it constitutes permissible grounds under the FSA. The factor of escape risk, however, is still relevant to the evaluation of transfers between ORR facilities under the FSA as being an escape risk might cause a UAC to be stepped up from a non-secure level of care to a staff secure level of care where there is a higher staff-UAC ratio and a secure perimeter at the facility. Notably, an escape risk differs from a ''risk of flight,'' which is a term of art used in immigration law regarding an alien's risk of not appearing for his or her immigration proceedings.

Proposed 45 CFR 410.205—Applicability of Section 410.203 for Placement in a Secure Facility

Section 410.205 provides that ORR does not place a UAC in a secure facility pursuant to § 410.203 if less restrictive alternatives, such as a staff secure facility or another licensed program, are available and appropriate in the circumstances.

Proposed 45 CFR 410.206—Information for Unaccompanied Alien Children Concerning the Reasons for His or Her Placement in a Secure or Staff Secure Facility

Section 410.206 specifies that, within a reasonable period of time, ORR provides each UAC placed in or transferred to a secure or staff secure facility with a notice of the reasons for the placement in a language the UAC understands.

Proposed 45 CFR 410.207—Custody of an Unaccompanied Alien Child Placed Pursuant to This Subpart

Section 410.207 specifies who has custody of a UAC under subpart B of these rules. The regulation specifies that upon release to an approved sponsor, a UAC is no longer in the custody of ORR. ORR would continue to have ongoing monitoring responsibilities under the HSA and TVPRA, but would not be the legal or physical custodian. *See, e.g.,* 6 U.S.C. 279(b)(1)(L); 8 U.S.C. 1232(c)(3)(B). This interpretation accords with ORR's longstanding interpretation, as well as provisions of the FSA (*see e.g.,* paragraphs 15 through 17, discussing ''release'' from custody). This provision recognizes that once a UAC is released, he or she is outside the custody of HHS and ORR.

Proposed 45 CFR 410.208—Special Needs Minors

Section 410.208 describes ORR's policy regarding placement of a special needs minor. Note that an RTC may be considered a secure level of care and is discussed in section 410.203 of this Part.

Proposed 45 CFR 410.209—Procedures During an Emergency or Influx

Section 410.209 describes the procedures ORR follows during an emergency or influx. The FSA defines ''emergency'' and ''influx.'' HHS proposes to incorporate those definitions into its regulations with minor changes, consistent with the definitions in proposed 8 CFR 236.3. In addition, the FSA states that in the case of an emergency or influx of minors into the United States, UACs [22] should be placed in a licensed program as ''expeditiously as possible.''

However, as DHS does, ORR also proposes a written plan describing the reasonable efforts it will take to place all UACs as expeditiously as possible into a licensed shelter when there is an influx or emergency consistent with proposed 410.209.

Proposed 45 CFR 410 Subpart C, Releasing an Unaccompanied Alien Child From ORR Custody

Proposed 45 CFR 410.300—Purpose of This Subpart

As described in § 410.300, the purpose of this subpart is to address the policies and procedures used to release a UAC from ORR custody to an approved sponsor.

Proposed 45 CFR 410.301—Sponsors to Whom ORR Releases an Unaccompanied Alien Child

As specified in 410.301, ORR releases a UAC to a sponsor without unnecessary delay when ORR determines that continued ORR custody of the UAC is not required either to secure the UAC's timely appearance before DHS or the immigration courts, or to ensure the UAC's safety or the safety of others.

Section 410.301 also contains the list of individuals (and entities) to whom ORR releases a UAC. ORR refers to the individuals and entities in this list as ''sponsors,'' regardless of their specific relationship with the UAC. The list follows the order of preference set out in the FSA.

Proposed 45 CFR 410.302—Sponsor Suitability Assessment Process Requirements Leading to Release of an Unaccompanied Alien Child From ORR Custody to a Sponsor

Section 410.302 outlines the process requirements leading to release of a UAC from ORR custody to a sponsor (also referred to as ''custodian''). The FSA at paragraph 17 allows ORR the discretion to require a suitability assessment prior to release. Likewise, the TVPRA provides that ORR may not release a UAC to a potential sponsor unless ORR makes a determination that the proposed custodian is ''capable of providing for the child's physical and mental well-being. Such determination shall, at a minimum, include verification of the custodian's identity and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child.'' 8 U.S.C. 1232(c)(3)(A). As such, this proposed rule requires a background check, including at least a verification of identity for potential sponsors in all circumstances.

Like the FSA, the proposed rule also allows for the suitability assessment to include an investigation of the living conditions in which the UAC would be placed and the standard of care he or she would receive, interviews of household members, a home visit, and follow-up visits after release. Furthermore, where the TVPRA requires a home study, as specified in 8 U.S.C. 1232(c)(3)(B), the proposed regulations acknowledge such requirement.

The FSA says that the proposed sponsor must agree to the conditions of release by signing a custodial affidavit (Form I–134) and release agreement. However, the Form I–134 is a DHS form, and ORR does not use such form. Therefore, this proposed rule would have the sponsor sign an affirmation of abiding by the sponsor care agreement, which is the historical agreement and accompanying form ORR has used so that the sponsor acknowledges his or her responsibilities.

For many years the suitability assessment has involved prospective sponsors and household members to be fingerprinted and for background checks to be run on their biometric and biographical data to ensure that release of a UAC to prospective sponsors would be safe. Fingerprinting of potential sponsors and household members is consistent with child welfare provisions. For example, all states require background checks for prospective foster care and adoptive parents, and kinship caregivers typically must meet most of these same requirements. *See* ''Background Checks for Prospective Foster, Adoptive, and Kinship Caregivers,'' available at: *https://www.childwelfare.gov/pubPDFs/background.pdf#page=2&view=Who* needs background checks (last visited Aug. 4, 2018). As of the time of the publication of the report, in 48 states, all adults residing in the home also were subject to background checks. A criminal records check for adult sponsors and other household members will check the individual's name in State, local or Federal law enforcement agencies' records, including databases of records for any history of criminal convictions. And, nearly all states require a check of national criminal records. *See also* 42 U.S.C. 671(a)(20) (providing that states receiving federal funding for foster care and adoption assistance provide ''procedures for criminal records checks, including fingerprint-based checks of national crime information databases (as defined in section 534(e)(3)(A) 1 of title 28), for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child . . . .'') In many, if not most cases, as well, while a sponsor may be a biological parent, the child arrived unaccompanied, and may not have lived with the parent for much or a significant portion of his or her childhood.

Section 410.302(e) lists the conditions and principles of release.

ORR also invites public comment on whether to set forth in the final rule ORR's general policies concerning the following:

- Requirements for home studies (see 8 U.S.C. 1232(c)(3)(B) for statutory requirements for a home study);
- Denial of release to a prospective sponsor, criteria for such denial, and appeal; and
- Post-release services requirements.

Note: in accordance with the *Flores* v. *Sessions* July 30, 2018 Court order, ORR states in the preamble that it will not have a blanket policy of requiring post-release services to be scheduled prior to release—for those UACs who required a home study—but will evaluate such situations on case-by-case basis, based on the particularized needs of the UAC as well as the evaluation of the sponsor, and whether the suitability of the sponsor may depend upon having post-release services in place prior to any release. Because this statement reflects an interpretation of what may constitute an ''unnecessary'' delay of release, it is not necessary to include the policy on post-release services being in place, discussed above, explicitly in the regulation text, as the requirement for release without ''unnecessary delay'' is already included in the substantive rule.

Current policies are set forth in the UAC Policy Guide available at *https://www.acf.hhs.gov/orr/resource/children-*

[22] While the text of the FSA only uses the term ''minors,'' HHS has interpreted this term to include UACs, who may or may not meet the definition of ''minor'' in the FSA, given the subsequent enactment of the TVPRA, and the fact that HHS does not have custody of juveniles who are not UACs.

entering-the-united-states-unaccompanied at: §§ 2.4 through 2.7.

Proposed 45 CFR 410 Subpart D—What Standards Must Licensed Programs Meet?

Proposed 45 CFR 410.400—Purpose of This Subpart

As stated at § 410.400, this subpart covers the standards that licensed programs must meet in keeping with the FSA, as set out in the principles of the FSA, including the general principles of the settlement agreement of treating all minors in custody with dignity, respect, and special concern for their particular vulnerability.

Proposed 45 CFR 410.401—Applicability of This Subpart

Section 410.401 states that the subpart applies to all licensed programs.

Proposed 45 CFR 410.402—Minimum Standards Applicable to Licensed Programs

Section 410.402 reflects the minimum standards of care listed in Exhibit 1 of the FSA. ORR expects licensed programs to easily meet those minimum standards and, in addition, to strive to provide additional care and services to the UACs in their care. The requirements of 410.402 are consistent with the *Flores* v. *Sessions* Court Order of July 30, 2018, as they require that licensed programs comply with applicable state child welfare laws and regulations, and that UACs be permitted to ''talk privately on the phone, as permitted by the house rules and regulations.''

Proposed 45 CFR 410.403—Ensuring That Licensed Programs are Providing Services as Required by These Regulations

Section 410.403 describes how ORR ensures that licensed programs are providing services as required by these regulations. As stated in this section, to ensure that licensed programs continually meet the minimum standards and are consistent in their provision of services, ORR monitors compliance with these rules. The FSA does not contain standards for how often monitoring shall occur, and this regulation does not propose to do so. At present, ORR provides further information on such monitoring in section 5.5 of the ORR Policy Guide (available at: *https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-5#5.5*).

Proposed 45 CFR 410 Subpart E—Provisions for Transportation of an Unaccompanied Alien Child

This subpart concerns the safe transportation of a UAC while he or she is in ORR's custody.

Proposed 45 CFR 410.500—Purpose of This Subpart

Section 410.500 describes how transportation is conducted for a UAC in ORR's custody. The FSA has two provisions that govern transportation specifically, which are incorporated in this proposed rule at § 410.501. First, a UAC cannot be transported with unrelated detained adults. Second, ORR assists in making transportation arrangements when ORR plans to release a UAC under the sponsor suitability provisions, and ORR may, in its discretion, provide transportation to a UAC.

Proposed 45 CFR 410 Subpart F, Transfer of an Unaccompanied Alien Child

This subpart sets forth the provisions for transferring a UAC between HHS facilities. In some cases, ORR may need to change the placement of a UAC. This may occur for a variety of reasons, including a lack of detailed information at the time of apprehension, a change in the availability of licensed placements, or a change in the UAC's behavior, mental health situation, or immigration case.

Proposed 45 CFR 410.600—Principles Applicable to Transfer of an Unaccompanied Alien Child

Section 410.600 sets out the principles that apply to the transfer of a UAC between HHS facilities. The transfer of a UAC under the FSA concerns mainly two issues: (1) That a UAC is transferred with all his or her possessions and legal papers, and (2) that the UAC's attorney, if the UAC has one, is notified prior to a transfer, with some exceptions. This rule adopts the FSA provisions concerning transfer of a UAC.

Proposed 45 CFR 410 Subpart G—Age Determinations

This subpart concerns age determinations for UACs.

Proposed 45 CFR 410.700—Conducting Age Determinations

Section 410.700 incorporates both the provisions of the TVPRA, 8 U.S.C. 1232(b)(4), and the requirements of the FSA, in setting forth standards for age determinations. These take into account multiple forms of evidence, including the non-exclusive use of radiographs, and may involve medical, dental, or other appropriate procedures to verify age.

Proposed 45 CFR 410.701—Treatment of an Individual Who Appears To Be an Adult

Section 410.701 also accords with the FSA and the TVPRA, and states that if the procedures of § 410.700 would result in a reasonable person concluding that an individual is an adult, despite his or her claim to be a minor, ORR must treat such person as an adult for all purposes. As with 410.700, ORR may take into account multiple forms of evidence, including the non-exclusive use of radiographs, and may require such an individual to submit to a medical or dental examination conducted by a medical professional or other appropriate procedures to verify age.

Proposed 45 CFR 410 Subpart H, Unaccompanied Alien Children's Objections to ORR Determinations

This subpart concerns objections of a UAC to ORR placement.

Proposed 45 CFR 410.800–801—Procedures

While the FSA at Paragraph 24(B) and 24(C) contains procedures for judicial review of a UAC's placement in shelter (including in secure or staff-secure), and a standard of review, the agreement is clear that a reviewing federal district court must have both ''jurisdiction and venue.'' Also, once these regulations are finalized and the FSA is terminated, it would be even clearer that any review by judicial action must occur under a statute where the government has waived sovereign immunity, such as the Administrative Procedure Act. Therefore, we are not proposing regulations for most of paragraphs 24(B) and 24(C) of the FSA, although we do propose that all UACs will continue to receive a notice stating as follows:

''ORR usually houses persons under the age of 18 in an open setting, such as a foster or group home, and not in detention facilities. If you believe that you have not been properly placed or that you have been treated improperly, you may call a lawyer to seek assistance. If you cannot afford a lawyer, you may call one from the list of free legal services given to you with this form.''

The proposed rule also contains a requirement parallel to that of the FSA that when UACs are placed in a more restrictive level of care, such as a secure or staff secure facility, they receive a notice—within a reasonable period of time—explaining the reasons for housing them in the more restrictive

level of care. In addition, the proposed rule is consistent with the July 30, 2018 order of the *Flores* court by stating that the notice must be in a language the UAC understands.

Finally, consistent with the FSA, the proposed provision requires that ORR promptly provide each UAC not released with a list of free legal services providers compiled by ORR and that is provided to UAC as part of a Legal Resource Guide for UAC (unless previously given to the UAC).

Proposed 45 CFR 410.810 ''810 Hearings''

The proposed rule makes no provision for immigration judges employed by the DOJ to conduct bond redetermination hearings for UACs under paragraph 24(A) of the FSA. It is not clear statutory authority for DOJ to conduct such hearings still exists, and indeed DOJ argued in the Ninth Circuit that it does not. In the HSA, Congress assigned responsibility for the ''care and placement'' of UACs to HHS's ORR, and specifically barred ORR from requiring ''that a bond be posted for [a UAC] who is released to a qualified sponsor.'' 6 U.S.C. 279(b)(1)(A), (4). In the TVPRA, Congress reaffirmed HHS's responsibility for the custody and placement of UACs. 8 U.S.C. 1232(b)(1), (c). The TVPRA also imposed detailed requirements governing ORR's release of UACs to proposed custodians—including, for example, a provision authorizing ORR to consider a UAC's dangerousness and risk of flight in making placement decisions. 8 U.S.C. 1232(c)(2)(A). Congress thus appears to have vested HHS, not DOJ, with control over the custody and release of UACs, and to have deliberately omitted any role for immigration judges in this area.

In *Flores* v. *Sessions,* the U.S. Court of Appeals for the Ninth Circuit nonetheless concluded that neither the HSA nor the TVPRA superseded the FSA's bond-hearing provision. 862 F.3d at 881. But the court did not identify any affirmative statutory authority for immigration judges employed by DOJ to conduct the bond hearings for UACs required by paragraph 24(A) of the FSA. ''[A]n agency literally has no power to act . . . unless and until Congress confers power upon it.'' *La. Pub. Serv. Comm'n* v. *FCC,* 476 U.S. 355, 374 (1986). HHS, however, as the legal custodian of UACs who are in federal custody, clearly has the authority to conduct the hearings envisioned by the FSA and in accordance with the court's ruling in *Flores* v. *Sessions.* It also is more sensible, as a policy matter, for the same agency (HHS) charged with responsibility for custody and care of UACs also to conduct the hearings envisioned by the FSA.

This rule in turn proposes HHS regulations to afford the same type of hearing paragraph 24(A) calls for, and to recognize the transfer of responsibility of care and custody of UAC from the former INS to HHS ORR. Specifically, rather than providing for DOJ-employed immigration judges to preside over these hearings, this rule includes provisions whereby HHS would create an independent hearing officer process that would be guided by the immigration judge bond hearing process currently in place for UACs under the FSA. The basic idea would be to provide essentially the same substantive protections, but through a neutral adjudicator at HHS rather than DOJ.

This proposed rule implements the FSA's substantive protections, and responds to the HSA and TVPRA and the transfer of responsibility for UACs, when they are in government custody, to HHS. The reasonable method of reconciling paragraph 24(A) of the FSA with the HSA and TVPRA, is for the Secretary of HHS to appoint an independent hearing officer or officers who would conduct the hearings envisioned by the FSA for those UAC who qualify for such review.

Under this proposal, the Secretary would appoint independent hearing officers to determine whether a UAC, if released, would present a danger to community (or flight risk). The hearing officer would not have the authority to release a UAC, as the *Flores* court has already recognized that Paragraph 24(A) of the FSA does not permit a determination over the suitability of a sponsor. Specifically, in reviewing this issue, the Ninth Circuit explained ''as was the case when the *Flores* Settlement first went into effect, [a bond hearing] permits a system under which unaccompanied minors will receive bond hearings, but the decision of the immigration judge will not be the sole factor in determining whether and to whose custody they will be released. Immigration judges may assess whether a minor should remain detained or otherwise in the government's custody, but there must still be a separate decision with respect to the implementation of the child's appropriate care and custody.'' *Flores,* 862 F.3d at 878. Similarly, the district court stated: ''To be sure, the TVPRA addresses the safety and secure placement of unaccompanied children . . . . But identifying appropriate custodians and facilities for an unaccompanied child is not the same as answering the threshold question of whether the child should be detained in the first place—that is for an immigration judge at a bond hearing to decide . . . . Assuming an immigration judge reduces a child's bond, or decides he or she presents no flight risk or danger such that he needs to remain in HHS/ORR custody, HHS can still exercise its coordination and placement duties under the TVPRA.'' *Flores* v. *Lynch,* No. CV 85–4544 DMG at 6 (C.D. Cal. Jan. 20, 2017).

Thus, the hearing officer would decide only the issues presented by paragraph 24(A) of the FSA—whether the UAC would present a danger to the community or a risk of flight (that is, not appearing for his or her immigration hearing) if released. For the majority of children in ORR custody, ORR has determined they are not a danger and therefore has placed them in shelters, group homes, and in some cases, staff secure facilities. For these children, a hearing is not necessary or even beneficial, and would simply be a misuse of limited government resources. However, for some children placed in secure facilities, the hearing may assist them in ultimately being released from ORR custody in the event a suitable sponsor is or becomes available.

As is the case now, under section 2.9 of the ORR Policy Guide (available at: *https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.9*), the hearing officer's decision that the UAC is not a danger to the community will supersede an ORR determination on that question. While currently, immigration judge decisions on such issues may be appealed to the Board of Immigration Appeals (BIA), HHS does not have a two-tier administrative appellate system that mirrors the immigration judge-BIA hierarchy. To provide similar protections without such a rigid hierarchy, this proposed rule would allow appeal to the Assistant Secretary of ACF (if the appeal is received by the Assistant Secretary within 30 days of the original hearing officer decision). The Assistant Secretary would review factual determinations using a clearly erroneous standard, and review legal determinations on a *de novo* basis. In such cases, where ORR appeals to the Assistant Secretary of ACF, there would be no stay of the hearing officer's decision unless the Assistant Secretary finds, within 5 business days of the hearing officer decision, that a failure to stay the decision would result in a significant danger to the community presented by the UAC. The written stay decision would be based on clear behaviors of the UAC while in care, and/or documented criminal or juvenile behavior records from the UAC.

Otherwise, a hearing officer's decision that a UAC would not be dangerous (or a flight risk) if released, would mean that as soon as ORR determined a suitable sponsor (or if ORR has done so already) it must release in accordance with its ordinary procedures on release.

Under current *Flores* hearing rules, and in accordance with the *Flores* district court's order analogizing *Flores* hearings to bond hearings for adults, immigration judges apply the standard of *Matter of Guerra,* 24 I&N Dec. 37 (BIA 2006).[23] Thus, the burden is on the UAC to demonstrate that he or she would not be a danger to the community (or flight risk) if released. However, due to the unique vulnerabilities of children and subsequent enactment of the TVPRA, we request comments on whether the burden of proof should be on ORR to demonstrate that the UAC would be a danger or flight risk if released. As is the case currently, the standard would be a ''preponderance'' of the evidence.

ORR also would take into consideration the hearing officer's decision on a UAC's level of danger when assessing the UAC's placement and conditions of placement, but the hearing officer would not have the authority to order a particular placement for a UAC.

Requests for a hearing under this section (an ''810 hearing'') could be made by the child in ORR care, by a legal representative of the child, or by parents/legal guardians on their child's behalf. These parties could submit a written request for the 810 hearing to the care provider using the ORR form (*See https://www.acf.hhs.gov/sites/default/files/orr/request_for_a_flores_bond_hearing_01_03_2018e.pdf* (last visited Aug. 12, 2018)), or through a separate written request that provides the information requested in the form. ORR would provide a notice of the right to request the 810 hearing to UACs in secure and staff secure facilities. ORR also expects that the hearing officer would create a process for UACs or their representatives to directly request a hearing to determine danger (or flight risk). During the 810 hearing, the UAC could choose to be represented by a person of his or her choosing, at no cost to the government. The UAC could present oral and written evidence to the hearing officer and could appear by video or teleconference. ORR could also choose to present evidence either in writing, or by appearing in person, or by video or teleconference.

Because the 810 hearing process would be unique to ORR and HHS, if a UAC turns 18 years old during the pendency of the hearing, the deliberations would have no effect on DHS detention (if any).

If the hearing officer determines that the UAC would be a danger to the community (or a flight risk) if released, the decision would be final unless the UAC later demonstrates a material change in circumstances to support a second request for a hearing. Similarly, because ORR may not have yet located a suitable sponsor at the time a hearing officer issues a decision, ORR may find that circumstances have changed by the time a sponsor is found such that the original hearing officer decision should no longer apply. Therefore, the proposed regulation states that ORR may request the hearing officer to make a new determination if at least one month has passed since the original decision, and ORR can show that a material change in circumstances means the UAC should no longer be released due to danger (or flight risk).

HHS invites public comment on whether the hearing officers for the 810 hearings should be employed by the Departmental Appeals Board, either as Administrative Law Judges or hearing officers, or whether HHS would create a separate office for hearings, similar to the Office of Hearings in the Centers for Medicare & Medicaid Services. *See https://www.cms.gov/About-CMS/Agency-Information/CMSLeadership/Office_OHI.html*.

Furthermore, while the FSA contains procedures for judicial review of a UAC's placement in a secure or staff-secure shelter, and a standard of review, once these regulations are finalized and the FSA is vacated, any review by judicial actions would occur in accordance with the Administrative Procedure Act and any other applicable Federal statute. Therefore, we are not proposing regulations for most of paragraphs 24(B) and 24(C) of the FSA.

VI. Statutory and Regulatory Requirements

The Departments have considered numerous statutes and executive orders related to rulemaking. The following sections summarize our analyses based on a number of these statutes and executive orders.

A. Executive Orders 12866 and 13563: Regulatory Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. OMB has designated this rule a significant regulatory action, although not an economically significant regulatory action, under Executive Order 12866. Accordingly, OMB has reviewed this regulation.

(1) Background and Purpose of the Proposed Rule

These proposed regulations aim to terminate the FSA. They would codify current requirements of the FSA and court orders enforcing terms of the FSA, as well as relevant provisions of the HSA and TVPRA. The Federal government's care of minors and UACs has complied with the FSA and related court orders for over 20 years, and complies with the HSA and TVPRA.

The proposed rule applies to minors and UACs encountered by DHS, and in some cases, their families. CBP and ICE encounter minors and UACs in different manners. CBP generally encounters minors and UACs at the border. Generally, ICE encounters minors either upon transfer from CBP to an FRC, or during interior enforcement actions. ICE generally encounters UACs when they are transferred from CBP custody to ORR custody, as well as during interior enforcement actions.

CBP

CBP's facilities at Border Patrol stations and ports of entry (POEs) are processing centers, designed for the temporary holding of individuals. CBP facilities are designed to meet the primary mission of CBP, which is to facilitate legitimate travel and trade. CBP's facilities are not designed, nor are there services in place, to accommodate large numbers of minors and UACs waiting for transfer to ICE or ORR, even for the limited period for which CBP is generally expected to have custody of minors and UACs, generally 72 hours or less. All minors and UACs in CBP facilities are provided access to safe and sanitary facilities; functioning toilets and sinks; food; drinking water; emergency medical assistance, as appropriate; and adequate temperature control and ventilation. To ensure their safety and well-being, UACs in CBP facilities are supervised and are generally segregated from unrelated

[23] The *Flores* District Court specifically cited the law of 8 U.S.C. 1226 and 8 CFR 1003.19, 1236.1(d). *See Flores* v. *Sessions*, 2:85–cv–04544, *supra* at 2, 6.

adults; older, unrelated UACs are generally segregated by gender.

CBP has apprehended or encountered 61,610 minors accompanied by their parent(s) or legal guardian(s) (defined as a ''family unit''), and 55,090 UACs on average annually for the last three fiscal years. In Fiscal Year 2017, CBP apprehended or encountered approximately 105,000 aliens as part of a family unit. Table 2 shows the annual number of accompanied minors (that is, minors accompanied by their parent(s) or legal guardian(s)) and UACs CBP has apprehended or encountered in Fiscal Years (FYs) 2010 through 2017.

TABLE 2—U.S. CUSTOMS AND BORDER PROTECTION ACCOMPANIED MINORS AND UNACCOMPANIED ALIEN CHILDREN NATIONWIDE APPREHENSIONS AND ENCOUNTERS FY 2010–FY 2017

Fiscal year	Accompanied minors	UACs	Total
2010	22,937	19,234	42,171
2011	13,966	17,802	31,768
2012	13,314	27,031	40,345
2013	17,581	41,865	59,446
2014	55,644	73,421	129,065
2015	45,403	44,910	90,313
2016	74,798	71,067	145,865
2017	64,628	49,292	113,920

CBP makes a case by case determination as to whether an alien is a UAC based upon the information and evidence available at the time of encounter. When making this determination, CBP refers to section 462(g)(2) of the HSA, which defines a UAC as a child who— (A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom— (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.

Once CBP determines that an alien is a UAC, CBP must process the UAC consistent with the provisions of the TVPRA, which requires the transfer of a UAC who is not statutorily eligible to withdraw his or her application for admission into the custody of ORR within 72 hours of determining that the juvenile meets the definition of a UAC, except in exceptional circumstances.

If, upon apprehension or encounter, CBP determines that an alien is a minor who is part of a family unit, the family unit is processed accordingly and transferred out of CBP custody. If appropriate, the family unit may be transferred to an ICE FRC. If the FSA were not in place, CBP would still make a determination of whether an alien was a UAC or part of a family unit upon encountering an alien, in order to determine appropriate removal proceedings pursuant to the TVPRA.

ICE

When ICE encounters a juvenile during an interior enforcement action, ICE performs an interview to determine the juvenile's nationality, immigration status, and age. Pursuant to the TVPRA, an alien who has been encountered and has no lawful immigration status in the United States, has not attained 18 years of age, and has no parent or legal guardian in the United States available to provide care and physical custody will be classified as a UAC. The number of juvenile arrests made by ICE is significantly smaller than CBP across all fiscal years as shown in Table 3. An individual would have to be arrested to be booked into an FRC.

TABLE 3—FY 14–FY 17 JUVENILE BOOK-INS WITH ICE AS ARRESTING AGENCY

Fiscal year	Book-ins of accompanied minors	UAC Book-ins
2014	3	285
2015	8	200
2016	108	164
2017	123	292

Once ICE determines that an alien is a UAC, ICE must process the UAC consistent with the provisions of the TVPRA, which requires the transfer of a UAC into the custody of ORR within 72 hours of determining that the juvenile meets the definition of a UAC, except in exceptional circumstances.

At the time that the FSA was agreed to in 1997, INS generally did not detain alien family units. Instead, family units apprehended or encountered at the border were generally released. When a decision was made to detain an adult family member, the other family members were generally separated from that adult. However, beginning in 2001, in an effort to maintain family unity, INS began opening FRCs to accommodate families who were seeking asylum but whose cases had been drawn out. INS initially opened what today is the Berks Family Residential Center (Berks) in Berks, Pennsylvania, in 2001. ICE also operated the T. Don Hutto medium-security facility in Taylor, Texas as an FRC from 2006 to 2009. In response to the influx of UACs and family units in 2014 in the Rio Grande Valley, ICE opened family residential centers in Artesia, New Mexico in June of 2014; Karnes County, Texas in July of 2014; and Dilley, Texas in December of 2014. The Artesia facility, which was intended as a temporary facility while more permanent facilities were contracted for and established, was closed on December 31, 2014.

The South Texas Family Residential Center in Dilley, Texas (Dilley) has 2,400 beds, Berks has 96 beds, and the

Karnes County Residential Center in Karnes County, Texas (Karnes) has 830 beds. The capacity of the three FRCs provide for a total of 3,326 beds. As a practical matter, given varying family sizes and compositions, and housing standards, not every available bed will be filled at any given time, and the facilities may still be considered to be at capacity even if every available bed is not filled. ICE did not maintain a consistent system of records of FRC intakes until July 2014. Since 2015, there has been an annual average of 31,458 intakes of adults and minors at the FRCs. The count of FRC intakes from July 2014 through FY 2017 is shown in Table 4.

TABLE 4—FAMILY RESIDENTIAL CENTER (FRC) INTAKES FY 2014–FY 2017

Fiscal year	FRC intakes	FRC adult intakes	FRC minor intakes
Q4 2014 *	1,589	711	878
2015	13,206	5,964	7,242
2016	43,342	19,452	23,890
2017	37,825	17,219	20,606

* 2014 only includes the fourth quarter of FY 2014: July, August, and September.

As previously discussed, due to court decisions in 2015 and 2017, DHS ordinarily uses its FRCs for the detention of non-UAC minors and their accompanying parent(s) or legal guardian(s) for periods of up to approximately 20 days. Since 2016, the average number of days from the book-in date to the release date at all FRCs for both minors and adults has been less than 15 days. Table 5 shows the average number of days from book-in date to release date at FRCs for FY 2014 through FY 2017, based on releases by fiscal year. Data on releases are available for all four quarters of FY 2014.

TABLE 5—AVERAGE NUMBER OF DAYS FROM BOOK-IN DATE TO RELEASE DATE AT FAMILY RESIDENTIAL CENTERS FY 2014–FY 2017

Fiscal year	Average number of days	Average days for minors (<18 years old)	Average days for adults (≥18 years old)
2014	47.4	46.7	48.4
2015	43.5	43.1	44.0
2016	13.6	13.6	13.6
2017	14.2	14.2	14.1

Table 6 shows the reasons for the release of adults and minors from FRCs in FY 2017. As it indicates, the large majority of such individuals were released on an order of their own recognizance or paroled.

TABLE 6—FY 2017 REASONS FOR RELEASE

[Adults and minors]

Reason for release	Percent
Order of Recognizance	76.9
Paroled	21.3
Order of Supervision	1.7
Bonded Out	0.1
Prosecutorial Discretion	<0.0

Table 7 shows the number of adults and minors removed from the United States from FRCs since FY 2014. Removals include returns. Returns include Voluntary Departures (including Voluntary Returns) [24] and Withdrawals Under Docket Control.

TABLE 7—REMOVALS FROM FRCS FY 2014–FY 2017

[Adults and minors]

Fiscal year	Removals
Q4 2014 *	390
2015	430
2016	724
2017	977

* 2014 only includes the fourth quarter of FY 2014: July, August, and September.

The FSA does not impose requirements on secure facilities used for the detention of juveniles. Juveniles may be placed in secure facilities if they meet the criteria listed in paragraph 21 of the FSA.

HHS

The proposed rule also applies to UACs who have been transferred to HHS care. Upon referral, HHS promptly places UACs in the least restrictive setting that is in the best interests of the child, taking into consideration danger to self, danger to the community, and risk of flight. HHS takes into consideration the unique nature of each child's situation and incorporates child welfare principles when making placement and release decisions that are in the best interest of the child.

HHS places UACs in a network of over 100 shelters in 17 states. For its first nine years at HHS, fewer than 8,000 UACs were served annually in this program. Since FY 2012, this number has jumped dramatically, with a total of 13,625 children referred to HHS by the end of FY 2012. Between FY 2012 and FY 2018—Year To Date (YTD) (June), HHS has received a total of 267,354 UACs.

TABLE 8—UAC REFERRALS TO HHS FY 2008–FY 2017

Fiscal year	Referrals
2008	6,658
2009	6,089
2010	7,383
2011	6,560
2012	13,625
2013	24,668
2014	57,496
2015	33,726

[24] For the purposes of this table, Voluntary Return refers to the DHS grant of permission for an alien to depart the United States, while Voluntary Departure refers to the immigration judge's grant of permission for an alien to depart the United States.

TABLE 8—UAC REFERRALS TO HHS FY 2008–FY 2017—Continued

Fiscal year	Referrals
2016	59,170
2017	40,810

For FY 2018—YTD (June) the average length of stay (the time a child is in custody from the time of admission to the time of discharge) for UACs in the program is approximately 50 days. In FY 2018—June '18 the average length of care (the time a child has been in custody, since the time of admission) for UACs in ORR care is approximately 58 days. The overwhelming majority, over 90 percent, of UACs are released to suitable sponsors who are family members within the United States. UACs that are not released to a sponsor typically: Age out or receive an order of removal and are transferred to DHS; are granted voluntary departure and likewise transferred to DHS for removal; or, obtain immigration legal relief and are no longer eligible for placement in ORR's UAC program.

TABLE 9—PERCENTAGE OF UACS BY DISCHARGE TYPE FY 18

[Through June 30th]

Discharge type	Percentage of UACs
Age Out	3.5
Age Redetermination	2.3
Immigration Relief Granted	0.2
Local Law Enforcement	0.0
Ordered Removed	0.2
Other	0.3
Runaway from Facility	0.4
Runaway on Field Trip	0.1
Reunified (Individual Sponsor)	90.0
Reunified (Program/Facility)	1.3
Voluntary Departure	1.9
Total	100.0

(2) Baseline of Current Costs

In order to properly evaluate the benefits and costs of regulations, agencies must evaluate the costs and benefits against a baseline. OMB Circular A–4 defines the ''no action'' baseline as ''the best assessment of the way the world would look absent the proposed action.'' The Departments consider their current operations and procedures for implementing the terms of the FSA, the HSA, and the TVPRA to be the baseline for this analysis, from which they estimate the costs and benefits of the proposed rule. The baseline encompasses the FSA that was approved by the court on January 28, 1997. It also encompasses the 2002 HSA legislation transferring the responsibility for the care and custody of UACs, including some of the material terms of the FSA, to ORR, as well as the substantive terms of the 2008 TVPRA. Finally, it includes the July 6, 2016 decision of the Ninth Circuit affirming the district court's finding that the FSA ''unambiguously'' applies to both accompanied and unaccompanied minors, and that such minors shall not be detained in unlicensed and secure facilities that do not meet the requirements of the FSA. *See Flores* v. *Lynch,* 828 F.3d 898 (9th Cir. 2016). The section below discusses some examples of the current cost for the Departments' operations and procedures under the baseline. Because the costs described below are already being incurred, they are not costs of this rule.

DHS

CBP incurs costs to comply with the FSA, including those related to facility configurations, custodial requirements, and compliance monitoring. To comply with the terms of the FSA, for example, CBP reallocates space in its facilities to allow for separate holding areas for families and/or UACs. Pursuant to the FSA, CBP provides minors and UACs access to food; drinking water; functioning toilets and sinks; adequate temperature and ventilation; emergency medical care, if needed; and safe and sanitary facilities, which impose costs on CBP. Related costs include, for example, the purchase of food; bottled water; first aid kits; blankets, mats, or cots; and age-appropriate transport and bedding. To ensure compliance with the FSA, CBP has added fields in its electronic systems of records, so that CBP officers and Border Patrol agents can continuously record the conditions of the hold rooms and all custodial activities related to each minor or UAC, such as medical care provided, welfare checks conducted, and any separation from accompanying family members.

CBP has experienced other baseline costs from its national and field office Juvenile Coordinators. Under current practice, the national CBP Juvenile Coordinator oversees agency compliance with applicable law and policy related to the treatment of minors and UACs in CBP custody. The national CBP Juvenile Coordinator monitors CBP facilities and processes through site visits and review of juvenile custodial records. Along with the national CBP Juvenile Coordinator role, CBP has field office and sector Juvenile Coordinators who are responsible for managing all policies on the processing of juveniles within CBP facilities, coordinating within CBP and across DHS components to ensure the expeditious placement and transport of juveniles placed into removal proceedings by CBP, and informing CBP operational offices of any policy updates related to the processing of juveniles (*e.g.,* through correspondence, training presentations). Moreover, CBP's Juvenile Coordinators serve as internal and external agency liaisons for all juvenile processing matters.

CBP's baseline costs also include the use of translation services, including contracts for telephonic interpretation services.

ICE also incurs facility costs to comply with the FSA. The costs of operation and maintenance of the ICE FRCs for FY 2015–2017 are listed in Table 10, provided by the ICE Office of Acquisition Management. The costs account for the implementation of the FSA requirements, including the cost for the facility operators to abide by all relevant state standards. Two of the FRCs are operated by private contractors, while one is operated by a local government, under contract with ICE. These are the amounts that have been paid to private contractors or to the local government to include beds, guards, health care, and education.

TABLE 10—CURRENT COSTS FOR FRCS

Fiscal year	FRC costs
2015	$323,264,774
2016	312,202,420
2017	231,915,415

The FRC costs are fixed-price agreements with variable costs added on a monthly basis. Overall, the fixed-price agreements are not dependent on the number of detainees present or length of stay, with some exceptions. At Berks, the contract includes a per-person fee charged in addition to the monthly fixed rate. At two of the FRCs, Berks and Karnes, education is provided per the standards of a licensed program set forth in the FSA, at a per-student, per-day cost. Since FRCs are currently at limited available capacity and the configuration of limited available capacity varies from day to day across all FRCs, the number of children and adults vary at Berks day to day and the number of children at Karnes vary day to day. Thus, these costs charged to ICE vary from month to month.

In addition to the above example of current costs to operate the FRCs, or the baseline cost, DHS (particularly CBP and ICE) incurs costs to process, transfer, and provide transportation of minors and UACs from the point of

apprehension to DHS facilities; from the point of apprehension or from a DHS facility to HHS facilities; between facilities; for the purposes of release; or for all other circumstances, in compliance with the FSA, HSA, and TVPRA.

The baseline costs also include bond hearing for minors and family units who are eligible for such hearings. When a minor or family unit seeks a bond, ICE officers must review the request and evaluate the individuals' eligibility as well as, where appropriate, set the initial bond amount. Further, should the minor or family unit seek a bond redetermination hearing before an immigration judge, ICE must transport or otherwise arrange for the individuals to appear before the immigration court.

ICE's baseline costs also include the use of translation services, including contracts for telephonic interpretation services.

ICE also incurs baseline costs related to its Juvenile and Family Residential Management Unit (JFRMU), which was created in 2007. JFRMU manages ICE's policies affecting alien juveniles and families. The role of ICE's Juvenile Coordinator is within JFRMU and is not a collateral duty. JFRMU consists of specialized federal staff, as well as contract subject matter experts in the fields of child psychology, child development, education, medicine, and conditions of confinement. JFRMU establishes policies on the management of family custody, UACs pending transfer to the ORR, and UACs applying for Special Immigrant Juvenile specific consent. JFRMU continues to pursue uniform operations throughout its program through implementation of family residential standards. These standards are continually reviewed and revised as needed to ensure the safety and welfare of families awaiting an immigration decision while housed in a family residential facility. DHS conducts an inspection of each FRC at least annually to confirm that the facility is in compliance with ICE Family Residential Standards.

The baseline costs include the monitoring of FSA compliance and reporting to the court. Since 2007, JFRMU has submitted *Flores* Reports annually, bi-annually, or monthly for submission to the court through DOJ.

HHS

HHS' baseline costs were $1.4 billion in FY 2017. HHS funds private non-profit and for-profit agencies to provide shelter, counseling, medical care, legal services, and other support services to UACs in custody. Funding levels for non-profit organizations totaled $912,963,474 in FY 2017. Funding levels for for-profit agencies totaled $141,509,819 in FY 2017. Program funded facilities receive grants or contracts to provide shelter, including therapeutic care, foster care, shelter with increased staff supervision, and secure detention care. The majority of program costs (approximately 80 percent) are for bed capacity care. Other services for UACs, such as medical care, background checks, and family reunification services, make up approximately 15 percent of the budget. In addition, some funding is provided for limited post-release services to certain UACs. Administrative expenses to carry out the program total approximately five percent of the budget.

In FY 2016, HHS total approved funding for the UAC program was $743,538,991, with $224,665,994 going to influx programming. In FY 2017, the total funding was $912,963,474, with $141,509,819 for influx.

These are examples of the types of costs the Departments incur under current operations, and are not a result of this rule.

(3) Costs

This rulemaking would implement the relevant and substantive terms of the FSA, with limited changes necessary to implement closely related provisions of the HSA and TVPRA, and to ensure that the regulations set forth a sustainable operational model of immigration enforcement. This section assesses the cost of proposed changes to the current operational environment.

The primary source of new costs for the proposed rule would be as a result of the proposed alternative licensing process, changes to ICE parole determination practices to align them with applicable statutory and regulatory authority, and the costs of shifting hearings from DOJ to HHS. The proposed alternative license for FRCs and changes to parole determination practices may result in additional or longer detention for certain minors, but DHS is unable to estimate the costs of this to the Government or to the individuals being detained because we are not sure how many individuals will be detained at FRCs after this rule is effective or for how much longer individuals may be detained because there are so many other variables to consider. The Departments seek comment on how these costs might be reasonably estimated, given the uncertainties.

Table 11 shows the proposed changes to the DHS current operational status compared to the FSA. It contains a preliminary, high-level overview of how the proposed rule would change DHS's current operations, for purposes of the economic analysis. The table does not provide a comprehensive description of all proposed provisions and their basis and purpose.

TABLE 11—FSA AND DHS CURRENT OPERATIONAL STATUS

FSA paragraph No.	Description of FSA provision	DHS cite (8 CFR)	DHS change from current practice
1, 2, 3	"Party, "plaintiff" and "class member" definitions.	N/A	None. (*Note:* These definitions are only relevant to the FSA insofar as the FSA exists in the form of a consent decree. Following promulgation of a final rule, the definitions would no longer be relevant. As a result, the proposed rule does not include these definitions.)
4	"Minor" definition	236.3(b)(1)	None.
5	"Emancipated minor" definition	236.3(b)(1)(i)	None.
6	"Licensed program" definition	236.3(b)(9)	FSA defines a "licensed program" as one licensed by an appropriate State agency. DHS would not define "licensed program," but instead would define a "licensed facility" as an ICE detention facility that is licensed by the state, county, or municipality in which it is located. DHS would also add an alternative licensing scheme for family residential centers (FRCs), if the state, county, or municipality where the facility is located does not have a licensing scheme for such facilities.

TABLE 11—FSA AND DHS CURRENT OPERATIONAL STATUS—Continued

FSA paragraph No.	Description of FSA provision	DHS cite (8 CFR)	DHS change from current practice
6+ Exhibit 1	Exhibit 1, standards of a licensed program.	236.3(i)(4)	DHS provides requirements that licensed facilities must meet. *(Note:* Compared with Exhibit 1, these requirements contain a slightly broadened educational services description to capture current operations and added that program design should be appropriate for length of stay (see (i)(4)(iv)); amended ''family reunification services'' provision to more appropriately offer communication with adult relatives in the U.S. and internationally, since DHS only has custody of accompanied minors so reunification is unnecessary (see proposed 236.3(i)(4)(iii)(H)).)
7	''Special needs minor'' definition and standard.	236.3(b)(2)	None.
8	''Medium security facility'' definition.	N/A	None. (*Note:* DHS only has secure or non-secure facilities, so a definition of ''medium security facility'' is unnecessary. As a result, the proposed rule lacks such a definition, even though the FSA contains one.)
9	Scope of Settlement Agreement, Effective Date, and Publication.	N/A	None. (*Note:* This provision imposes a series of deadlines that passed years ago, and/or do not impose obligations on the parties that continue following termination of the FSA. As a result, the proposed rule does not include this provision.)
10	Class Definition	N/A	None. (*Note:* Provision is specific to the litigation and is not a relevant or substantive term of the FSA, and is not included in the rule.)
11	Place each detained minor in least restrictive setting appropriate for age and special needs. No requirement to release to any person who may harm or neglect the minor or fail to present minor before the immigration court.	236.3(g)(2)(i), (i), (j)(4).	None. (*Note:* 236.3(j) tracks FSA paragraph14, which is consistent with FSA paragraph 11 but uses different terms.)
11	The INS treats, and shall continue to treat, all minors in its custody with dignity, respect and special concern for their particular vulnerability as minors.	236.3(a)(1)	None.
12(A)	Expeditiously process the minor ..	236.3(e), (f), & (g)(2)(i).	None. (*Note:* The proposed rule reflects the fact that the TVPRA (rather than the FSA) governs the processing and transfer of UACs. The proposed rule also makes clear that generally, unless an emergency or influx ceases to exist, the transfer timelines associated with an emergency or influx continue to apply for non-UAC minors.)
12(A)	Shall provide the minor with notice of rights.	236.3(g)(1)(i)	None.
12(A)	Facilities must be safe and sanitary including toilets and sinks, water and food, medical assistance for emergencies, temperature control and ventilation, adequate supervision to protect minor from others.	236.3(g)(2)(i)	None
12(A)	Contact with family members who were arrested with the minor.	236.3(g)(2)(i)	None. (*Note:* The proposed rule contains a slightly different standard than appears in the FSA. The proposed rule provides for contact with family members apprehended with both minors and UACs. Additionally, the proposed rule invokes operational feasibility and consideration of the safety or well-being of the minor or UAC in facilitating contact. The FSA generally prioritizes the safety and well-being of the minor and that of others, but does not include these provisos.)
12(A)	Segregate unaccompanied minors from unrelated adults, unless not immediately possible (in which case an unaccompanied minor may not be held with an unrelated adult for more than 24 hours).	236.3(g)(2)(i)	None. (*Note:* The proposed rule would allow UACs to be held with unrelated adults for no more than 24 hours except in cases of emergency or other exigent circumstances.)

TABLE 11—FSA AND DHS CURRENT OPERATIONAL STATUS—Continued

FSA paragraph No.	Description of FSA provision	DHS cite (8 CFR)	DHS change from current practice
12(A), 12(A)(1)–(3), 12(B).	Transfer in a timely manner: Three days to five days max with exceptions, such as emergency or influx, which requires placement as expeditiously as possible.	236.3(b)(5), (b)(10), (e)(1).	None. (*Note:* Following the TVPRA, the transfer provisions in FSA paragraph 12(A) apply to DHS only for accompanied minors. In addition, the proposed rule's definition of ''emergency'' clarifies that an emergency may create adequate cause to depart from any provision of proposed 236.3, not just the transfer timeline.)
12(A)(4)	Transfer within 5 days instead of 3 days in cases involving transport from remote areas or where an alien speaks an ''unusual'' language.	N/A	None. (*Note:* Although DHS is not proposing a change in practice, it does not propose to codify this exception from the FSA in proposed 236.3(e) because operational improvements have rendered the exception unnecessary.)
12(C)	Written plan for ''emergency'' or ''influx''.	236.3(e)(2)	None. (*Note:* Like the FSA, the proposed rule requires a written plan. The written plan is contained in a range of guidance documents.)
13	Age determination	236.3(c)	None. (*Note:* The proposed rule includes a ''totality of the circumstances'' standard; the FSA does not contain a standard that conflicts with ''totality of the circumstances.'')
14	Release from custody where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others. Release is to, in order of preference: parent, legal guardian, adult relative, adult or entity, licensed program, adult seeking custody.	236.3(j) (release generally).	The proposed rule adds that any decision to release must follow a determination that such release is permitted by law, including parole regulations. In addition, the proposed rule does not codify the list of individuals to whom a non-UAC minor can be released, because the TVPRA has overtaken this provision. Per the TVPRA, DHS does not have the authority to release juveniles to non-parents or legal guardians. Under the TVPRA, DHS may release a juvenile to a parent or legal guardian only.
15	Before release from custody, Form I–134 and agreement to certain terms must be executed. If emergency, then minor can be transferred temporarily to custodian but must notify INS in 72 hours.	N/A	None. (*Note:* The proposed rule does not codify this portion of the FSA, because (1) the TVPRA has overtaken this provision in part, and (2) these requirements, which are primarily for DHS's benefit, are not currently implemented.)
16	INS may terminate the custody if terms are not met.	N/A	None. (*Note:* The proposed rule does not codify this portion of the FSA, because (1) the TVPRA has overtaken this provision in part, and (2) these requirements, which are primarily for DHS's benefit, are not currently implemented.)
17	Positive suitability assessment	N/A	None. (*Note:* The proposed rule does not codify this portion of the FSA, because the TVPRA has overtaken this provision. Per the TVPRA, DHS does not have the authority to release minors to non-parents/legal guardians.)
18	INS or licensed program must make and record the prompt and continuous efforts on its part toward family reunification efforts and release of minor consistent with FSA paragraph 14.	236.3(j)	None.
19	INS custody in licensed facilities until release or until immigration proceedings are concluded. Temporary transfers in event of an emergency.	236.3(i), (i)(5)	None.
20	INS must publish a ''Program Announcement'' within 60 Days of the FSA's approval.	N/A	None. (*Note:* This provision imposes a deadline that passed years ago. As a result, the proposed rule does not include this provision.)
21	Transfer to a suitable State or county juvenile detention facility if a minor has been charged or convicted of a crime with exceptions.	236.3(i)(1)	None. (*Note:* The proposed rule clarifies some of the exceptions to secure detention, consistent with current practice and in line with the intent underlying FSA paragraph 21(A)(i)–(ii). The proposed rule also removes the specific examples used in FSA.)
22	Escape risk definition	236.3(b)(6)	None. (*Note:* the proposed rule uses final order of ''removal'' rather than deportation or exclusion, and considers past absconding from state or federal custody; and not just DHS or HHS custody.)
23	Least restrictive placement of minors available and appropriate.	236.3(i)(2)	None.

TABLE 11—FSA AND DHS CURRENT OPERATIONAL STATUS—Continued

FSA paragraph No.	Description of FSA provision	DHS cite (8 CFR)	DHS change from current practice
24(A)	Bond redetermination hearing afforded.	236.3(m)	None. (*Note:* The proposed rule adds language to specifically exclude those aliens for which IJs do not have jurisdiction, as provided in 8 CFR 1003.19.)
24(B)	Judicial review of placement in a particular type of facility permitted or that facility does not comply with standards in Ex. 1.	N/A	None. (*Note:* The proposed rule does not expressly provide for judicial review of placement/compliance, but does not expressly bar such review.)
24(C)	Notice of reasons provided to minor not in a licensed program/judicial review.	N/A	None.
24(D)	All minors ''not released'' shall be given Form I–770, notice of right to judicial review, and list of free legal services.	236.3(g)(1)	None. (*Note:* The proposed rule requires DHS to provide the notice of right to judicial review and list of counsel to those minors who are not UACs and who are transferred to or remain in a DHS detention facility. The corresponding FSA provisions apply to minors ''not released.'' The difference in scope is a result of the TVPRA and reflects the relationship between Paragraph 12(A), which applies to the provision of certain rights (largely contained on the I–770) immediately following arrest, and Paragraph 28(D), which applies to all minors who are ''not released,'' and so are detained by DHS. The language does not reflect a change in practice. The proposed rule also includes more detailed language with respect to the Form I–770 than the FSA; this language comes from current 8 CFR 236.3, and is consistent with the requirements of Paragraph 12(A).)
24(E)	Additional information on precursors to seeking judicial review.	N/A	None. (*Note:* Responsibilities of the minor prior to bringing litigation are not relevant or substantive terms of the FSA, and are not included in the rule.)
25	Unaccompanied minors in INS custody should not be transported in vehicles with detained adults except when transport is from place of arrest/apprehension to an INS office, or when separate transportation would otherwise be impractical.	236.3(f)(4)	None. (*Note:* Proposed rule makes a clarifying change: the proposed rule adds ''or unavailable'' as an exception to ''impractical.'')
26	Provide assistance in making transportation arrangement for release of minor to person or facility to whom released.	236.3(j)(3)	None. (*Note:* The proposed rule would remove the reference to release to a ''facility.'' DHS releases minors only to a parent or legal guardian; a referral to HHS is a transfer, not a release.)
27	Transfer between placements with possessions, notice to counsel.	236.3(k)	None.
28(A)	INS Juvenile Coordinator to monitor compliance with FSA and maintain records on all minors placed in proceedings and remain in custody for longer than 72 hours.	236.3(o)	None. (*Note:* The proposed rule requires collection of relevant data for purposes of monitoring compliance. The list of data points is similar to the list in 28(A) but not identical.)
28(B)	Plaintiffs' counsel may contact INS Juvenile Coordinator to request an investigation on why a minor has not been released.	N/A	This provision would no longer apply following termination of the FSA. (*Note:* Special provisions for Plaintiffs' counsel are not relevant or substantive terms of the FSA, and are not included in the rule.)
29	Plaintiffs' counsel must be provided information pursuant to FSA paragraph 28 on a semi-annual basis; Plaintiffs' counsel have the opportunity to submit questions.	N/A	This provision would no longer apply following termination of the FSA. (*Note:* Special provisions for Plaintiffs' counsel are not relevant or substantive terms of the FSA, and are not included in the rule.)
30	INS Juvenile Coordinator must report to the court annually.	N/A	This provision would no longer apply following termination of the FSA. (*Note:* Special provisions for reporting to the court are not relevant or substantive terms of the FSA, and are not included in the rule.)
31	Defendants can request a substantial compliance determination after one year of the FSA.	N/A	None. (*Note:* This provision imposed a timeframe related to court supervision of the FSA. As a result, the proposed rule does not include this provision.)
32(A), (B), and (D).	Attorney-client visits with class members allowed for Plaintiffs' counsel at a facility.	N/A	Special provisions for Plaintiffs' counsel are not relevant or substantive terms of the FSA, and are not included in the rule.

TABLE 11—FSA AND DHS CURRENT OPERATIONAL STATUS—Continued

FSA paragraph No.	Description of FSA provision	DHS cite (8 CFR)	DHS change from current practice
32(C)	Agreements for the placement of minors in non-INS facilities shall permit attorney-client visits, including by class counsel.	236.3(i)(4)(xv)	None. (*Note:* Special provisions for Plaintiffs' counsel are not relevant or substantive terms of the FSA, so the reference to class counsel is not included in the rule.)
33	Plaintiffs' counsel allowed to request access to, and visit licensed program facility or medium security facility or detention facility.	N/A	Special provisions for Plaintiffs' counsel are not relevant or substantive terms of the FSA, and are not included in the rule.
34	INS employees must be trained on FSA within 120 days of court approval.	N/A	None. (*Note:* This provision imposed a deadline that passed years ago. As a result, the proposed rule does not include this provision.)
35	Dismissal of action after court has determined substantial compliance.	N/A	None. (*Note:* Provisions specific to terminating the action are not relevant or substantive terms of the FSA, and are not included in the rule.)
36	Reservation of Rights	N/A	None. (*Note:* This provision is only relevant to the FSA insofar as the FSA exists in the form of a consent decree. Following promulgation of a final rule, it would no longer be relevant. As a result, the proposed rule does not include this provision.)
37	Notice and Dispute Resolution	N/A	None. (*Note:* This provision provides for ongoing enforcement of the FSA by the district court. As a result, the proposed rule does not include this provision.)
38	Publicity—joint press conference	N/A	None. (*Note:* This provision relates to an event that occurred years ago. As a result, the proposed rule does not include this provision.)
39	Attorneys' Fees and Costs	N/A	None. (*Note:* This provision imposed a deadline that passed years ago. As a result, the proposed rule does not include this provision.)
40	Termination 45 days after publication of final rule.	N/A	None. (*Note:* Provisions specific to terminating the FSA are not relevant or substantive terms, and are not included in the rule.)
41	Representations and Warranty	N/A	None. (*Note:* This provision is only relevant to the FSA insofar as the FSA exists in the form of a consent decree. Following promulgation of a final rule, it would no longer be relevant. As a result, the proposed rule does not include this provision.)

DHS

A primary source of new costs for the proposed rule would be as a result of the proposed alternative licensing process. To codify the requirements of the FSA, DHS is proposing in this rule that facilities that hold minors obtain state, county, or municipal licensing where appropriate licenses are available. If no such licensing regime is available, however, DHS proposes that it will employ an outside entity to ensure that the facility complies with family residential standards established by ICE and that meet the requirements for licensing under the FSA, thus fulfilling the intent of obtaining a license from a state or local agency. That would thus provide effectively the same substantive assurances that the state-licensing requirement exists to provide. ICE currently meets the proposed licensing requirements by requiring FRCs to adhere to the Family Residential Standards and monitoring the FRCs' compliance through an existing contract. Thus, DHS would not incur additional costs in fulfilling the requirements of the proposed alternative licensing scheme. However, most states do not offer licensing for facilities like the FRCs.[25] Therefore, to meet the terms of the FSA, minors who are not UACs are generally held in FRCs for less than 20 days (see Table 5). As all FRCs would be licensed, or considered licensed, under this proposed rule, the proposed rule may result in extending detention of some minors, and their accompanying parent or legal guardian, in FRCs beyond 20 days. An increase in the average length of detention may increase the variable contract costs paid by ICE to the private contractor and government entity who operate and maintain the FRCs, as compared to the current operational environment.

ICE is unable to estimate how long detention would be extended for some categories of minors and their accompanying adults in FRCs due to this proposed rule. The average length of stay in the past is not a reliable source for future projections. The average length of stay prior to the court decisions in 2015 and 2017 reflect other policy decisions that will not be directly affected by this proposed rule. In addition, the number of days some minors and their accompanying adults may be detained depends on several factors, including a number of factors that are beyond the scope of this proposed rule. Among other factors, these may include the number of minors and their accompanying adults who arrive in a facility on a given day; the timing and outcome of immigration court proceedings before an immigration judge; whether an individual is eligible for parole or bond; issuance of travel documents by foreign governments; transportation schedule and availability; the availability of bed space in an FRC; and other laws, regulations, guidance, and policies regarding removal not subject to this proposed rule.

Although DHS cannot reliably predict the increased average length of stay for affected minors and their accompanying adults in FRCs, DHS recognizes that generally only certain groups of aliens are likely to have their length of stay in an FRC increased as a result of this proposed rule, among other factors. For instance, aliens who have received a positive credible fear determination, and who are not suitable for parole, may be held throughout their asylum

[25] *See* the discussion of the definition of ''licensed facility'' *supra.*

proceedings. Likewise, aliens who have received a negative credible fear determination, have requested review of the determination by an immigration judge and had the negative determination upheld, and are awaiting removal, are likely to be held until removal can be effectuated. In FY 2017, 16,807 minors in FRCs went through the credible fear screening process and were released. Table 12 shows for FY 2017 the number of minors who went through the credible fear screening process who were released from FRCs. It does not include those minors who were removed while detained at an FRC. Those minors who were removed from an FRC would not have their lengths of stay increased pursuant to the changes proposed in this rule.

TABLE 12—FY 2017 MINORS AT FRCS WHO WENT THROUGH CREDIBLE FEAR SCREENING PROCESS

	Number of minors at FRCs
Positive Credible Fear Determinations	14,993
Negative Credible Fear Determinations	349
Immigration Judge Review Requested	*317*
Immigration Judge Review Not Requested	*32*
Administratively Closed	1,465

Of the 14,993 minors shown in Table 12 who had positive credible fear determinations, about 99 percent were paroled or released on their own recognizance. The remaining one percent of minors are those in categories that might have their length of stay in an FRC increased due to this proposed rule.

Separate from the population of minors referenced in Table 12, members of a family unit with administratively final orders of removal, once this rule has been finalized, are likely to be held until removed. 842 such minors who were detained and released at FRCs during FY 2017 either had final orders of removal at the time of their release or subsequently received final orders of removal following their release within the same FY. Minors like these 842 may be held in detention longer as a result of this rule. While DHS generally expects an increase in the average length of stay to affect only these groups, there may be others that may be affected.

In FY 2017, the total number of minors who might have been detained longer at an FRC is estimated to be the number of minors in an FRC who were not paroled or released on order of their own recognizance (131), plus the number of such minors who had negative credible fear determinations (349), plus administratively closed cases (1,465), plus those who were released and either had final orders of removals at the time of their release or subsequently received final orders following their release (842), or 2,787. While the above analysis reflects the number of minors in these groups in the FY 2017, DHS is unable to forecast the future total number of such minors.

The remaining factor in estimating the costs that are attributed to a potentially increased length of stay for these groups of minors and their accompanying parent or legal guardian are the variable contract costs paid by ICE to the private contractor and government entity who operate and maintain the FRCs. The fixed and variable contract costs were obtained from ICE Office of Acquisition Management. For Berks, there is a $16 per-person, per-day fee in addition to the monthly fixed contract rate. Assuming that the contract terms are the same in the future, an increased number of days that all individuals would be at an FRC may also increase this total variable fee amount. Due to the uncertainty surrounding estimating an increased length of stay and the number of aliens this may affect, the total incremental cost of this per day per person fee is not estimated.

Educational services are provided at the Berks and Karnes FRCs at a variable cost per-student, per-day. The cost at Karnes is $75 per-student, per-day, and at Berks the cost is $79 per-student, per-day. There is a fixed monthly cost for educational services at Dilley of $342,083; it is not dependent on the number of students per day.

Assuming again that future contract terms are the same, the total education cost may increase if certain aliens, like the groups described above, are detained longer. However, the incremental variable education cost is not estimated because of the uncertainty surrounding the factors that make up the estimate of the average length of stay and the number of minors that may have an increased length of stay.

This rule also proposes to change current ICE practices for parole determinations to align them with applicable statutory and regulatory authority. ICE is currently complying with the June 27, 2017 court order while it is on appeal. In complying, every detained minor in expedited removal proceedings and awaiting a credible fear determination or determined not to have a credible fear receives an individualized parole determination under the considerations laid out in 8 CFR 212.5(b), which considers only whether the minor is a flight risk. However, ICE proposes to revert to its practice prior to the 2017 court order for those minors in expedited removal proceedings, using its parole authorities under 8 CFR 235.3 sparingly for this category of aliens, as intended by Congress. *See* 8 U.S.C. 1225(b)(1)(B)(iii)(IV) (''Any alien subject to [expedited removal] shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.''). Under this standard, for aliens who are in expedited removal proceedings and are pending a credible fear determination or who have been found not to have such fear, release on parole can only satisfy this standard when there is a medical necessity or a law enforcement need. Accordingly, this change may result in fewer such minors or their accompanying parent or legal guardians being released on parole. Aliens in expedited removal proceedings are not generally detained in mandatory custody for long periods of time. Either a removal order is issued within a short amount of time or a Notice to Appear is issued, which may make the alien eligible for various forms of release. Consequently, DHS does not anticipate that these changes will result in extended periods of detention for minors who are in expedited removal proceedings.

At this time, ICE is unable to determine how the number of FRCs may change due to this proposed rule. There are many factors that would be considered in opening a new FRC, some of which are outside the scope of this proposed regulation, such as whether such a facility would be appropriate, based on the population of aliens crossing the border, anticipated capacity, projected average daily population, and projected costs.

With respect to CBP, the proposed rule is not anticipated to have an impact on current operations because CBP is currently implementing the relevant and substantive terms of the FSA, the HSA, and the TVPRA.

HHS

HHS has complied with the FSA for over 20 years. The proposed rule would codify current HHS compliance with the FSA, court orders, and statutes. Accordingly, HHS does not expect this proposed rule to impose any additional costs, beyond those costs incurred by the Federal Government to establish the 810 Hearings process within HHS.

This rule will shift responsibility for custody redetermination hearings for

UACs, now proposed to be referred to as 810 hearings, from DOJ to HHS. We estimate that some resources will be required to implement this shift. We believe that this burden will fall on DOJ and HHS staff, and we estimate that it will require approximately 2,000–4,000 hours to implement. This estimate reflects six to 12 staff working full-time for two months to create the new system. After this shift in responsibility has been implemented, we estimate that the rule will lead to no change in net resources required for 810 hearings, and therefore estimate no incremental costs or savings. We seek public comment on these estimates.

(4) Benefits

The primary benefit of the proposed rule would be to ensure that applicable regulations reflect the current conditions of DHS detention, release, and treatment of minors and UACs, in accordance with the relevant and substantive terms of the FSA, the HSA, and the TVPRA.

Without codifying the FSA as proposed in this rule, family detention is a less effective tool to meet the enforcement mission of ICE. In many cases, families do not appear for immigration court hearings after being released from an FRC, and even when they do, many more fail to comply with the lawfully issued removal orders from the immigration courts and some families engage in dilatory legal tactics when ICE works to enforce those orders. By departing from the FSA in limited cases to reflect the intervening statutory and operational changes, ICE is reflecting its existing discretion to detain families together, as appropriate, given enforcement needs, which will ensure that family detention remains an effective enforcement tool.

HHS, having not been an original party to the FSA but having inherited some of its requirements, likewise benefits from the current operational environment with proposed rules that clearly delineate ORR's responsibilities from that of other Federal partners. Additionally, the proposed codification of the FSA terms, specifically the minimum standards for licensed facilities and the release process ensures a measure of consistency across the programs network of state licensed facilities.

The regulations are also designed to eliminate judicial management, through the FSA, of functions Congress delegated to the executive branch.

(5) Conclusion

This proposed rule reflects current requirements to comply with the FSA, court orders, the HSA, and the TVPRA. The Departments consider current operations and procedures for implementing the terms of the FSA, the HSA, and the TVPRA to be the baseline for this analysis. Because these costs are already being incurred, they are not costs of this rule. The primary source of new costs for the proposed rule would be a result of the proposed alternative licensing process, changes to current ICE parole determination practices to align them with applicable statutory and regulatory authority, and the costs of shifting hearings from DOJ to HHS. ICE expects the proposed alternative licensing process and changes to current parole determination practices to extend detention of certain minors in FRCs. This may result in additional or longer detentions for certain minors, increasing annual variable costs paid by ICE to the operators of Berks and Karnes and costs to the individuals being detained, but due to the uncertainty surrounding estimating an increased length of stay and the number of aliens this may affect, this incremental cost is not quantified.

(6) Alternatives

No Regulatory Action

The Departments considered not promulgating this rule. The Departments had been engaged in this alternative prior to proposing this rule, which has required the Government to adhere to the terms of the FSA, as interpreted by the courts, which also rejected the Government's efforts to amend the FSA to help it better conform to existing legal and operational realities. Continuing with this alternative would likely require the Government to operate through non-regulatory means in an uncertain environment subject to currently unknown future court interpretations of the FSA that may be difficult or operationally impracticable to implement and that could otherwise hamper operations. The Departments reject this alternative because past successful motions to enforce the Agreement have consistently expanded the FSA beyond what the Departments believe was its original and intended scope and imposed operationally impracticable or effectively impossible requirements not intended by the parties to the FSA and in tension with (if not incompatible with) current legal authorities. The Departments also reject this alternative because it does not address the current conflict between certain portions of the FSA and the HSA and TVPRA.

Comprehensive FSA/TVPRA/Asylum Regulation

The Departments considered proposing within this regulatory action additional regulations addressing further areas of authority under the TVPRA, to include those related to asylum proceedings for UACs. The Departments rejected this alternative in order to solely focus this regulatory action on implementing the terms of the FSA, and provisions of the HSA and TVPRA where they necessarily intersect with the FSA's provisions. And, promulgating this more targeted regulation does not preclude the Departments from subsequently issuing regulations to address broader issues.

Promulgate Regulations—Preferred Alternative

Legacy INS's successors are obligated under the FSA to initiate action to publish the relevant and substantive terms of the FSA as regulations. In the 2001 Stipulation, the parties agreed to a termination of the FSA ''45 days following the defendants' publication of final regulations implementing this Agreement.'' Under this alternative, the Departments are proposing to publish the relevant and substantive terms of the FSA as regulations, while maintaining the operational flexibility necessary to continue operations and ensuring that minors and UACs continue to be treated in accordance with the FSA, the HSA, and the TVPRA.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small business, 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. Individuals are not considered by the RFA to be a small entity.

An initial regulatory flexibility analysis follows.

(1) A description of the reasons why the action by the agency is being considered.

The purpose of this action is to promulgate regulations that implement the relevant and substantive terms of the FSA. This proposed rule would implement the relevant and substantive terms of the FSA and provisions of the HSA and TVPRA where they necessarily intersect with the FSA's provisions. Publication of final regulations would result in termination of the FSA, as provided for in FSA paragraph 40.

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule.

The main purpose of this action is to promulgate regulations that implement the relevant and substantive terms of the FSA. The FSA provides standards for the detention, treatment, and transfer of minors and UACs. The Secretary of Homeland Security derives her authority to promulgate these proposed regulatory amendments primarily from the Immigration and Nationality Act (INA or Act), as amended, 8 U.S.C. 1101 *et seq.* The Secretary may ''establish such regulations'' as she deems necessary for carrying out her authorities under the INA. INA sec. 103(a)(3), 8 U.S.C. 1103(a)(3). In addition, section 462 of the HSA and section 235 of the TVPRA prescribe substantive requirements and procedural safeguards to be implemented by DHS and HHS with respect to UACs. And court decisions have dictated how the FSA is to be implemented. *See, e.g., Flores* v. *Sessions,* 862 F.3d 863 (9th Cir. 2017); *Flores* v. *Lynch,* 828 F.3d 898 (9th Cir. 2016); *Flores* v. *Sessions,* No. 2:85–cv–04544 (C.D. Cal. June 27, 2017).

Section 462 of the HSA also transferred to the ORR Director ''functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Commissioner of Immigration and Naturalization.'' 6 U.S.C. 279(a). The ORR Director may, for purposes of performing a function transferred by this section, ''exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function'' immediately before the transfer of the program. 6 U.S.C. 279(f)(1).

Consistent with provisions in the HSA, and 8 U.S.C. 1232(a), the TVPRA places the responsibility for the care and custody of UACs with the Secretary of Health and Human Services. Prior to the transfer of the program, the Commissioner of Immigration and Naturalization, through a delegation from the Attorney General, had authority ''to establish such regulations . . . as he deems necessary for carrying out his authority under the provisions of this Act.'' INA sec. 103(a)(3), 8 U.S.C. 1103(a)(3) (2002); 8 CFR 2.1 (2002). In accordance with the relevant savings and transfer provisions of the HSA, *see* 6 U.S.C. 279, 552, 557; *see also* 8 U.S.C. 1232(b)(1); the ORR Director now possesses the authority to promulgate regulations concerning ORR's administration of its responsibilities under the HSA and TVPRA.

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

This proposed rule would directly regulate DHS and HHS. DHS contracts with private contractors and a local government to operate and maintain FRCs, and with private contractors to provide transportation of minors and UACs. This rule would indirectly affect these entities to the extent that DHS contracts with them under the terms necessary to fulfill the FSA. To the degree this rule increases contract costs to DHS private contractors, it would be incurred by the Federal Government in the cost paid by the contract. Similarly, as of June 2018, HHS is funding non-profit organizations to provide shelter, counseling, medical care, legal services, and other support services to UACs in custody. HHS does not believe this rule would increase costs to any of their grantees.

ICE currently contracts with three operators of FRCs, two of which are businesses and the other a local governmental jurisdiction. ICE and CBP also each have one contractor that provides transportation. To determine if the private contractors that operate and maintain FRCs and the private contractors that provide transportation are small entities, DHS references the Small Business Administration (SBA) size standards represented by business average annual receipts. SBA's Table of Small Business Size Standards is matched to the North American Industry Classification System (NAICS) for these industries.[26] To determine if the local government that operates and maintains an FRC is a small entity, DHS applies the 50,000 size standard for governmental jurisdictions.

DHS finds that the revenue of the private contractors that operate and maintain two of the three FRCs to be greater than the SBA size standard of the industry represented by NAICS 531110: Lessors of Residential Buildings and Dwellings. The size standard classified by the SBA is $38.5 million for lessors of buildings space to the Federal Government by Owners.[27] The county population of the local government that operates and maintains the other FRC is over 50,000, based on 2017 U.S. Census Bureau annual resident population estimates.[28]

DHS finds that the revenue of the two private contractors that provide transportation to minors, in some cases their family members, and to UACs for DHS to be greater than the SBA size standard of these industries.[29] The SBA size standard for NAICS 561210 Facilities Support Services is $38.5 million. The SBA size standards for NAICS 561612 Security Guards and Patrol Services is $20.3 million.

Currently, HHS funds 37 grantees to provide services to UACs. HHS finds that all 37 current grantees are non-profits that do not appear to be dominant in their field. Consequently, HHS believes all 37 grantees are likely to be small entities for the purposes of the RFA.

The proposed changes to DHS and HHS regulations would not directly impact any small entities.

(4) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The proposed rule would codify the relevant and substantive terms of the FSA. ICE believes the FRCs, which are operated and maintained by private contractors or a local government, comply with these provisions, and will continue to comply through future contract renewals. To the extent this rule increases variable contract costs, such as a per student per day education cost, to any detention facilities, the cost increases would be passed along to the Federal Government in the cost paid for the contract. However, DHS cannot say with certainty how much, if any, increase in variable education costs would result from this rule.

A primary source of new costs for the proposed rule would be as a result of the proposed alternative licensing process. ICE currently fulfills the requirements being proposed as an alternative to licensing through its existing FRC contracts. To codify the requirements of the FSA, DHS is proposing in this rule that facilities that hold minors obtain state, county, or municipal licensing where appropriate licenses are available. If no such licensing regime is available, however, DHS proposes that it will employ an

[26] U.S. Small Business Administration, Tables of Small Business Size Standards Matched to NAICS Codes (Oct. 1, 2017), available at *https://www.sba.gov/sites/default/files/files/Size_Standards_Table_2017.xlsx.*

[27] DHS obtained NAICS codes and 2016 annual sales data from *Hoovers.com.*

[28] Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2017. Source: U.S. Census Bureau, Population Division.

[29] DHS obtained NAICS codes and 2016 annual sales data from *Hoovers.com* and *ReferenceUSA.com.*

outside entity to ensure that the facility complies with family residential standards established by ICE and that meet the requirements for licensing under the FSA. That would fulfill the goals of obtaining a license from a state or local agency. Most states do not offer licensing for facilities like the FRCs.[30] Therefore, to meet the terms of the FSA, minors are generally held in FRCs for less than 20 days (see Table 5). As all FRCs would be licensed under this proposed rule, the proposed rule may result in extending detention of some minors and their accompanying parent or legal guardian in FRCs beyond 20 days. Additionally, this rule would change ICE parole determination practices, which may result in fewer aliens being paroled.

An increase in the average length of detention may increase the variable costs paid by ICE to the private contractors who operate and maintain Berks and Karnes, as compared to the current operational environment. Due to many uncertainties surrounding the forecast, DHS is unable to estimate the incremental variable costs due to this proposed rule. Refer to Section VI.A. Executive Orders 12866 and 13563: Regulatory Review for the description of the uncertainties.

As discussed above, DHS would incur these potential costs through the cost paid for the contract with these facilities.

There are no cost impacts on the contracts for providing transportation because this rule codifies current operations.

The Departments request information and data from the public that would assist in better understanding the direct effects of this proposed rule on small entities. Members of the public should submit a comment, as described in this proposed rule under Public Participation, if they think that their business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it. It would be helpful if commenters provide as much information as possible as to why this proposed rule would create an impact on small businesses.

(5) Identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap or conflict with the proposed rule.

The Departments are unaware of any relevant Federal rule that may duplicate, overlap, or conflict with the proposed rule.

[30] *See* the discussion of the definition of ''licensed facility'' *supra.*

(6) Description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

The Departments are not aware any alternatives to the proposed rule which accomplish the stated objectives that would minimize economic impact of the proposed rule on small entities. DHS requests comments and also seeks alternatives from the public that will accomplish the same objectives and minimize the proposed rule's economic impact on small entities.

C. Small Business Regulatory Enforcement Fairness Act of 1996

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 110 Stat. 847, 858–59, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult ICE or ORR, as appropriate, using the contact information provided in the **FOR FURTHER INFORMATION** section above.

D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 109 Stat. 48 (codified at 2 U.S.C. 1501 *et seq.*), is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (adjusted annually for inflation) in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector. 2 U.S.C. 1532(a). The value equivalent of $100 million in 1995 adjusted for inflation to 2017 levels by the Consumer Price Index for All Urban Consumer (CPI–U) is $161 million.

This rule does not exceed the $100 million expenditure threshold in any 1 year when adjusted for inflation. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble. Additionally, UMRA excludes from its definitions of ''Federal intergovernmental mandate,'' and ''Federal private sector mandate'' those regulations imposing an enforceable duty on other levels of government or the private sector which are a ''condition of Federal assistance.'' 2 U.S.C. 658(5)(A)(i)(I), (7)(A)(i). The FSA provides the Departments with no direct authority to mandate binding standards on facilities of state and local governments or on operations of private sector entities. Instead, these requirements would impact such governments or entities only to the extent that they make voluntary decisions to contract with the Departments. Compliance with any standards that are not already otherwise in place resulting from this rule would be a condition of ongoing Federal assistance through such arrangements. Therefore, this rulemaking contains neither a federal intergovernmental mandate nor a private sector mandate.

E. Congressional Review Act

The Office of Information and Regulatory Affairs has determined that this rulemaking is not a major rule, as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking pursuant to the Congressional Review Act, Public Law 104–121, sec. 251, 110 Stat. 868, 873 (codified at 5 U.S.C. 804). This rulemaking would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets. If this rule is implemented as proposed, a report about the issuance of the final rule will be submitted to Congress and the Comptroller General of the United States prior to its effective date.

F. Paperwork Reduction Act

All Departments are required to submit to OMB for review and approval, any reporting or recordkeeping requirements inherent in a rule under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995) (codified at 44 U.S.C. 3501 *et seq.*). This proposed rule does not create or change a collection of information, therefore, is not subject to the Paperwork Reduction Act requirements.

However, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), ACF submitted a copy of this section to the Office of Management and Budget (OMB) for its review. This proposed rule complies with settlement agreements, court orders, and statutory requirements, most of whose terms have been in place for over 20 years. This proposed rule would not require additional information

collection requirements beyond those requirements. The reporting requirements associated with those practices have been approved under the requirements of the Paperwork Reduction Act and in accordance with 5 CFR part 1320. ACF received conditional approval from OMB for use of its forms on October 19, 2015, with an expiration date of October 31, 2018 (OMB Control Number 0970–0278). Separately, ACF received approval from OMB for its placement and service forms on July 6, 2017, with an expiration date of July 31, 2020 (OMB Control Number 0970–0498); a form associated with the specific consent process is currently pending approval with OMB (OMB Control Number 0970–0385).

G. Executive Order 13132: Federalism

This proposed rule would 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. This proposed rule implements the FSA by codifying the Departments' practices that comply with the terms of the FSA and relevant law for the processing, transfer, and care and custody of alien juveniles. In codifying these practices, the Departments were mindful of their obligations to meet the requirements of the FSA while also minimizing conflicts between State law and Federal interests.

Insofar, however, as the proposed rule sets forth standards that might apply to immigration detention facilities and holding facilities operated by contract with State and local governments and private entities, this proposed rule has the potential to affect the States, although it would not affect the relationship between the National Government and the States or the distribution of power and responsibilities among the various levels of government and private entities. With respect to the State and local agencies, as well as the private entities, that contract with DHS and operate these facilities across the country, the FSA provides DHS with no direct authority to mandate binding standards on their facilities. Instead, these requirements will impact the State, local, and private entities only to the extent that they make voluntary decisions to contract with DHS for the processing, transportation, care, or custody of alien juveniles. This approach is fully consistent with DHS's historical relationship to State and local agencies in this context.

Typically HHS enters into cooperative agreements or contracts with non-profit organizations to provide shelter, care, and physical custody for UACs in a facility licensed by the appropriate State or local licensing authority. Where HHS enters into cooperative agreements or contacts with a state licensed facility, ORR requires that the non-profit organization administering the facility abide by all applicable State or local licensing regulations and laws. ORR designed agency policies and proposed regulations as well as the terms of HHS cooperative agreements and contracts with the agency's grantees/contractors to complement appropriate State and licensing rules, not supplant or replace the requirements.

Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Notwithstanding the determination that the formal consultation process described in Executive Order 13132 is not required for this rule, the Departments welcome any comments from representatives of State and local juvenile or family residential facilities—among other individuals and groups—during the course of this rulemaking.

H. Executive Order 12988: Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, *Civil Justice Reform,* to minimize litigation, eliminate ambiguity, and reduce burden.

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

Executive Order 13211 requires agencies to consider the impact of rules that significantly impact the supply, distribution, and use of energy. DHS has reviewed this proposed rule and determined that it is not a ''significant energy action'' under the order because, while it is a ''significant regulatory action'' under Executive Order 12866, it does not have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, this proposed rule does not require a Statement of Energy Effects under Executive Order 13211.

J. National Environmental Policy Act (NEPA)

The U.S. Department of Homeland Security Management Directive (MD) 023–01 Revision Number 01 and Instruction Manual (IM) 023–01–001–01 Revision Number 01 establish procedures that DHS and its Components use to implement the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4375, and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500–1508.

The CEQ regulations allow federal agencies to establish categories of actions that do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement. 40 CFR 1508.4. The IM 023–01–001–01, Rev. 01 lists the Categorical Exclusions that DHS has found to have no such effect. IM 023–01–001–01 Rev. 01, Appendix A, Table 1.

For an action to be categorically excluded, IM 023–01–001–01 Rev. 01 requires the action to satisfy each of the following three conditions:

(1) The entire action clearly fits within one or more of the Categorical Exclusions;

(2) The action is not a piece of a larger action; and

(3) No extraordinary circumstances exist that create the potential for a significant environmental effect. IM 023–01–001–01 Rev. 01 § V(B)(2)(a)–(c).

Certain categories of proposed actions included in the Categorically Excluded actions list have a greater potential to involve extraordinary circumstances and require the preparation of a Record of Environmental Consideration to document the NEPA analysis. IM 023–01–001–01 Rev. 01 § V(B)(2).

This proposed rule would implement the relevant and substantive terms of the FSA, with such limited changes as are necessary to implement closely related provisions of the HSA and the TVPRA, and to ensure that the regulations set forth a sustainable operational model. The proposed rule would implement regulations to ensure the humane detention of alien juveniles, and satisfy the goals of the FSA, in a manner that is workable and enforceable.

DHS analyzed this proposed rule under MD 023–01 Rev. 01 and IM 023–01–001–01 Rev. 01. DHS has 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 clearly

fits within the Categorical Exclusions found in IM 023–01–001–01 Rev. 01, Appendix A, Table 1, number A3(b) and A3(d). A3(b) reads as: The ''Promulgation of rules . . . that implement, without substantive change, statutory or regulatory requirements.'' A3(d) reads as: The ''Promulgation of rules . . . that interpret or amend an existing regulation without changing its environmental effect.'' This proposed rule is not part of a larger action. This proposed rule presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this proposed rule is categorically excluded from further NEPA review.

For purposes of the joint NPRM, ORR's functions are categorically exempted from NEPA requirements as ORR's state licensed facilities are operated under social service grants. While the exception specifically excludes ''projects involving construction, renovation, or changes in land use,'' ORR is generally precluded from initiating these types of projects directly for traditional shelter care in state licensed facilities, as the agency lacks construction authority.

The Departments seek any comments or information that may lead to the discovery of any significant environmental effects from this proposed rule.

K. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights.*

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

Executive Order 13045 requires agencies to consider the impacts of environmental health risk or safety risk that may disproportionately affect children. The Departments have reviewed this proposed rule and determined that this rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that may disproportionately affect children. Therefore, the Departments have not prepared a statement under this executive order.

M. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

N. Family Assessment

The Departments have reviewed this proposed rule in accordance with the requirements of section 654 of the Treasury General Appropriations Act, 1999, Public Law 105–277. With respect to the criteria specified in section 654(c)(1), insofar as the proposed rule may ensure the continued availability of FRCs notwithstanding the lack of state licensure, the proposed rule may in some respects strengthen the stability of the family and the authority and rights of parents in the education, nurture, and supervision of their children, within the immigration detention context. The rule would also codify in regulation certain statutory policies with respect to the treatment of UACs. In general, however, as proposed, these regulations would not have an impact on family well-being as defined in this legislation. With respect to family well-being, this proposed rule codifies current requirements of settlement agreements, court orders, and statutes, most of whose terms have been in place for over 20 years, as well as HHS's related authorities.

VII. List of Subjects and Regulatory Amendments

List of Subjects

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 236

Apprehension and detention of inadmissible and deportable aliens, Removal of aliens ordered removed, Administrative practice and procedure, Aliens, Immigration.

45 CFR Part 410

Administrative practice and procedure, Child welfare, Immigration, Unaccompanied alien children, Reporting and recordkeeping requirements.

DEPARTMENT OF HOMELAND SECURITY

8 CFR Chapter I

For the reasons set forth in the preamble, parts 212 and 236 of chapter I are proposed to be amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257; 8 CFR part 2.

■ 2. In § 212.5, revise paragraphs (b) introductory text and (b)(3) to read as follows:

§ 212.5 Parole of aliens into the United States.

* * * * *

(b) The parole of aliens within the following groups who have been or are detained in accordance with § 235.3(c) of this chapter would generally be justified only on a case-by-case basis for ''urgent humanitarian reasons or ''significant public benefit,'' provided the aliens present neither a security risk nor a risk of absconding:

* * * * *

(3) Aliens who are defined as minors in § 236.3(b) of this chapter and are in DHS custody. The Executive Assistant Director, Enforcement and Removal Operations; directors of field operations; field office directors, deputy field office directors; or chief patrol agents shall follow the guidelines set forth in § 236.3(j) of this chapter and paragraphs (b)(3)(i) through (ii) of this section in determining under what conditions a minor should be paroled from detention:

(i) Minors may be released to a parent or legal guardian not in detention.

(ii) Minors may be released with an accompanying parent or legal guardian who is in detention.

* * * * *

PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

■ 3. The authority citation for part 236 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 6 U.S.C. 112(a)(2), 112(a)(3), 112(b)(1), 112(e), 202, 251, 279, 291; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1232, 1357, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

■ 4. Section 236.3 is revised to read as follows:

§ 236.3 Processing, detention, and release of alien minors.

(a) *Generally.* (1) DHS treats all minors and UACs in its custody with dignity, respect and special concern for their particular vulnerability.

(2) The provisions of this section apply to all minors in the legal custody of DHS, including minors who are subject to the mandatory detention provisions of the INA and applicable regulations, to the extent authorized by law.

(b) *Definitions.* For the purposes of this section:

(1) *Minor* means any alien who has not attained eighteen (18) years of age and has not been:

(i) Emancipated in an appropriate state judicial proceeding; or

(ii) Incarcerated due to a conviction for a criminal offense in which he or she was tried as an adult.

(2) *Special Needs Minor* means a minor whose mental and/or physical condition requires special services and treatment as identified during an individualized needs assessment as referenced in paragraph (i)(4)(iii) of this section. A minor may have special needs due to drug or alcohol abuse, serious emotional disturbance, mental illness or retardation, or a physical condition or chronic illness that requires special services or treatment. A minor who has suffered serious neglect or abuse may be considered a minor with special needs if the minor requires special services or treatment as a result of the neglect or abuse.

(3) *Unaccompanied Alien Child* (UAC) has the meaning provided in 6 U.S.C. 279(g)(2), that is, a child who has no lawful immigration status in the United States and who has not attained 18 years of age; and with respect to whom: There is no parent or legal guardian present in the United States; or no parent or legal guardian in the United States is available to provide care and physical custody. An individual may meet the definition of UAC without meeting the definition of minor.

(4) *Custody* means within the physical and legal control of an institution or person.

(5) *Emergency* means an act or event (including, but not limited to, a natural disaster, facility fire, civil disturbance, or medical or public health concerns at one or more facilities) that prevents timely transport or placement of minors, or impacts other conditions provided by this section.

(6) *Escape-risk* means that there is a serious risk that the minor will attempt to escape from custody. Factors to consider when determining whether a minor is an escape-risk include, but are not limited to, whether:

(i) The minor is currently subject to a final order of removal;

(ii) The minor's immigration history includes: A prior breach of bond, a failure to appear before DHS or the immigration courts, evidence that the minor is indebted to organized smugglers for his transport, or a voluntary departure or previous removal from the United States pursuant to a final order of removal; or

(iii) The minor has previously absconded or attempted to abscond from state or federal custody.

(7) *Family unit* means a group of two or more aliens consisting of a minor or minors accompanied by his/her/their adult parent(s) or legal guardian(s). In determining the existence of a parental relationship or a legal guardianship for purposes of this definition, DHS will consider all available reliable evidence. If DHS determines that there is insufficient reliable evidence available that confirms the relationship, the minor will be treated as a UAC.

(8) *Family Residential Center* means a facility used by ICE for the detention of Family Units.

(9) *Licensed Facility* means an ICE detention facility that is licensed by the state, county, or municipality in which it is located, if such a licensing scheme exists. Licensed facilities shall comply with all applicable state child welfare laws and regulations and all state and local building, fire, health, and safety codes. If a licensing scheme for the detention of minors accompanied by a parent or legal guardian is not available in the state, county, or municipality in which an ICE detention facility is located, DHS shall employ an entity outside of DHS that has relevant audit experience to ensure compliance with the family residential standards established by ICE.

(10) *Influx* means a situation in which there are, at any given time, more than 130 minors or UACs eligible for placement in a licensed facility under this section or corresponding provisions of ORR regulations, including those who have been so placed or are awaiting such placement.

(11) *Non-Secure Facility* means a facility that meets the definition of non-secure in the state in which the facility is located. If no such definition of non-secure exists under state law, a DHS facility shall be deemed non-secure if egress from a portion of the facility's building is not prohibited through internal locks within the building or exterior locks and egress from the facility's premises is not prohibited through secure fencing around the perimeter of the building.

(12) *Office of Refugee Resettlement (ORR)* means the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement.

(c) *Age Determination.* (1) For purposes of exercising the authorities described in this part, DHS shall determine the age of an alien in accordance with 8 U.S.C. 1232(b)(4). Age determination decisions shall be based upon the totality of the evidence and circumstances.

(2) If a reasonable person would conclude that an individual is an adult, despite his or her claim to be under the age of 18, DHS may treat such person as an adult for all purposes, including confinement and release on bond, recognizance, or other conditions of release. In making this determination, an immigration officer may require such an individual to submit to a medical or dental examination conducted by a medical professional or other appropriate procedures to verify his or her age.

(3) If an individual previously considered to have been an adult is subsequently determined to be a under the age of 18, DHS will then treat such individual as a minor or UAC as prescribed by this section.

(d) *Determining whether an alien is a UAC.* (1) Immigration officers will make a determination as to whether an alien under the age of 18 is a UAC at the time of encounter or apprehension and prior to the detention or release of such alien.

(2) When an alien previously determined to have been a UAC has reached the age of 18, when a parent or legal guardian in the United States is available to provide care and physical custody for such an alien, or when such alien has obtained lawful immigration status, the alien is no longer a UAC. An alien who is no longer a UAC is not eligible to receive legal protections limited to UACs under the relevant sections of the Act. Nothing in this paragraph affects USCIS' independent

determination of its initial jurisdiction over asylum applications filed by UACs pursuant to section 208(b)(3)(C) of the Act.

(3) *Age-out procedures.* When an alien previously determined to have been a UAC is no longer a UAC because he or she turns eighteen years old, relevant ORR and ICE procedures shall apply.

(e) *Transfer of minors who are not UACs from one facility to another.* (1) In the case of an influx or emergency, as defined in paragraph (b) of this section, DHS will transfer a minor who is not a UAC, and who does not meet the criteria for secure detention pursuant to paragraph (i)(1)of this section, to a licensed facility as defined in paragraph (b)(9) of this section, which is non-secure, as expeditiously as possible. Otherwise, to the extent consistent with law or court order, DHS will transfer such minor within three (3) days, if the minor was apprehended in a district in which a licensed program is located, or within five (5) days in all other cases.

(2) In the case of an emergency or influx, DHS will abide by written guidance detailing all reasonable efforts that it will take to transfer all minors who are not UACs as expeditiously as possible.

(f) *Transfer of UACs from DHS to HHS.* (1) All UACs apprehended by DHS, except those who are subject to the terms of 8 U.S.C. 1232(a)(2), will be transferred to ORR for care, custody, and placement in accordance with 6 U.S.C. 279 and 8 U.S.C. 1232.

(2) DHS will notify ORR within 48 hours upon the apprehension or discovery of a UAC or any claim or suspicion that an unaccompanied alien detained in DHS custody is under 18 years of age.

(3) Unless exceptional circumstances are present, DHS will transfer custody of a UAC as soon as practicable after receiving notification of an ORR placement, but no later than 72 hours after determining that the minor is a UAC per paragraph (d) of this section. In the case of exceptional circumstances, DHS will abide by written guidance detailing the efforts that it will take to transfer all UACs as required by law.

(4) *Conditions of transfer.* (i) A UAC will not be transported with an unrelated detained adult(s) unless the UAC is being transported from the place of apprehension to a DHS facility or if separate transportation is otherwise impractical or unavailable.

(ii) When separate transportation is impractical or unavailable, necessary precautions will be taken to ensure the UAC's safety, security, and well-being. If a UAC is transported with any unrelated detained adult(s), DHS will separate the UAC from the unrelated adult(s) to the extent operationally feasible and take necessary precautions for protection of the UAC's safety, security, and well-being.

(g) *DHS procedures in the apprehension and processing of minors or UACs.*

(1) Processing. (i) *Notice of rights and request for disposition.* Every minor or UAC who enters DHS custody, including minors and UACs who request voluntary departure or request to withdraw their application for admission, will be issued a Form I–770, Notice of Rights and Request for Disposition, which will include a statement that the minor or UAC may make a telephone call to a parent, close relative, or friend. If the minor or UAC is believed to be less than 14 years of age, or is unable to comprehend the information contained in the Form I–770, the notice shall be read and explained to the minor or UAC in a language and manner that he or she understands. In the event that a minor or UAC is no longer amenable to voluntary departure or to a withdrawal of an application for admission, the minor or UAC will be issued a new Form I–770 or the Form I–770 will be updated, as needed.

(ii) *Notice of Right to Judicial Review.* Every minor who is not a UAC who is transferred to or remains in a DHS detention facility will be provided with a Notice of Right to Judicial Review, which informs the minor of his or her right to seek judicial review in United States District Court with jurisdiction and venue over the matter if the minor believes that his or her detention does not comply with the terms of paragraph (i) of this section.

(iii) *Current List of Counsel.* Every minor who is not a UAC who is transferred to or remains in a DHS detention facility will be provided the free legal service provider list, prepared pursuant to section 239(b)(2) of the Act.

(2) *DHS custodial care immediately following apprehension.* (i) Following the apprehension of a minor or UAC, DHS will process the minor or UAC as expeditiously as possible. Consistent with 6 CFR 115.114, minors and UACs shall be held in the least restrictive setting appropriate to the minor or UAC's age and special needs, provided that such setting is consistent with the need to protect the minor or UAC's well-being and that of others, as well as with any other laws, regulations, or legal requirements. DHS will hold minors and UACs in facilities that are safe and sanitary and that are consistent with DHS's concern for their particular vulnerability. Facilities will provide access to toilets and sinks, drinking water and food as appropriate, access to emergency medical assistance as needed, and adequate temperature and ventilation. DHS will provide adequate supervision and will provide contact with family members arrested with the minor or UAC in consideration of the safety and well-being of the minor or UAC, and operational feasibility. UACs generally will be held separately from unrelated adult detainees in accordance with 6 CFR 115.14(b) and 6 CFR 115.114(b). In the event that such separation is not immediately possible, UACs in facilities covered by 6 CFR 115.114 may be housed with an unrelated adult for no more than 24 hours except in the case of an emergency or other exigent circumstances.

(ii) Consistent with the statutory requirements, DHS will transfer UACs to HHS in accordance with the procedures described in paragraph (f) of this section.

(h) *Detention of family units.* DHS's policy is to maintain family unity, including by detaining families together where appropriate and consistent with law and available resources. If DHS determines that detention of a family unit is required by law, or is otherwise appropriate, the family unit may be transferred to a Family Residential Center which is a licensed facility and non-secure.

(i) *Detention of minors who are not UACs in DHS custody.* In any case in which DHS does not release a minor who is not a UAC, said minor shall remain in DHS detention. Consistent with 6 CFR 115.14, minors shall be detained in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with the need to ensure the minor's timely appearance before DHS and the immigration courts and to protect the minor's well-being and that of others, as well as with any other laws, regulations, or legal requirements. The minor shall be placed temporarily in a licensed facility, which will be non-secure, until such time as release can be effected or until the minor's immigration proceedings are concluded, whichever occurs earlier. If immigration proceedings are concluded and result in a final order of removal, DHS will detain the minor for the purpose of removal. If immigration proceedings result in a grant of relief or protection from removal where both parties have waived appeal or the appeal period defined in 8 CFR

1003.38(b) has expired, DHS will release the minor.

(1) A minor who is not a UAC referenced under this paragraph may be held in or transferred to a suitable state or county juvenile detention facility, or a secure DHS detention facility, or DHS contracted facility having separate accommodations for minors, whenever the Field Office Director and the ICE supervisory or management personnel have probable cause to believe that the minor:

(i) Has been charged with, is chargeable with, or has been convicted of a crime or crimes, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act or acts, that fit within a pattern or practice of criminal activity;

(ii) Has been charged with, is chargeable with, or has been convicted of a crime or crimes, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act or acts, that involve violence against a person or the use or carrying of a weapon;

(iii) Has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in federal or state government custody or while in the presence of an immigration officer;

(iv) Has engaged, while in the licensed facility, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed facility in which the minor has been placed and transfer to another facility is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed facility;

(v) Is determined to be an escape-risk pursuant to paragraph (b)(6) of this section; or

(vi) Must be held in a secure facility for his or her own safety.

(2) DHS will not place a minor who is not a UAC in a secure facility pursuant to paragraph (i)(1) if there are less restrictive alternatives that are available and appropriate in the circumstances, such as transfer to a facility which would provide intensive staff supervision and counseling services or another licensed facility. All determinations to place a minor in a secure facility will be reviewed and approved by the Juvenile Coordinator referenced in paragraph (o) of this section. Secure facilities shall permit attorney-client visits in accordance with applicable facility rules and regulations.

(3) *Non-secure facility.* Unless a secure facility is otherwise authorized pursuant to this section, ICE facilities used for the detention of minors who are not UACs shall be non-secure facilities.

(4) *Standards.* Non-secure, licensed ICE facilities to which minors who are not UACs are transferred pursuant to the procedures in paragraph (e) of this section shall abide by applicable standards established by ICE. At a minimum, such standards shall include provisions or arrangements for the following services for each minor who is not a UAC in its care:

(i) Proper physical care and maintenance, including suitable living, accommodations, food, appropriate clothing, and personal grooming items;

(ii) Appropriate routine medical and dental care, family planning services, and emergency health care services, including a complete medical examination (including screening for infectious disease) within 48 hours of admission, excluding weekends and holidays, unless the minor was recently examined at another facility; appropriate immunizations in accordance with the U.S. Public Health Service (PHS), Centers for Disease Control and Prevention; administration of prescribed medication and special diets; appropriate mental health interventions when necessary;

(iii) An individualized needs assessment which includes:

(A) Various initial intake forms;

(B) Essential data relating to the identification and history of the minor and family;

(C) Identification of the minor's special needs including any specific problem(s) which appear to require immediate intervention;

(D) An educational assessment and plan;

(E) An assessment of family relationships and interaction with adults, peers and authority figures;

(F) A statement of religious preference and practice;

(G) An assessment of the minor's personal goals, strengths and weaknesses; and

(H) Identifying information regarding immediate family members, other relatives, godparents, or friends who may be residing in the United States and may be able to assist in family reunification;

(iv) Educational services appropriate to the minor's level of development and communication skills in a structured classroom setting, Monday through Friday, which concentrates primarily on the development of basic academic competencies and secondarily on English Language Training (ELT). The educational program should include subjects similar to those found in U.S. programs and include science, social studies, math, reading, writing, and physical education. The program design should be appropriate for the minor's estimated length of stay and can include the necessary skills appropriate for transition into a U.S. school district. The program should also include acculturation and adaptation services which include information regarding the development of social and interpersonal skills that contribute to those abilities as age appropriate;

(v) Appropriate reading materials in languages other than English for use during the minor's leisure time;

(vi) Activities according to a recreation and leisure time plan which shall include daily outdoor activity, weather permitting, at least one hour per day of large muscle activity and one hour per day of structured leisure time activities (this should not include time spent watching television). Activities should be increased to a total of three hours on days when school is not in session;

(vii) At least one individual counseling session or mental health wellness interaction (if the minor does not want to participate in a counseling session) per week conducted by trained social work staff with the specific objectives of reviewing the minor's progress, establishing new short-term objectives, and addressing both the developmental and crisis-related needs of each minor;

(viii) Group counseling sessions at least twice a week. This is usually an informal process and takes place with all the minors present and can be held in conjunction with other structured activities. It is a time when new minors present in the facility are given the opportunity to get acquainted with the staff, other children, and the rules of the program. It is an open forum where everyone gets a chance to speak. Daily program management is discussed and decisions are made about recreational activities, etc. It is a time for staff and minors to discuss whatever is on their minds and to resolve problems;

(ix) Upon admission, a comprehensive orientation regarding program intent, services, rules (written and verbal), expectations and the availability of legal assistance;

(x) Whenever possible, access to religious services of the minor's choice;

(xi) Visitation and contact with family members (regardless of their immigration status) which is structured to encourage such visitation. The staff shall respect the minor's privacy while reasonably preventing the unauthorized release of the minor and preventing the transfer of contraband;

(xii) A reasonable right to privacy, which shall include the right to:

(A) Wear his or her own clothes, when available;

(B) Retain a private space in the residential facility for the storage of personal belongings;

(C) Talk privately on the phone, as permitted by applicable facility rules and regulations;

(D) Visit privately with guests, as permitted by applicable facility rules and regulations; and

(E) Receive and send uncensored mail unless there is a reasonable belief that the mail contains contraband.

(xiii) When necessary, communication with adult relatives living in the United States and in foreign countries regarding legal issues related to the release and/or removal of the minor;

(xiv) Legal services information regarding the availability of free legal assistance, the right to be represented by counsel at no expense to the Government, the right to apply for asylum or to request voluntary departure; and

(xv) Attorney-client visits in accordance with applicable facility rules and regulations.

(5) In the event of an emergency, a licensed, non-secure facility described in paragraph (i) of this section may transfer temporary physical custody of a minor prior to securing permission from DHS, but shall notify DHS of the transfer as soon as is practicable thereafter, but in all cases within 8 hours.

(j) *Release of minors from DHS custody.* DHS will make and record prompt and continuous efforts on its part toward the release of the minor. If DHS determines that detention of a minor who is not a UAC is not required to secure the minor's timely appearance before DHS or the immigration court, or to ensure the minor's safety or the safety of others, the minor may be released, as provided under existing statutes and regulations, pursuant to the procedures set forth in this paragraph.

(1) DHS will release a minor from custody to a parent or legal guardian who is available to provide care and physical custody.

(2) Prior to releasing to a parent or legal guardian, DHS will use all available reliable evidence to determine whether the relationship is bona fide. If no reliable evidence is available that confirms the relationship, the minor will be treated as a UAC and transferred into the custody of HHS as outlined in paragraph (f) of this section.

(3) For minors in DHS custody, DHS shall assist without undue delay in making transportation arrangements to the DHS office nearest the location of the person to whom a minor is to be released. DHS may, in its discretion, provide transportation to minors.

(4) Nothing herein shall require DHS to release a minor to any person or agency whom DHS has reason to believe may harm or neglect the minor or fail to present him or her before DHS or the immigration courts when requested to do so.

(k) *Procedures upon transfer.*—(1) *Possessions.* Whenever a minor or UAC is transferred from one ICE placement to another, or from an ICE placement to an ORR placement, he or she will be transferred with all possessions and legal papers; provided, however, that if the minor or UAC's possessions exceed the amount normally permitted by the carrier in use, the possessions shall be shipped to the minor or UAC in a timely manner.

(2) *Notice to counsel.* A minor or UAC who is represented will not be transferred from one ICE placement to another, or from an ICE placement to an ORR placement, until notice is provided to his or her counsel, except in unusual and compelling circumstances, such as where the safety of the minor or UAC or others is threatened or the minor or UAC has been determined to be an escape-risk, or where counsel has waived such notice. In unusual and compelling circumstances, notice will be sent to counsel within 24 hours following the transfer.

(l) *Notice to parent of refusal of release or application for relief.* (1) A parent shall be notified of any of the following requests if the parent is present in the United States and can reasonably be contacted, unless such notification is otherwise prohibited by law or DHS determines that notification of the parent would pose a risk to the minor's safety or well-being:

(i) A minor or UAC in DHS custody refuses to be released to his or her parent; or

(ii) A minor or a UAC seeks release from DHS custody or seeks voluntary departure or a withdrawal of an application for admission, parole, or any form of relief from removal before DHS, and that the grant of such request or relief may effectively terminate some interest inherent in the parent-child relationship and/or the minor or UAC's rights and interests are adverse with those of the parent.

(2) Upon notification, the parent will be afforded an opportunity to present his or her views and assert his or her interest to DHS before a determination is made as to the merits of the request for relief.

(m) *Bond hearings.* Bond determinations made by DHS for minors who are in removal proceedings pursuant to section 240 of the Act and who are also in DHS custody may be reviewed by an immigration judge pursuant to 8 CFR part 1236 to the extent permitted by 8 CFR 1003.19. Minors in DHS custody who are not in section 240 proceedings are ineligible to seek review by an immigration judge of their DHS custody determinations.

(n) *Retaking custody of a previously released minor.* (1) In addition to the ability to make a UAC determination upon each encounter as set forth in paragraph (c) of this section, DHS may take a minor back into custody if there is a material change in circumstances indicating the minor is an escape-risk, a danger to the community, or has a final order of removal. If the minor is accompanied, DHS shall place the minor in accordance with paragraphs (e) and (i) of this section. If the minor is a UAC, DHS shall transfer the minor into HHS custody in accordance with paragraph (e) of this section.

(2) DHS may take a minor back into custody if there is no longer a parent or legal guardian available to care for the minor. In these cases, DHS will treat the minor as a UAC and transfer custody to HHS as outlined in paragraph (e) of this section.

(3) Minors who are not UACs and who are taken back into DHS custody may request a custody redetermination hearing in accordance with paragraph (m) of this section and to the extent permitted by 8 CFR 1003.19 .

(o) *Monitoring.* (1) CBP and ICE each shall identify a Juvenile Coordinator for the purpose of monitoring compliance with the terms of this section.

(2) The Juvenile Coordinators shall collect and periodically examine relevant statistical information about UACs and minors who remain in CBP or ICE custody for longer than 72 hours. Such statistical information may include but not necessarily be limited to:

(i) Biographical information;

(ii) Dates of custody; and

(iii) Placements, transfers, removals, or releases from custody, including the reasons for a particular placement.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Chapter IV

For the reasons set forth in the preamble, part 410 of Chapter IV of title 45 of the Code of Federal Regulations is proposed to be amended as follows:

■ 10. Add part 410 to read as follows:

PART 410—CARE AND PLACEMENT OF UNACCOMPANIED ALIEN CHILDREN

Authority: 6 U.S.C. 279, 8 U.S.C. 1103(a)(3), 8 U.S.C. 1232.

Subpart A—Care and Placement of Unaccompanied Alien Children

§ 410.100 Scope of this part.

This part governs those aspects of the care, custody, and placement of unaccompanied alien children (UACs) agreed to in the settlement agreement reached in *Jenny Lisette Flores* v. *Janet Reno, Attorney General of the United States,* Case No. CV 85–4544–RJK (C.D. Cal. 1996). ORR operates the UAC program as authorized by section 462 of the Homeland Security Act of 2002, Public Law 107–296, 6 U.S.C. 279, and section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110–457, 8 U.S.C. 1232. This part does not govern or describe the entire program.

§ 410.101 Definitions.

DHS means the Department of Homeland Security.

Director means the Director of the Office of Refugee Resettlement (ORR), Administration for Children and Families, Department of Health and Human Services.

Emergency means an act or event (including, but not limited to, a natural disaster, facility fire, civil disturbance, or medical or public health concerns at one or more facilities) that prevents timely transport or placement of UACs, or impacts other conditions provided by this part.

Escape risk means there is a serious risk that an unaccompanied alien child (UAC) will attempt to escape from custody.

Influx means a situation in which there are, at any given time, more than 130 minors or UACs eligible for placement in a licensed facility under this part or corresponding provisions of DHS regulations, including those who have been so placed or are awaiting such placement.

Licensed program means any program, agency, or organization that is licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special needs UAC. A licensed program must meet the standards set forth in § 410.402 of this part. All homes and facilities operated by a licensed program, including facilities for special needs minors, are non-secure as required under State law. However, a facility for special needs minors may maintain that level of security permitted under State law which is necessary for the protection of a UAC or others in appropriate circumstances, *e.g.,* cases in which a UAC has drug or alcohol problems or is mentally ill.

ORR means the Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services.

Secure facility means a State or county juvenile detention facility or a secure ORR detention facility, or a facility with an ORR contract or cooperative agreement having separate accommodations for minors. A secure facility does not need to meet the requirements of § 410.402, and is not defined as a ''licensed program'' or ''shelter'' under this Part.

Shelter means a licensed program that meets the standards set forth in § 410.402 of this part.

Special needs minor means a UAC whose mental and/or physical condition requires special services and treatment by staff. A UAC may have special needs due to drug or alcohol abuse, serious emotional disturbance, mental illness or retardation, or a physical condition or chronic illness that requires special services or treatment. A UAC who has suffered serious neglect or abuse may be considered a special needs minor if the UAC requires special services or treatment as a result of neglect or abuse.

Sponsor, also referred to as custodian, means an individual (or entity) to whom ORR releases a UAC out of ORR custody.

Staff secure facility means a facility that is operated by a program, agency or organization licensed by an appropriate State agency and that meets the standards for licensed programs set forth in § 410.402 of this part. A staff secure facility is designed for a UAC who requires close supervision but does not need placement in a secure facility. It provides 24-hour awake supervision, custody, care, and treatment. It maintains stricter security measures, such as intensive staff supervision, than a shelter in order to control problem behavior and to prevent escape. A staff secure facility may have a secure perimeter but is not equipped internally with major restraining construction or procedures typically associated with correctional facilities.

Unaccompanied alien child (UAC) means an individual who: Has no lawful immigration status in the United States; has not attained 18 years of age; and with respect to whom: There is no parent or legal guardian in the United States; or no parent or legal guardian in the United States is available to provide care and physical custody. When an alien previously determined to have been a UAC has reached the age of 18, when a parent or legal guardian in the United States is available to provide care and physical custody for such an alien, or when such alien has obtained lawful immigration status, the alien is no longer a UAC. An alien who is no longer a UAC is not eligible to receive legal protections limited to UACs.

§ 410.102 ORR care and placement of unaccompanied alien children.

ORR coordinates and implements the care and placement of UAC who are in ORR custody by reason of their immigration status.

For all UAC in ORR custody, DHS and DOJ handle other matters, including immigration benefits and enforcement matters, as set forth in their respective statutes, regulations and other authorities.

ORR shall hold UACs in facilities that are safe and sanitary and that are consistent with ORR's concern for the particular vulnerability of minors.

Within all placements, UAC shall be treated with dignity, respect, and special concern for their particular vulnerability.

Subpart B—Determining the Placement of an Unaccompanied Alien Child

§ 410.200 Purpose of this subpart.

This subpart sets forth what ORR considers when placing a UAC in a particular ORR facility, in accordance with the Flores settlement agreement.

§ 410.201 Considerations generally applicable to the placement of an unaccompanied alien child.

(a) ORR places each UAC in the least restrictive setting that is in the best interest of the child and appropriate to the UAC's age and special needs, provided that such setting is consistent with its interests to ensure the UAC's timely appearance before DHS and the immigration courts and to protect the UAC's well-being and that of others.

(b) ORR separates UAC from delinquent offenders.

(c) ORR makes reasonable efforts to provide placements in those geographical areas where DHS apprehends the majority of UAC.

(d) Facilities where ORR places UAC will provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if the UAC is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect UAC from others, and contact with family members who were arrested with the minor.

(e) If there is no appropriate licensed program immediately available for placement of a UAC pursuant to Subpart B, and no one to whom ORR may release the UAC pursuant to Subpart C, the UAC may be placed in an ORR-contracted facility, having separate accommodations for minors, or a State or county juvenile detention facility. In addition to the requirement that UAC shall be separated from delinquent offenders, every effort must be taken to ensure that the safety and well-being of the UAC detained in these facilities are satisfactorily provided for by the staff. ORR makes all reasonable efforts to place each UAC in a licensed program as expeditiously as possible.

(f) ORR makes and records the prompt and continuous efforts on its part toward family reunification. ORR continues such efforts at family reunification for as long as the minor is in ORR custody.

§ 410.202 Placement of an unaccompanied alien child in a licensed program.

(a) ORR places UAC into a licensed program promptly after a UAC is transferred to ORR legal custody, except in the following circumstances:

(1) UAC meeting the criteria for placement in a secure facility set forth in § 410.203 of this part;

(2) As otherwise required by any court decree or court-approved settlement; or,

(3) In the event of an emergency or influx of UAC into the United States, in which case ORR places the UAC as expeditiously as possible in accordance with § 410.209 of this part; or

(4) If a reasonable person would conclude that the UAC is an adult despite his or her claims to be a minor.

§ 410.203 Criteria for placing an unaccompanied alien child in a secure facility.

(a) Notwithstanding § 410.202 of this part, ORR may place a UAC in a secure facility if the UAC:

(1) Has been charged with, is chargeable, or has been convicted of a crime, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act, and where ORR deems those circumstances demonstrate that the UAC poses a danger to self or others. ''Chargeable'' means that ORR has probable cause to believe that the UAC has committed a specified offense. This provision does not apply to a UAC whose offense is:

(i) An isolated offense that was not within a pattern or practice of criminal activity and did not involve violence against a person or the use or carrying of a weapon; or

(ii) A petty offense, which is not considered grounds for stricter means of detention in any case;

(2) While in DHS or ORR's custody or while in the presence of an immigration officer, has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself/herself or others);

(3) Has engaged, while in a licensed program or staff secure facility, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program or staff secure facility in which he or she has been placed and removal is necessary to ensure the welfare of the UAC or others, as determined by the staff of the licensed program or staff secure facility (*e.g.,* drug or alcohol abuse, stealing, fighting, intimidation of others, or sexually predatory behavior), and ORR determines the UAC poses a danger to self or others based on such conduct;

(4) For purposes of placement in a secure RTC, if a licensed psychologist or psychiatrist determines that the UAC poses a risk of harm to self or others.

(5) Is otherwise a danger to self or others.

(b) ORR Federal Field Specialists review and approve all placements of UAC in secure facilities consistent with legal requirements.

§ 410.204 Considerations when determining whether an unaccompanied alien child is an escape risk.

When determining whether a UAC is an escape risk, ORR considers, among other factors, whether:

(a) The UAC is currently under a final order of removal;

(b) The UAC's immigration history includes:

(1) A prior breach of a bond;

(2) A failure to appear before DHS or the immigration court;

(3) Evidence that the UAC is indebted to organized smugglers for his or her transport; or

(4) A voluntary departure or a previous removal from the United States pursuant to a final order of removal; and

(c) The UAC has previously absconded or attempted to abscond from state or federal custody.

§ 410.205 Applicability of § 410.203 for placement in a secure facility.

ORR does not place a UAC in a secure facility pursuant to § 410.203 of this part if less restrictive alternatives are available and appropriate under the circumstances. ORR may place a UAC in a staff secure facility or another licensed program as an alternative to a secure facility.

§ 410.206 Information for unaccompanied alien children concerning the reasons for his or her placement in a secure or staff secure facility.

Within a reasonable period of time, ORR provides each UAC placed or transferred to a secure or staff secure facility with a notice of the reasons for the placement in a language the UAC understands.

§ 410.207 Custody of an unaccompanied alien child placed pursuant to this subpart.

A UAC who is placed in a licensed program pursuant to this subpart remains in the custody of ORR, and may only be transferred or released under its authority. However, in the event of an emergency, a licensed program may transfer temporarily the physical placement of a UAC prior to securing permission from ORR, but must notify ORR of the transfer as soon as possible, but in all cases within eight hours of the transfer. Upon release to an approved sponsor, a UAC is no longer in the custody of ORR.

§ 410.208 Special needs minors.

ORR assesses each UAC to determine if he or she has special needs, and if so, places the UAC, whenever possible, in a licensed program in which ORR places unaccompanied alien children without special needs, but which provides services and treatment for such special needs.

§ 410.209 Procedures during an emergency or influx.

In the event of an emergency or influx that prevents the prompt placement of UAC in licensed programs, ORR makes all reasonable efforts to place each UAC in a licensed program as expeditiously as possible using the following procedures:

(a) ORR maintains an emergency placement list of at least 80 beds at programs licensed by an appropriate state agency that are potentially available to accept emergency placements.

(b) ORR implements its contingency plan on emergencies and influxes.

(c) Within one business day of the emergency or influx, ORR, if necessary, contacts the programs on the emergency placement list to determine available placements. To the extent practicable, ORR will attempt to locate emergency placements in geographic areas where culturally and linguistically appropriate community services are available.

(d) In the event that the number of UAC needing placement exceeds the available appropriate placements on the emergency placement list, ORR works with governmental and nongovernmental organizations to locate additional placements through licensed programs, county social services departments, and foster family agencies.

(e) ORR maintains a list of UAC affected by the emergency or influx including each UAC's:

(1) Name;

(2) Date and country of birth;

(3) Date of placement in ORR's custody; and

(4) Place and date of current placement.

(f) Each year ORR reevaluates the number of regular placements needed for UAC to determine whether the number of regular placements should be adjusted to accommodate an increased or decreased number of UAC eligible for placement in licensed programs.

Subpart C—Releasing an Unaccompanied Alien Child From ORR Custody

§ 410.300 Purpose of this subpart.

This subpart covers the policies and procedures used to release, without unnecessary delay, a UAC from ORR custody to an approved sponsor.

§ 410.301 Sponsors to whom ORR releases an unaccompanied alien child.

(a) ORR releases a UAC to an approved sponsor without unnecessary delay, but may continue to retain custody of a UAC if ORR determines that continued custody is necessary to ensure the UAC's safety or the safety of others, or that continued custody is required to secure the UAC's timely appearance before DHS or the immigration courts.

(b) When ORR releases a UAC without unnecessary delay to an approved sponsor, it releases in the following order of preference:

(1) A parent;

(2) A legal guardian;

(3) An adult relative (brother, sister, aunt, uncle, or grandparent);

(4) An adult individual or entity designated by the parent or legal guardian as capable and willing to care for the UAC's well-being in:

(i) A declaration signed under penalty of perjury before an immigration or consular officer, or

(ii) Such other document that establishes to the satisfaction of ORR, in its discretion, the affiant's parental relationship or guardianship;

(5) A licensed program willing to accept legal custody; or

(6) An adult individual or entity seeking custody, in the discretion of ORR, when it appears that there is no other likely alternative to long term custody, and family reunification does not appear to be a reasonable possibility.

§ 410.302 Sponsor suitability assessment process requirements leading to release of an unaccompanied alien child from Federal custody to a proposed sponsor.

(a) The licensed program providing care for the UAC shall make and record the prompt and continuous efforts on its part towards family reunification and the release of the UAC pursuant to the provisions of this section.

(b) ORR requires a background check, including verification of identity and which may include verification of employment of the individuals offering support, prior to release.

(c) ORR also may require further suitability assessment, which may include interviews of members of the household, investigation of the living conditions in which the UAC would be placed and the standard of care he or she would receive, a home visit, a fingerprint-based background and criminal records check on the prospective sponsor and on adult residents of the prospective sponsor's household, and follow-up visits after release. Any such assessment also takes into consideration the wishes and concerns of the UAC.

(d) If the conditions identified in TVPRA at 8 U.S.C. 1232(c)(3)(B) are met, and require a home study, no release to a sponsor may occur in the absence of such a home study.

(e) The proposed sponsor must sign an affidavit of support and a custodial release agreement of the conditions of release. The custodial release agreement requires that the sponsor:

(1) Provide for the UAC's physical, mental, and financial well-being;

(2) Ensure the UAC's presence at all future proceedings before DHS and the immigration courts;

(3) Ensure the UAC reports for removal from the United States if so ordered;

(4) Notify ORR, DHS, and the Executive Office for Immigration Review of any change of address within five days following a move;

(5) Notify ORR and DHS at least five days prior to the sponsor's departure from the United States, whether the departure is voluntary or pursuant to a grant of voluntary departure or an order of removal;

(6) Notify ORR and DHS if dependency proceedings involving the UAC are initiated and also notify the dependency court of any immigration proceedings pending against the UAC;

(7) Receive written permission from ORR if the sponsor decides to transfer legal custody of the UAC to someone else. Also, in the event of an emergency (*e.g.,* serious illness or destruction of the home), a sponsor may transfer temporary physical custody of the UAC prior to securing permission from ORR, but the sponsor must notify ORR as soon as possible and no later than 72 hours after the transfer; and

(8) Notify ORR and DHS as soon as possible and no later than 24 hours of learning that the UAC has disappeared, has been threatened, or has been contacted in any way by an individual or individuals believed to represent an immigrant smuggling syndicate or organized crime.

(f) ORR is not required to release a UAC to any person or agency it has reason to believe may harm or neglect the UAC or fail to present him or her before DHS or the immigration courts when requested to do so.

Subpart D—Licensed Programs

§ 410.400 Purpose of this subpart.

This subpart covers the standards that licensed programs must meet in keeping with the principles UACs in custody with dignity, respect and special concern for their particular vulnerability

§ 410.401 Applicability of this subpart.

This subpart applies to all licensed programs, regardless of whether they are providing care in shelters, staff secure facilities, residential treatment centers, or foster care and group home settings.

§ 410.402 Minimum standards applicable to licensed programs.

Licensed programs must:

(a) Be licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children.

(b) Comply with all applicable state child welfare laws and regulations and all state and local building, fire, health and safety codes;

(c) Provide or arrange for the following services for each UAC in care, including:

(1) Proper physical care and maintenance, including suitable living accommodations, food, appropriate clothing, and personal grooming items;

(2) Appropriate routine medical and dental care, family planning services, and emergency health care services, including a complete medical examination (including screening for infectious disease) within 48 hours of admission, excluding weekends and holidays, unless the UAC was recently examined at another facility; appropriate immunizations in accordance with the U.S. Public Health Service (PHS), Center for Disease Control; administration of prescribed medication and special diets; appropriate mental health interventions when necessary;

(3) An individualized needs assessment that must include:

(i) Various initial intake forms;

(ii) Essential data relating to the identification and history of the UAC and family;

(iii) Identification of the UAC's special needs including any specific problems that appear to require immediate intervention;

(iv) An educational assessment and plan;

(v) An assessment of family relationships and interaction with adults, peers and authority figures;

(vi) A statement of religious preference and practice;

(vii) An assessment of the UAC's personal goals, strengths and weaknesses; and

(viii) Identifying information regarding immediate family members, other relatives, godparents or friends who may be residing in the United States and may be able to assist in family reunification; and

(4) Educational services appropriate to the UAC's level of development and communication skills in a structured classroom setting, Monday through Friday, which concentrate primarily on the development of basic academic competencies and secondarily on English Language Training (ELT), including:

(i) Instruction and educational and other reading materials in such languages as needed;

(ii) Instruction in basic academic areas that include science, social studies, math, reading, writing, and physical education; and

(iii) The provision to a UAC of appropriate reading materials in languages other than English for use during the UAC's leisure time;

(5) Activities according to a recreation and leisure time plan that include daily outdoor activity, weather permitting, at least one hour per day of large muscle activity and one hour per day of structured leisure time activities, which do not include time spent watching television. Activities must be increased to at least three hours on days when school is not in session;

(6) At least one individual counseling session per week conducted by trained social work staff with the specific objectives of reviewing the UAC's progress, establishing new short-term objectives, and addressing both the developmental and crisis-related needs of each UAC;

(7) Group counseling sessions at least twice a week. This is usually an informal process and takes place with all the UACs present. This is a time when new UACs are given the opportunity to get acquainted with the staff, other children, and the rules of the program. It is an open forum where everyone gets a chance to speak. Daily program management is discussed and decisions are made about recreational and other program activities, etc. This is a time for staff and UACs to discuss whatever is on their minds and to resolve problems;

(8) Acculturation and adaptation services that include information regarding the development of social and inter-personal skills that contribute to those abilities necessary to live independently and responsibly;

(9) Upon admission, a comprehensive orientation regarding program intent, services, rules (provided in writing and verbally), expectations and the availability of legal assistance;

(10) Whenever possible, access to religious services of the UAC's choice;

(11) Visitation and contact with family members (regardless of their immigration status) which is structured to encourage such visitation. The staff must respect the UAC's privacy while reasonably preventing the unauthorized release of the UAC;

(12) A reasonable right to privacy, which must include the right to:

(i) Wear his or her own clothes, when available;

(ii) Retain a private space in the residential facility, group or foster home for the storage of personal belongings;

(iii) Talk privately on the phone, as permitted by the house rules and regulations;

(iv) Visit privately with guests, as permitted by the house rules and regulations; and

(v) Receive and send uncensored mail unless there is a reasonable belief that the mail contains contraband;

(13) Family reunification services designed to identify relatives in the United States as well as in foreign countries and assistance in obtaining legal guardianship when necessary for release of the UAC; and

(14) Legal services information regarding the availability of free legal assistance, the right to be represented by counsel at no expense to the government, the right to a removal hearing before an immigration judge, the

right to apply for asylum or to request voluntary departure in lieu of removal;

(d) Deliver services in a manner that is sensitive to the age, culture, native language and the complex needs of each UAC;

(e) Formulate program rules and discipline standards with consideration for the range of ages and maturity in the program and that are culturally sensitive to the needs of each UAC to ensure the following:

(1) UAC must not be subjected to corporal punishment, humiliation, mental abuse, or punitive interference with the daily functions of living, such as eating or sleeping: and

(2) Any sanctions employed must not:

(i) Adversely affect either a UAC's health, or physical or psychological well-being; or

(ii) Deny UAC regular meals, sufficient sleep, exercise, medical care, correspondence privileges, or legal assistance;

(f) Develop a comprehensive and realistic individual plan for the care of each UAC in accordance with the UAC's needs as determined by the individualized needs assessment. Individual plans must be implemented and closely coordinated through an operative case management system;

(g) Develop, maintain and safeguard individual client case records. Licensed programs must develop a system of accountability that preserves the confidentiality of client information and protects the records from unauthorized use or disclosure; and

(h) Maintain adequate records and make regular reports as required by ORR that permit ORR to monitor and enforce these regulations and other requirements and standards as ORR may determine are in the interests of the UAC.

§ 410.403 Ensuring that licensed programs are providing services as required by these regulations.

ORR monitors compliance with the terms of these regulations.

Subpart E—Transportation of an Unaccompanied Alien Child

§ 410.500 Conducting transportation for an unaccompanied alien child in ORR's custody.

(a) ORR does not transport UAC with adult detainees.

(b) When ORR plans to release a UAC from its custody under the family reunification provisions at sections 410.201 and 410.302 of this part, ORR assists without undue delay in making transportation arrangements. ORR may, in its discretion, provide transportation to UAC.

Subpart F—Provisions for Transfer of an Unaccompanied Alien Child

§ 410.600 Principles applicable to transfer of an unaccompanied alien child.

(a) ORR transfers a UAC from one placement to another with all of his or her possessions and legal papers. ORR takes all necessary precautions for the protection of UACs during transportation with adults.

(b) If the UAC's possessions exceed the amount permitted normally by the carrier in use, the possessions are shipped to the UAC in a timely manner.

(c) ORR does not transfer a UAC who is represented by counsel without advance notice to his or her legal counsel. However, ORR may provide notice to counsel within 24 hours of the transfer in unusual and compelling circumstances such as:

(1) Where the safety of the UAC or others has been threatened;

(2) The UAC has been determined to be an escape risk consistent with § 410.204 of this part; or

(3) Where counsel has waived such notice.

Subpart G—Age Determinations

§ 410.700 Conducting age determinations.

Procedures for determining the age of an individual must take into account multiple forms of evidence, including the non-exclusive use of radiographs, to determine the age of the individual. ORR may require an individual in ORR's custody to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If ORR subsequently determines that such an individual is a UAC, he or she will be treated in accordance with ORR's UAC regulations for all purposes.

§ 410.701 Treatment of an individual who appears to be an adult.

If, the procedures in § 410.700 would result in a reasonable person concluding that an individual is an adult, despite his or her claim to be under the age of 18, ORR must treat such person as an adult for all purposes.

Subpart H—Unaccompanied Alien Children's Objections to ORR Determinations

§ 410.800 Purpose of this subpart.

This subpart concerns UACs' objections to ORR placement.

§ 410.801 Procedures.

(a) For UACs not placed in licensed programs, ORR shall—within a reasonable period of time—provide a notice of the reasons for housing the minor in secure or staff secure facility. Such notice shall be in a language the UAC understands.

(b) ORR shall promptly provide each UAC not released with:

(i) A list of free legal services providers compiled by ORR and that is provided to UAC as part of a Legal Resource Guide for UAC (unless previously given to the UAC); and

(ii) The following explanation of the right of potential review: ORR usually houses persons under the age of 18 in an open setting, such as a foster or group home, and not in detention facilities. If you believe that you have not been properly placed or that you have been treated improperly, you may call a lawyer to seek assistance. If you cannot afford a lawyer, you may call one from the list of free legal services given to you with this form.

§ 410.810 Hearings

(a) A UAC may request that an independent hearing officer employed by HHS determine, through a written decision, whether the UAC would present a risk of danger to the community or risk of flight if released.

(1) Requests under this section may be made by the UAC, his or her legal representative, or his or her parent or legal guardian.

(2) UACs placed in secure or staff secure facilities will receive a notice of the procedures under this section and may use a form provided to them to make a written request for a hearing under this section.

(b) In hearings conducted under this section, the burden is on the UAC to show that he or she will not be a danger to the community (or risk of flight) if released, using a preponderance of the evidence standard.

(c) In hearings under this section, the UAC may be represented by a person of his or her choosing, at no cost to the government. The UAC may present oral and written evidence to the hearing officer and may appear by video or teleconference. ORR may also choose to present evidence either in writing, or by appearing in person, or by video or teleconference.

(d) A hearing officer's decision that a UAC would not be a danger to the community (or risk of flight) if released is binding upon ORR, unless the provisions of paragraph (e) of this section apply.

(e) A hearing officer's decision under this section may be appealed to the Assistant Secretary of the Administration for Children and Families. Any such appeal request shall be in writing, and must be received

within 30 days of the hearing officer decision. The Assistant Secretary will reverse a hearing officer decision only if there is a clear error of fact, or if the decision includes an error of law. Appeal to the Assistant Secretary shall not effect a stay of the hearing officer's decision to release the UAC, unless within five business days of such hearing officer decision, the Assistant Secretary issues a decision in writing that release of the UAC would result in a significant danger to the community. Such a stay decision must include a description of behaviors of the UAC while in care and/or documented criminal or juvenile behavior records from the UAC demonstrating that the UAC would present a danger to community if released.

(f) Decisions under this section are final and binding on the Department, and a UAC may only seek another hearing under this section if the UAC can demonstrate a material change in circumstances. Similarly, ORR may request the hearing officer to make a new determination under this section if at least one month has passed since the original decision, and ORR can show that a material change in circumstances means the UAC should no longer be released.

(g) This section cannot be used to determine whether a UAC has a suitable sponsor, and neither the hearing officer nor the Assistant Secretary may order the UAC released.

(h) This section may not be invoked to determine the UAC's placement while in ORR custody. Nor may this section be invoked to determine level of custody for the UAC.

Kirstjen M. Nielsen,

Secretary, Department of Homeland Security.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

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