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FEDERAL REGISTER

Vol. 83 Thursday,
No. 197 October 11, 2018

Pages 51301–51620

OFFICE OF THE FEDERAL REGISTER

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

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Docket No. FCIC–17–0005]

RIN 0563–AC54

General Administrative Regulations; Reinsurance Agreement—Standards for Approval; Regulations for the 2019 and Subsequent Reinsurance Years.

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the General Administrative Regulations; Subpart L—Reinsurance Agreement—Standards for Approval; Regulations for the 2019 and Subsequent Reinsurance Years. The intended effect of this action is to clarify and improve Subpart L to better align with the existing Standard Reinsurance Agreement (SRA) and Livestock Price Reinsurance Agreement (LPRA) and to eliminate language that is no longer relevant.

DATES: This rule is effective November 13, 2018.

FOR FURTHER INFORMATION CONTACT: David L. Miller, Director, Reinsurance Services Division, Federal Crop Insurance Corporation, United States Department of Agriculture (USDA), 1400 Independence Avenue SW, Stop 0801, Washington, DC 20250, telephone (202) 720–9830.

SUPPLEMENTARY INFORMATION:

Background

This rule finalizes changes to the General Administrative Regulations; Subpart L—Reinsurance Agreement—Standards for Approval; Regulations for the 2019 and Subsequent Reinsurance Years (7 CFR part 400, subpart L), that were published by FCIC on February 8, 2018, as a notice of proposed rulemaking in the **Federal Register** at 83 FR 5573—5576. The public was afforded 60 days to submit comments after the regulation was published in the **Federal Register**.

A total of one comment was received from one commenter. The commenter was an insurance company.

The public comment received regarding the proposed rule and FCIC's response to the comment is as follows:

Comment: One comment was received from an insurance company asking for a definition of ''outcome'' which was added to Section 400.169(b).

Response: FCIC removed the term outcome and returned Section 400.169(b) to its original language.

Executive Orders 12866, 13563, and 13771

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has not reviewed this rule. Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' requires that, in order to manage the costs required to comply with Federal regulations, that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. This rule is not subject to Executive Order 13771.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563–0069.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FCIC has assessed the impact of this rule on Indian tribes and determined that this rule does not, to its knowledge,

have tribal implications that require tribal consultation under E.O. 13175. If a Tribe requests consultation, FCIC will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act (Act) authorizes FCIC to waive collection of administrative fees from beginning farmers or ranchers and limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of Federal crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605). This regulation pertains to all legal entities wanting a Reinsurance Agreement, to insure financial stability and capacity under this regulation.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. Interpretations of statutory and regulatory provisions are matters of general applicability and, therefore, no administrative appeals process is available and judicial review may only be brought to challenge the interpretation after seeking a determination of appeal ability by the Director of the National Appeals Division (NAD) in accordance with 7 CFR part 11. An interpretation of a policy provision not codified in the Code of Federal Regulations or any procedure used in the administration of any Federal crop insurance program are administratively appealable and the appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought against FCIC.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

List of Subjects in 7 CFR Part 400

Administrative practice and procedure, crop insurance, reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, FCIC amends 7 CFR part 400 as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

■ 1. Revise subpart L to read as follows:

Subpart L—Reinsurance Agreement—Standards for Approval; Regulations for the 2019 and Subsequent Reinsurance Years

Sec.

400.161 Definitions.
400.162 Qualification ratios.
400.163 Applicability.
400.164 Eligibility for a Reinsurance Agreement.
400.165–400.168 [Reserved]
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400.170–400.177 [Reserved]

Authority: 7 U.S.C. 1506(l), 1506(o)

Subpart L—Reinsurance Agreement—Standards for Approval; Regulations for the 2019 and Subsequent Reinsurance Years.

§ 400.161 Definitions.

In addition to the terms defined in the Standard Reinsurance Agreement, Livestock Price Reinsurance Agreement and any other Reinsurance Agreement, the following terms as used in this rule are defined to mean:

Annual statutory financial statement means the annual financial statement of a Company prepared in accordance with Statutory Accounting Principles and submitted to the state insurance department if required by any state in which the Company is licensed.

Company means the insurance company that currently has or is applying to FCIC for a Reinsurance Agreement.

FCIC means the Federal Crop Insurance Corporation as authorized in section 503 of the Federal Crop Insurance Act (7 U.S.C. 1503).

MPUL means the maximum possible underwriting loss that a Company can sustain on policies it intends to reinsure after adjusting for the effect of any Reinsurance Agreement and any private reinsurance, as evaluated by FCIC.

Plan of Operations means the documentation and information submitted by a Company to apply for or maintain a Reinsurance Agreement as required by FCIC.

Quarterly Statutory Financial Statement means the quarterly financial statement of a Company prepared in accordance with Statutory Accounting Principles and submitted to the state insurance department if required by any state in which the Company is licensed.

Reinsurance Agreement means the Standard Reinsurance Agreement, Livestock Price Reinsurance Agreement or any other Reinsurance Agreement between the Company and FCIC.

§ 400.162 Qualification ratios.

(a) The eighteen qualification ratios include:

(1) Thirteen National Association of Insurance Commissioner's (NAIC) Insurance Regulatory Information System (IRIS) ratios found in paragraphs (b)(1) through (12) and (17) of this section and referenced in ''Using the NAIC Insurance Regulatory Information System'' distributed by NAIC, 1100 Walnut St., Suite 1500, Kansas City, MO 64106–2197;

(2) Three ratios used by A.M. Best Company found in paragraphs (b)(13), (15), and (16) of this section and referenced in Best's Key Rating Guide, A.M. Best, Ambest Road, Oldwick, N.J. 08858–0700;

(3) One ratio found in paragraph (b)(14) of this section which is formulated by FCIC and is calculated the same as the One-Year Change to Surplus IRIS ratio but for a two-year period; and

(4) One ratio found in paragraph (b)(18) of this section, which is reported

on the annual statutory financial statement.

(b) The Company shall provide an explanation for any ratio falling outside of the following requirements in paragraphs (b)(1) through (18):

Ratio	Ratio requirement
(1) Gross Premium Written to Policyholders Surplus	<900%
(2) Net Premium Written to Policyholders Surplus	<300%
(3) Change in Net Premiums Writings	−33% to 33%
(4) Surplus Aid to Policyholders Surplus	<15%
(5) Two-Year Overall Operating Ratio	<100%
(6) Change in Policyholders Surplus	−10% to 50%
(7) Investment Yield	3.0% to 6.5%
(8) Liabilities to Liquid Assets	<100%
(9) Gross Agents Balances to Policyholders Surplus	<40%
(10) One Year Reserve Development to Policyholders Surplus	<20%
(11) Two Year Reserve Development to Policyholders Surplus	<20%
(12) Estimated Current Reserve Deficiency to Policyholders Surplus	<25%
(13) Combined Ratio after Policyholder Dividend	<115%
(14) Two Year Change in Surplus	>−10%
(15) Quick Liquidity	>20%
(16) Return on Surplus	>−5%
(17) Net Change in Adjusted Policyholder Surplus	−10% to 25%
(18) Risk Based Capital Ratio	> 200%

§ 400.163 Applicability.

The standards contained herein shall be applicable to a Company applying for and those maintaining a Reinsurance Agreement.

§ 400.164 Eligibility for a Reinsurance Agreement.

FCIC will offer a Reinsurance Agreement to an eligible Company as determined by FCIC. To be eligible and qualify initially or thereafter for a Reinsurance Agreement with FCIC, a Company must:

(a) Be licensed or admitted in any state, territory, or possession of the United States;

(b) Be licensed or admitted, or use as a policy-issuing company, an insurance company that is licensed or admitted, in each state where the Company will write policies under a Reinsurance Agreement;

(c) Have surplus, as reported in its most recent Annual or Quarterly Statutory Financial Statement, that is at least equal to twice the MPUL amount for the Company's estimated retained premium submitted in its plan of operation.

(d) The Company shall have the financial and operational resources, including but not limited to, organization, experience, internal controls, technical skills, positive assessment of the ratio results appearing in Section 400.162 as well as meet methodologies, data submission requirements and assessment contained in Appendix II (Plan of Operations) of the Reinsurance Agreement to meet the requirements, including addressing reasonable risks, associated with a Reinsurance Agreement, as determined by FCIC.

(e) The Company shall provide data and demonstrate a satisfactory performance record to obtain a Reinsurance Agreement and continue to hold a Reinsurance Agreement for the reinsurance year as determined by FCIC.

§ 400.165–400.168 [Reserved]

§ 400.169 Disputes.

(a) If the Company believes that the FCIC has taken an action that is not in accordance with the provisions of a Reinsurance Agreement except compliance issues, it may request the Deputy Administrator of Insurance Services to make a final administrative determination addressing the disputed action. The Deputy Administrator of Insurance Services will render the final administrative determination of the FCIC with respect to the applicable actions. All requests for a final administrative determination must be in writing and submitted within 45 days after receipt after the disputed action.

(b) With respect to compliance matters, the Compliance Field Office renders an initial finding, permits the Company to respond, and then issues a final finding. If the Company believes that the Compliance Field Office's final finding is not in accordance with the applicable laws, regulations, custom or practice of the insurance industry, or FCIC approved policy and procedure, it may request the Deputy Administrator of Compliance to make a final administrative determination addressing the disputed final finding. The Deputy Administrator of Compliance will render the final administrative determination of the FCIC with respect to the final finding. All requests for a final administrative determination must be in writing and submitted within 45 days after receipt of the final finding.

(c) A Company may also request reconsideration by the Deputy Administrator of Insurance Services of a decision of the FCIC rendered under any FCIC bulletin or directive which bulletin or directive does not interpret, explain, or restrict the terms of the Reinsurance Agreement. The Company, if it disputes the FCIC's determination, must request a reconsideration of that determination in writing, within 45 days of the receipt of the determination. The determination of the Deputy Administrator of Insurance Services will be final and binding on the Company. Such determinations will not be appealable to the Board of Contract Appeals.

(d) Appealable final administrative determinations of the FCIC under paragraph (a) or (b) of this section may be appealed to the Board of Contract Appeals in accordance with 48 CFR part 6102 and with the provisions 7 CFR part 24.

§ 400.170–400.177 [Reserved]

Martin R. Barbre,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2018–21699 Filed 10–10–18; 8:45 am]

BILLING CODE 3410–08–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

[NRC–2015–0021]

Korea Electric Power Corporation; Korea Hydro & Nuclear Power Co., Ltd. Advanced Power Reactor 1400

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard design approval; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued a standard design approval (SDA) to Korea Electric Power Corporation and Korea Hydro & Nuclear Power Co., Ltd (KEPCO/KHNP) for the advanced power reactor 1400 (APR1400) standard design. The SDA allows the APR1400 standard design to be referenced in an application for a construction permit or operating license, or an application for a combined license or manufacturing license under its regulations.

DATES: The Standard Design Approval was issued on September 28, 2018.

ADDRESSES: Please refer to Docket ID NRC–2015–0021 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–2015–0021. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: William R. Ward, Office of New Reactors, telephone: 301–415–7038, email: *William.Ward@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission has issued a standard design approval (SDA) to Korea Electric Power Corporation and Korea Hydro & Nuclear Power Co., Ltd (KEPCO/KHNP) for the advanced power reactor 1400 (APR1400) standard design under Subpart E, ''Standard Design Approvals,'' of title 10 of the *Code of Federal Regulations* (10 CFR) part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' This SDA allows the APR1400 standard design to be referenced in an application for a construction permit or operating license under 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' or an application for a combined license or manufacturing license under 10 CFR part 52. In addition, the Commission has issued the final safety evaluation report (FSER) (ADAMS Accession No. ML18087A364) that supports issuance of the SDA.

Issuance of this SDA signifies completion of the NRC staff's technical review of KEPCO/KHNP's APR1400 design. The NRC staff performed its technical review of the APR1400 design control document in accordance with the standards for review of standard design approval applications set forth in 10 CFR 52.139, ''Standards for Review of Applications.''

On the basis of its evaluation and independent analyses, as described in the FSER, the NRC staff concludes that KEPCO/KHNP's application for standard design approval meets the applicable portions of 10 CFR 52.137, ''Content of Applications; Technical Information,'' and the review standards identified in 10 CFR 52.139.

Copies of the APR1400 FSER and SDA have been placed in the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, for review and copying by interested persons.

Dated at Rockville, Maryland, this 5th day of October 2018.

For the Nuclear Regulatory Commission.

Andrew C. Campbell,

Deputy Director, Division of Licensing, Siting, and Environmental Analysis, Office of New Reactors.

[FR Doc. 2018–22116 Filed 10–10–18; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0127; Product Identifier 2016–NM–161–AD; Amendment 39–19447; AD 2018–20–13]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 737 airplanes, excluding Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; all Model 757–200, –200PF, –200CB, and –300 series airplanes; and all Model 767–200, –300, –300F, and –400ER series airplanes. This AD was prompted by reports of latently failed motor-operated valve (MOV) actuators of the fuel shutoff valves. This AD requires replacing certain MOV actuators of the fuel shutoff valves for the left and right engines (on certain airplanes) and of the auxiliary power unit (APU) fuel shutoff valve (on Model 757 and Model 767 airplanes); and revising the maintenance or inspection program to incorporate certain airworthiness limitations (AWLs). We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 15, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 15, 2018.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone: 562–797–1717; internet: *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0127.

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–2017–0127; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is Docket Operations, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tak Kobayashi, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3553; email: *Takahisa.Kobayashi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes; Model 757 airplanes; and Model 767 airplanes. The NPRM published in the **Federal Register** on March 9, 2017 (82 FR 13073). The NPRM was prompted by reports of latently failed MOV actuators of the fuel shutoff valves. The NPRM proposed to require replacing certain MOV actuators of the fuel shutoff valves for the left and right engines (on all airplanes) and of the APU fuel shutoff valve (on Model 757 and Model 767 airplanes); and revising the maintenance or inspection program, as applicable, to incorporate certain AWLs.

We subsequently issued a supplemental NPRM (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Model 737 airplanes, excluding Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; and all Model 757 and 767 airplanes. The SNPRM published in the **Federal Register** on April 3, 2018 (83 FR 14207). The SNPRM proposed to add Model 737–8 airplanes and future Model 737 airplanes to the applicability.

We are issuing this AD to address a latent failure of the actuator for the engine or APU fuel shutoff valves, which could result in the inability to shut off fuel to the engine or the APU, and, in case of certain engine or APU fires, could result in structural failure.

Comments

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

Request To Exclude Model 737–8 and Future Model 737

Boeing requested that we revise the proposed AD (in the SNPRM) to exclude Model 737–8 airplanes and future Model 737 airplanes, because MOV actuator part number MA30A1017 (Boeing P/N S343T003–76) is the only certified MOV actuator for use on any future Model 737 airplanes as documented in the drawings and Illustrated Parts Catalog (IPC). The commenter stated that using airworthiness limitations to prohibit the use of parts with AD restrictions on one minor model series (Model 737 next generation (NG) airplanes) from being used on a different minor model series (Model 737–8 and future Model 737 airplanes) that does not allow the use of the restricted parts is unnecessary and implies that certified configurations and ADs can be overridden via an Advisory Circular (AC) or other means.

We disagree with the commenter's request. The MOV actuator currently allowed on Model 737–8 and 737–9 airplanes, part number MA30A1017 (Boeing P/N S343T003–76), is the only part number certificated on those models, as documented in the manufacturer's drawings. However, manufacturer's proprietary drawings are not readily available to all affected operators, and there is no prohibition against installing MOV actuator part numbers that were determined unsafe in this AD. We have been informed by operators that the practice of rotating physically interchangeable parts among airplanes is widespread, and even a key part of their operations. In the absence of an AD or AWL that restricts the installation of the affected parts, we cannot be assured that the unsafe condition will not be introduced to Model 737–8, 737–9, and future 737 airplanes. In addition, ACs are advisory in nature and do not include mandatory actions. Therefore, ACs do not take precedence over ADs. We have not changed this AD regarding this issue.

Request To Remove Requirement To Revise Maintenance Program

Boeing requested that we remove paragraph (j) of the proposed AD and revise FAA AC 120–77 or other applicable advisory material to preclude installation of equipment that both Boeing and the FAA have determined cause a potential safety issue, against certified configurations. Boeing suggested that listing parts that are not approved for use on a given model sets a precedent that can become unmanageable, and that identifying parts that are acceptable for a given airplane and installation position is a more explicit and manageable approach. Boeing added that the use of AWLs to prohibit AD-driven part installations is unnecessary and implies that certified configurations and ADs can be overridden via an AC or other means.

We disagree with the commenter's request. The FAA is currently considering revising AC 120–77 to help prevent the rotation of parts as a minor alteration. However, ACs are advisory in nature and do not include mandatory actions. Therefore, ACs cannot prohibit the installation of unsafe equipment, and they do not take precedence over ADs. In addition, the practice of rotating parts is widespread, and revising the AC will not improve the situation in a timely manner. Certain MOV actuator part numbers have been identified to be unsafe for installation at certain locations. Since those part numbers continue to be available and acceptable for installation at certain other locations, we consider the use of AWLs to prohibit specific parts installation to be a reasonable way to address the safety concern in a timely manner. We have not changed this AD regarding this issue.

Request To Clarify Affected Part Numbers

FedEx requested that we revise paragraphs (h)(2) and (h)(3) of the proposed AD (in the SNPRM) to state that no replacement is necessary if the MOV actuator part number is one of the following alternative part numbers: AV–31–1 (Boeing P/N S343T003–111), MA11A1265 (Boeing P/N S343T003–14), or MA11A1265–1 (Boeing P/N S343T003–41). FedEx stated that the service information specified in paragraphs (h)(2) and (h)(3) of the proposed AD (in the SNPRM) explicitly state that those alternative MOV actuator part numbers are acceptable substitutes for P/N MA30A1017 (Boeing P/N S343T003–76).

We disagree with the commenter's request. However, we agree to clarify the requirements of paragraphs (h)(2) and (h)(3) of this AD. Paragraphs (h)(2) and (h)(3) of this AD require replacement of MOV actuator P/N MA20A2027 (Boeing P/N S343T003–56) and P/N MA30A1001 (Boeing P/N S343T003–66) with an acceptable MOV actuator part number. Those paragraphs do not state or imply that MOV actuator P/N AV–31–1 (Boeing P/N S343T003–111), P/N MA11A1265 (Boeing P/N S343T003–14), or P/N MA11A1265–1 (Boeing P/N S343T003–41) must be replaced. Therefore, we consider that adding the

proposed statement is unnecessary. We have not changed this AD regarding this issue.

Request To Add a Terminating Action Provision

FedEx requested that we revise paragraphs (i)(2) and (i)(3) of the proposed AD (in the SNPRM) to state that the actuator installation would terminate the daily functional checks required by AWLs 28–AWL–ENG and 28–AWL–APU. The commenter added that installation of MOV actuator part number MA30A1017 (Boeing P/N S343T003–76) or an acceptable alternative part number should substantially increase the safety value.

We disagree with the commenter's request. We have determined that accomplishing the applicable maintenance or inspection program revisions specified in paragraph (j) of this AD are the appropriate terminating actions. As discussed previously in the preamble of the SNPRM, we included the conditions (accomplishing the applicable maintenance or inspection program revisions) that would terminate the requirements of AD 2015–21–10, Amendment 39–18303 (80 FR 65130, October 26, 2015); AD 2015–19–04, Amendment 39–18267 (80 FR 55505, September 16, 2015); and AD 2015–21–09, Amendment 39–18302 (80 FR 65121, October 26, 2015). Those ADs require incorporation of the AWLs that require repetitive inspections of specific MOV actuator part numbers installed at specific locations. The requirements of those ADs may be terminated if the applicable conditions specified in paragraph (m) of this AD are met. We have not changed this AD regarding this issue.

Request To Refer to Latest Service Information

Southwest Airlines requested that we refer to the latest revisions of the airworthiness limitations documents.

We agree with the commenter's request and have revised this AD to refer to the current airworthiness limitations as the appropriate source of service information, and have included earlier revisions of the service information as credit in this AD. There are no changes to the required actions of this AD because the tasks that must be incorporated into the maintenance or inspection program are not changed in Boeing 737–600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001–9–04, Revision June 2018; Boeing 757 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLS) and Certification Maintenance Requirements (CMRs), D622N001–9, Revision May 2018; or Boeing 767–200/300/300F/400 Special Compliance Items/Airworthiness Limitations, D622T001–9–04, Revision March 2018; except for Task 28–AWL–23 for Model 767–200, –300, –300F, and –400ER series airplanes, which adds instructions that further describe the conditions for performing electrical bonding resistance measurements, in addition to being more descriptive regarding cap seal application.

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

We reviewed the following service information.

- Boeing Service Bulletin 737–28–1314, dated November 17, 2014, describes procedures for installing new MOV actuators of the fuel shutoff valves for the left and right engines on Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes.
- Boeing 737–600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001–9–04, Revision June 2018, describes AWLs for fuel tank ignition prevention on Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes.
- Boeing Special Attention Service Bulletin 757–28–0138, Revision 1, dated June 19, 2017, describes procedures for installing new MOV actuators of the fuel shutoff valves for the left and right engines, and of the APU fuel shutoff valve, on Model 757 airplanes.
- Boeing 757 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622N001–9, Revision May 2018, describes AWLs for fuel tank ignition prevention on Model 757 airplanes.
- Boeing Service Bulletin 767–28–0115, Revision 1, dated June 2, 2016, describes procedures for installing new MOV actuators of the fuel shutoff valves for the left and right engines, and of the APU fuel shutoff valve, on Model 767 airplanes.
- Boeing 767–200/300/300F/400 Special Compliance Items/Airworthiness Limitations, D622T001–9–04, Revision March 2018, describes AWLs for fuel tank ignition prevention on Model 767 airplanes.

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

Costs of Compliance

We estimate that this AD affects 2,557 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
Inspection and replacement Model 737 (1,440 airplanes).	Up to 6 work-hours × $85 per hour = Up to $510.	Up to $12,000	Up to $12,510	Up to $18,014,400.
Inspection and replacement Model 757 (675 airplanes).	Up to 9 work-hours × $85 per hour = Up to $765.	Up to $18,000	Up to $18,765	Up to $12,666,375.
Inspection and replacement Model 767 (442 airplanes).	Up to 9 work-hours × $85 per hour = Up to $765.	Up to $18,000	Up to $18,765	Up to $8,294,130.

For the maintenance/inspection program revision, we have determined that this action takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past,

we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleets, we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–20–13 The Boeing Company: Amendment 39–19447; Docket No. FAA–2017–0127; Product Identifier 2016–NM–161–AD.

(a) Effective Date

This AD is effective November 15, 2018.

(b) Affected ADs

This AD affects AD 2015–21–09, Amendment 39–18302 (80 FR 65121, October 26, 2015) (''AD 2015–21–09''); AD 2015–19–04, Amendment 39–18267, (80 FR 55505, September 16, 2015) (''AD 2015–19–04''); and AD 2015–21–10, Amendment 39–18303 (80 FR 65130, October 26, 2015) (''AD 2015–21–10'').

(c) Applicability

This AD applies to all The Boeing Company airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Model 737 airplanes, excluding Model 737–100, Estimated –200, –200C, –300, –400, and –500 series airplanes.

(2) Model 757–200, –200PF, –200CB, and –300 series airplanes.

(3) Model 767–200, –300, –300F, and –400ER series airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 28; Fuel.

(e) Unsafe Condition

This AD was prompted by reports of latently failed motor-operated valve (MOV) actuators of the fuel shutoff valves. We are issuing this AD to prevent a latent failure of the actuator for the engine or auxiliary power unit (APU) fuel shutoff valves, which could result in the inability to shut off fuel to the engine or the APU, and, in case of certain engine or APU fires, could result in structural failure.

(f) Compliance

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

(g) Inspection To Determine Part Number (P/N)

(1) For Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes: Within 8 years after the effective date of this AD, do an inspection to determine the part numbers of the MOV actuators of the fuel shutoff valves for the left and right engines, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–28–1314, dated November 17, 2014. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the MOV actuator at each location can be conclusively determined from that review.

(2) For airplanes identified in paragraphs (c)(2) and (c)(3) of this AD: Within 8 years after the effective date of this AD, do an inspection to determine the part numbers of the MOV actuators of the fuel shutoff valves for the left and right engines, and of the APU fuel shutoff valve, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–28–0138, Revision 1, dated June 19, 2017 (''SB 757–28–0138 R1''); or Boeing Service Bulletin 767–28–0115, Revision 1, dated June 2, 2016 (''SB 767–28–0115 R1''); as applicable. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the MOV actuator at each location can be conclusively determined from that review.

(h) Replacement

(1) For Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes on which any MOV actuator having P/N MA20A2027 or P/N MA30A1001 (Boeing P/N S343T003–56 or Boeing P/N S343T003–66, respectively), is found during the inspection required by paragraph (g)(1) of this AD: Within 8 years after the effective date of this AD, replace each affected MOV actuator with an MOV actuator having P/N MA30A1017 (Boeing P/N S343T003–76), in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–28–1314, dated November 17, 2014. Where Boeing Service Bulletin 737–28–1314, dated November 17, 2014, specifies the installation of a new MOV actuator, this AD allows the installation of a new or serviceable MOV actuator. While not required by this AD, the Accomplishment Instructions specified in Boeing Service Bulletin 737–28–1314, dated November 17, 2014, for replacing MOV actuators having Boeing P/N S343T003–66 or Boeing P/N S343T003–56 may be used for replacing MOV actuators having P/N MA20A1001–1 (Boeing P/N S343T003–39).

(2) For airplanes identified in paragraph (c)(2) of this AD on which any MOV actuator having P/N MA20A2027 or P/N MA30A1001 (Boeing P/N S343T003–56 or Boeing P/N S343T003–66, respectively) is found during the inspection required by paragraph (g)(2) of this AD: Within 8 years after the effective date of this AD, replace each affected MOV actuator with an MOV actuator having P/N MA30A1017 (Boeing P/N S343T003–76), P/N

AV–31–1 (Boeing P/N S343T003–111), or P/N MA11A1265–1 (Boeing P/N S343T003–41), in accordance with the Accomplishment Instructions of SB 757–28–0138 R1. Where SB 757–28–0138 R1 specifies the installation of a new MOV actuator, this AD allows the installation of a new or serviceable MOV actuator. While not required by this AD, the Accomplishment Instructions specified in SB 757–28–0138 R1 for replacing MOV actuators having Boeing P/N S343T003–66 or Boeing P/N S343T003–56 may be used for replacing MOV actuators having P/N MA20A1001–1 (Boeing P/N S343T003–39).

(3) For airplanes identified in paragraph (c)(3) of this AD on which any MOV actuator having P/N MA20A2027 (Boeing P/N S343T003–56) or P/N MA30A1001 (Boeing P/N S343T003–66) is found during the inspection required by paragraph (g)(2) of this AD: Within 8 years after the effective date of this AD, replace each affected MOV actuator with an MOV actuator having P/N MA30A1017 (Boeing P/N S343T003–76), P/N AV–31–1 (Boeing P/N S343T003–111), P/N MA11A1265 (Boeing P/N S343T003–14), or P/N MA11A1265–1 (Boeing P/N S343T003–41), in accordance with the Accomplishment Instructions of SB 767–28–0115 R1. Where SB 767–28–0115 R1 specifies the installation of a new MOV actuator, this AD allows the installation of a new or serviceable MOV actuator. While not required by this AD, the Accomplishment Instructions specified in SB 767–28–0115 R1, for replacing MOV actuators having Boeing P/N S343T003–66 or Boeing P/N S343T003–56 may be used for replacing MOV actuators having P/N MA20A1001–1 (Boeing P/N S343T003–39).

(i) Maintenance or Inspection Program Revision

(1) For Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes with an original certificate of airworthiness or original export certificate of airworthiness issued on or before the effective date of this AD: Prior to or concurrently with the actions required by paragraph (h)(1) of this AD or within 30 days after the effective date of this AD, whichever is later, revise the maintenance or inspection program, as applicable, to add the airworthiness limitations (AWLs) specified in paragraphs (i)(1)(i), (i)(1)(ii), and (i)(1)(iii) of this AD. The initial compliance time for accomplishing the actions required by AWL No. 28–AWL–24 is within 6 years since the most recent inspection was performed in accordance with AWL No. 28–AWL–24, or within 6 years since the actions specified in Boeing Alert Service Bulletin 737–28A1207 were accomplished, whichever is later.

(i) AWL No. 28–AWL–21, Motor Operated Valve (MOV) Actuator—Lightning and Fault Current Protection Electrical Bond, as specified in Boeing 737–600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001–9–04, Revision June 2018.

(ii) AWL No. 28–AWL–22, Motor Operated Valve (MOV) Actuator—Electrical Design Feature, as specified in Boeing 737–600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001–9–04, Revision June 2018.

(iii) AWL No. 28–AWL–24, Spar Valve Motor Operated Valve (MOV) Actuator—Lightning and Fault Current Protection Electrical Bond, as specified in Boeing 737–600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001–9–04, Revision June 2018.

(2) For airplanes identified in paragraph (c)(2) of this AD: Prior to or concurrently with the actions required by paragraph (h)(2) of this AD, revise the maintenance or inspection program, as applicable, to add the AWLs specified in paragraphs (i)(2)(i), (i)(2)(ii), and (i)(2)(iii) of this AD. The initial compliance time for accomplishing the actions required by AWL No. 28–AWL–25 is within 6 years since the most recent inspection was performed in accordance with AWL No. 28–AWL–25, or within 6 years since the actions specified in Boeing Alert Service Bulletin 757–28A0088 were accomplished, whichever is later.

(i) AWL No. 28–AWL–23, Motor Operated Valve (MOV) Actuator—Lightning and Fault Current Protection Electrical Bond, as specified in Boeing 757 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622N001–9, Revision May 2018.

(ii) AWL No. 28–AWL–24, MOV Actuator—Electrical Design Feature, as specified in Boeing 757 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622N001–9, Revision May 2018.

(iii) AWL No. 28–AWL–25, Motor Operated Valve (MOV) Actuator—Lightning and Fault Current Protection Electrical Bond, as specified in Boeing 757 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622N001–9, Revision May 2018.

(3) For airplanes identified in paragraph (c)(3) of this AD with an original certificate of airworthiness or original export certificate of airworthiness issued on or before the effective date of this AD: Prior to or concurrently with the actions required by paragraph (h)(3) of this AD, revise the maintenance or inspection program, as applicable, to add the AWLs specified in paragraphs (i)(3)(i) and (i)(3)(ii) of this AD.

(i) AWL No. 28–AWL–23, Motor Operated Valve (MOV) Actuator—Lightning and Fault Current Protection Electrical Bond, as specified in Boeing 767–200/300/300F/400 Special Compliance Items/Airworthiness Limitations, D622T001–9–04, Revision March 2018.

(ii) AWL No. 28–AWL–24, Motor Operated Valve (MOV) Actuator—Electrical Design Feature, as specified in Boeing 767–200/300/300F/400 Special Compliance Items/Airworthiness Limitations, D622T001–9–04, Revision March 2018.

(j) Maintenance or Inspection Program Revision for Parts Installation Prohibition

(1) For Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes: After accomplishing the actions required by paragraphs (g)(1), (h)(1), and (i)(1) of this AD, as applicable, on all airplanes in an operator's fleet, and within 8 years after the effective date of the AD, revise the maintenance or inspection program, as applicable, by incorporating the AWL specified in figure 1 to paragraph (j)(1) of this AD.

Figure 1 to Paragraph (j)(1) of this AD –
AWL for Model 737-600, -700, -700C, -800, -900, and -900ER series airplanes

AWL No.	Applicability	Description
28-AWL-MOVA	All	Motor Operated Valve (MOV) Actuator - Prohibition of Installation of Specific Part Numbers Installation of MOV actuator part number (P/N) MA30A1001 (Boeing P/N S343T003-66) and P/N MA20A2027 (Boeing P/N S343T003-56) is prohibited at the following positions: 1. Left engine fuel shutoff spar valve position 2. Right engine fuel shutoff spar valve position

(2) For airplanes identified in paragraph (c)(2) of this AD: After accomplishing the actions required by paragraphs (g)(2), (h)(2), and (i)(2) of this AD, as applicable, on all airplanes in an operator's fleet, and within 8 years after the effective date of the AD, revise the maintenance or inspection program, as applicable, by incorporating the AWL specified in figure 2 to paragraph (j)(2) of this AD.

Figure 2 to Paragraph (j)(2) of this AD –
AWL for airplanes identified in paragraph (c)(2) of this AD

AWL No.	Applicability	Description
28-AWL-MOVA	All	Motor Operated Valve (MOV) Actuator - Prohibition of Installation of Specific Part Numbers Installation of MOV actuator part number (P/N) MA30A1001 (Boeing P/N S343T003-66) and P/N MA20A2027 (Boeing P/N S343T003-56) is prohibited at the following positions: 1. Left engine fuel shutoff spar valve position 2. Right engine fuel shutoff spar valve position 3. APU fuel shutoff valve position

(3) For airplanes identified in paragraph (c)(3) of this AD: After accomplishing the actions required by paragraphs (g)(2), (h)(3), and (i)(3) of this AD, as applicable, on all airplanes in an operator's fleet, and within 8 years after the effective date of the AD, revise the maintenance or inspection program, as applicable, by incorporating the AWL specified in figure 3 to paragraph (j)(3) of this AD.

Figure 3 to Paragraph (j)(3) of this AD –
AWL for airplanes identified in paragraph (c)(3) of this AD

AWL No.	Applicability	Description
28-AWL-MOVA	All	Motor Operated Valve (MOV) Actuator - Prohibition of Installation of Specific Part Numbers Installation of MOV actuator part number (P/N) MA30A1001 (Boeing P/N S343T003-66) and P/N MA20A2027 (Boeing P/N S343T003-56) is prohibited at the following positions: 1. Left engine fuel shutoff spar valve position 2. Right engine fuel shutoff spar valve position 3. APU fuel shutoff valve position

(4) For airplanes identified in paragraph (c)(1) of this AD, excluding Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes: Within 30 days since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or within 30 days after the effective date of this AD, whichever is later, revise the maintenance or inspection program, as applicable, by incorporating the AWL specified in figure 4 to paragraph (j)(4) of this AD.

Figure 4 to Paragraph (j)(4) of this AD –
AWL for airplanes identified in paragraph (c)(1) of this AD, excluding Model 737-600, -700, -700C, -800, -900, and -900ER series airplanes

AWL No.	Applicability	Description
28-AWL-MOVA	All	Motor Operated Valve (MOV) Actuator – Prohibition of Installation of Specific Part Numbers Concern: Installation of the following MOV actuator part numbers (P/N) is not part of the airplane type design: P/N MA30A1001 (Boeing P/N S343T003-66), P/N MA20A2027 (Boeing P/N S343T003-56), P/N MA20A1001-1 (Boeing P/N S343T003-39). However, there is a potential for those part numbers to be installed on the airplane using provisions provided in FAA Advisory Circular 120-77 or other means due to their continued availability and use on other Model 737 airplanes. Such an alteration will create unsafe conditions. 1. Installation of MOV actuator P/N MA20A1001-1 (Boeing P/N S343T003-39) is prohibited at any location. 2. Installation of MOV actuator part number (P/N) MA30A1001 (Boeing P/N S343T003-66) and P/N MA20A2027 (Boeing P/N S343T003-56) is prohibited at the following positions: a. Left engine fuel shutoff spar valve position b. Right engine fuel shutoff spar valve position

(k) No Alternative Actions, Intervals, and Critical Design Configuration Control Limitations (CDCCLs)

(1) After the maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs, may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (o) of this AD.

(2) After the maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs, may be used unless the actions, intervals, and CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (o) of this AD.

(l) Parts Installation Prohibition

(1) For Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes: As of the effective date of this AD, no person may replace an MOV actuator having P/N MA30A1017 (Boeing P/N S343T003–76) with an MOV actuator having P/N MA20A2027 or P/N MA30A1001 (Boeing P/N S343T003–56 or Boeing P/N S343T003–66, respectively) for the left engine and right engine fuel shutoff valves.

(2) For airplanes identified in paragraph (c)(2) of this AD: As of the effective date of this AD, no person may replace an MOV actuator having P/N AV–31–1 (Boeing P/N S343T003–111), P/N MA11A1265 (Boeing P/N S343T003–14), P/N MA11A1265–1 (Boeing P/N S343T003–41), or P/N MA30A1017 (Boeing P/N S343T003–76) with an MOV actuator having P/N MA30A1001 (Boeing P/N S343T003–66) or P/N MA20A2027 (Boeing P/N S343T003–56) for the left engine and right engine fuel shutoff valves and the APU fuel shutoff valve.

(3) For airplanes identified in paragraph (c)(3) of this AD: As of the effective date of this AD, no person may replace an MOV actuator having P/N AV–31–1 (Boeing P/N S343T003–111), P/N MA11A1265 (Boeing P/N S343T003–14), P/N MA11A1265–1 (Boeing P/N S343T003–41), or P/N MA30A1017 (Boeing P/N S343T003–76) with an MOV actuator having P/N MA30A1001 (Boeing P/N S343T003–66) or P/N MA20A2027 (Boeing P/N S343T003–56) for the left engine and right engine fuel shutoff valves and the APU fuel shutoff valve.

(4) For airplanes identified in paragraph (c)(1) of this AD, excluding Model 737–600, –700, –700C, –800, –900, and –900ER series

airplanes: As of the effective date of this AD, no person may install an MOV actuator having P/N MA20A1001–1 (Boeing P/N S343T003–39) or replace an MOV actuator with an MOV actuator having P/N MA20A2027 or P/N MA30A1001 (Boeing P/N S343T003–56 or Boeing P/N S343T003–66, respectively) for the left engine and right engine fuel shutoff valves.

(m) Terminating Action

(1) For Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes: Accomplishing the actions required by paragraph (j)(l) of this AD terminates the requirements of paragraph (l)(1) of this AD and all requirements of AD 2015–21–10.

(2) For airplanes identified in paragraph (c)(2) of this AD: Accomplishing the action required by paragraph (j)(2) of this AD terminates the requirements of paragraph (l)(2) of this AD and all requirements of AD 2015–19–04.

(3) For airplanes identified in paragraph (c)(3) of this AD: Accomplishing the action required by paragraph (j)(3) of this AD terminates the requirements of paragraph (l)(3) of this AD and all requirements of AD 2015–21–09.

(4) For airplanes identified in paragraph (c)(1) of this AD, excluding Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes: Accomplishing the action required by paragraph (j)(4) of this AD terminates the requirements of paragraph (l)(4) of this AD.

(n) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraph (g)(2) or (h)(2) of this AD, as applicable, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 757–28–0138, dated May 18, 2016.

(2) This paragraph provides credit for the actions specified in paragraph (g)(2) or (h)(3) of this AD, as applicable, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 767–28–0115, dated September 10, 2015.

(3) For Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes with an original certificate of airworthiness or original export certificate of airworthiness issued on or before the effective date of this AD, this paragraph provides credit for the actions specified in paragraph (i)(1) of this AD if those actions were performed before the effective date of this AD using Boeing 737–600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001–9–04, Revision July 2016, Revision September 2016, Revision January 2017, Revision April 2018, or Revision May 2018; or Boeing 737–600/700/700C/800/900/900ER Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D626A001–CMR, Revision October 2014, Revision November 2014, Revision January 2015, or Revision April 2016.

(4) For airplanes identified in paragraph (c)(2) of this AD, this paragraph provides credit for the actions specified in paragraph (i)(2) of this AD if those actions were performed before the effective date of this AD using Boeing 757 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622N001–9, Revision January 2016, Revision July 2016, or Revision February 2017.

(5) For airplanes identified in paragraph (c)(3) of this AD with an original certificate of airworthiness or original export certificate of airworthiness issued on or before the effective date of this AD, this paragraph provides credit for the actions specified in paragraph (i)(3) of this AD if those actions were performed before the effective date of this AD using Boeing 767 Special Compliance Items/Airworthiness Limitations, D622T001–9–04, Revision July 2015, Revision March 2016, Revision May 2016, Revision May 2016 R1, or Revision June 2016; or Boeing 767–200/300/300F/400 Special Compliance Items/Airworthiness Limitations, D622T001–9–04, Revision January 2018.

(6) For airplanes identified in paragraph (c)(3) of this AD with an original certificate of airworthiness or original export certificate of airworthiness issued on or before the effective date of this AD, this paragraph provides credit for the actions specified in paragraph (i)(3)(ii) of this AD if those actions were performed before the effective date of this AD using Boeing 767 Special Compliance Items/Airworthiness Limitations, D622T001–9–04, Revision October 2014.

(o) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (p)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (o)(4)(i) and (o)(4)(ii) of this AD apply.

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

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

(p) Related Information

(1) For more information about this AD, contact Tak Kobayashi, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3553; email: *Takahisa.Kobayashi@faa.gov.*

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

(q) Material Incorporated by Reference

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

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

(i) Boeing 737–600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001–9–04, Revision June 2018.

(ii) Boeing 757 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622N001–9, Revision May 2018.

(iii) Boeing 767–200/300/300F/400ER Special Compliance Items/Airworthiness Limitations, D622T001–9–04, Revision March 2018.

(iv) Boeing Service Bulletin 737–28–1314, dated November 17, 2014.

(v) Boeing Service Bulletin 767–28–0115, Revision 1, dated June 2, 2016.

(vi) Boeing Special Attention Service Bulletin 757–28–0138, Revision 1, dated June 19, 2017.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone: 562–797–1717; internet: *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on September 14, 2018.

John P. Piccola,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–21460 Filed 10–10–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0410; Product Identifier 2018–NM–030–AD; Amendment 39–19444; AD 2018–20–10]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus SAS Model A350–941 airplanes. This AD was prompted by an inspection on the production line that revealed evidence of paint peeling on the forward and aft cargo frame forks around the hook bolt hole. This AD requires a detailed visual inspection for any deficiency of the frame forks around the hook bolt hole on certain forward and aft cargo doors and applicable corrective actions. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 15, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 15, 2018.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *continued-airworthiness.a350@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0410.

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–2018–0410; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is Docket Operations, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A350–941 airplanes. The NPRM published in the **Federal Register** on May 15, 2018 (83 FR 22414). The NPRM was prompted by an inspection on the production line that revealed evidence of paint peeling on the forward and aft cargo frame forks around the hook bolt hole. The NPRM proposed to require a detailed visual inspection for any deficiency of the frame forks around the hook bolt hole on certain forward and aft cargo doors and applicable corrective actions.

We are issuing this AD to address paint peeling on the forward and aft cargo doors that could develop into galvanic corrosion, which could lead to cargo door failure and possibly result in decompression of the airplane and injury to occupants.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0031, dated January 31, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A350–941 airplanes. The MCAI states:

> Following an inspection on the production line, paint peeling was found on forward and aft cargo door frame forks around the hook bolt hole. Subsequent investigations determined this had been caused by incorrect masking method during application of primer, top coat and Tartaric Sulfuric Anodizing (TSA) layer. As the cargo doors are located in an area with high corrosion sensitivity, where a surface protection with primer, top coat and TSA is specified, in case of paint peeling off, galvanic corrosion could develop.
>
> This condition, if not detected and corrected, could lead to cargo door failure, possibly resulting in decompression of the aeroplane and injury to occupants.
>
> To address this potential unsafe condition, Airbus identified the affected parts and issued the SB [Airbus Service Bulletin (SB) A350–52–P011, dated May 12, 2017] to provide inspection instructions.
>
> For the reasons described above, this [EASA] AD requires a one-time detailed [visual] inspection (DET) of the affected parts [for discrepancies] and, depending on findings, accomplishment of applicable corrective action(s) [*i.e.,* restoration of the anti-corrosion protection of frame forks of affected parts].

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0410.

Comments

We gave the public the opportunity to participate in developing this final rule. We received no comments on the NPRM or on the determination of the cost to the public.

Clarification of Definition of Serviceable Part

We have changed paragraph (g)(2) in this AD by adding that a serviceable part is also ''a part identified as an affected part, and the actions in paragraph (i) of this AD have been accomplished on that part.'' This change has been coordinated with EASA and Airbus.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for 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.

Related Service Information Under 1 CFR Part 51

Airbus SAS has issued Airbus Service Bulletin A350–52–P011, dated May 12, 2017. This service information describes procedures for a one-time detailed visual inspection of the frame forks around the hook bolt hole on the forward and aft cargo door, and applicable corrective actions. This service information is reasonably

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

Costs of Compliance

We estimate that this AD affects 9 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
Inspection	Up to 9 work-hours × $85 per hour = $765.	$0	Up to $765	Up to $6,885.

We estimate the following costs to do any necessary on-condition actions that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need this action:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Restoration	9 work-hours × $85 per hour = $765	$50	$815.

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under 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):

2018–20–10 Airbus SAS: Amendment 39–19444; FAA–2018–0410; Product Identifier 2018–NM–030–AD.

(a) Effective Date

This AD is effective November 15, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by an inspection on the production line that revealed evidence of paint peeling on the forward and aft cargo frame forks around the hook bolt hole. We are issuing this AD to address paint peeling on the forward and aft cargo doors that could develop into galvanic corrosion, which could lead to cargo door failure and possibly result in decompression of the airplane and injury to occupants.

(f) Compliance

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

(g) Definitions

(1) For the purpose of this AD, the affected parts are forward cargo doors, part number (P/N) WG102AGAAAAF and P/N WG102AKAAAAF, serial number (S/N) UH10007 through UH10022 inclusive, except S/N UH10009; and aft cargo doors P/N

WH102AHAAAAC and P/N WH102ALAAAAC, S/N UH10008 through UH10022 inclusive.

(2) For the purpose of this AD, a serviceable forward cargo door or a serviceable aft cargo door is a part that is not identified as an affected part, or is a part identified as an affected part on which a detailed visual inspection specified in Airbus Service Bulletin A350–52–P011, dated May 12, 2017, has been done and there were no findings, or is a part identified as an affected part, and the actions in paragraph (i) of this AD have been accomplished on that part.

(h) Inspection

Within 36 months since the date of issuance of the original standard airworthiness certificate or date of issuance of the original export certificate of airworthiness, or within 90 days after the effective date of this AD, whichever occurs later, accomplish a detailed visual inspection of each affected part for any deficiency (*e.g.,* any paint peel-off of the hook bolt hole of the frame fork), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A350–52–P011, dated May 12, 2017.

(i) Corrective Actions

If, during any detailed visual inspection required by paragraph (h) of this AD, any deficiency is found, before next flight, restore the anti-corrosion protection of frame forks of the affected part, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A350–52–P011, dated May 12, 2017, except as required by paragraph (j) of this AD.

(j) Exceptions to Service Information Specifications

Where Airbus Service Bulletin A350–52–P011, dated May 12, 2017, specifies contacting Airbus, and specifies that action as RC: This AD requires repair using a method approved in accordance with the procedures specified in paragraph (l)(2) of this AD.

(k) Parts Installation Limitation

From the effective date of this AD, it is allowed to install on an airplane a forward cargo door or an aft cargo door, provided the part is a serviceable forward cargo door or serviceable aft cargo door as defined in paragraph (g)(2) of this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) Required for Compliance (RC): Except as required by paragraph (j) of this AD: If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0031, dated January 31, 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–2018–0410.

(2) For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

(n) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A350–52–P011, dated May 12, 2017.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *continued-airworthiness.a350@airbus.com;* internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on September 19, 2018.

John P. Piccola,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–21605 Filed 10–10–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0632; Airspace Docket No. 17–AWA–4]

RIN 2120–AA66

Amendment of Chicago Class B and Chicago Class C Airspace; Chicago, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action incorporates this amendment into FAA Order 7400.11C for a final rule published in the **Federal Register** of August 16, 2018, for the above titled, Amendment of Chicago Class B and Chicago Class C Airspace; Chicago, IL.

DATES: Effective date: 0901 UTC, October 11, 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 7400.11C, 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 7400.11C 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 makes the necessary updates for airspace areas within the National Airspace System.

History

The FAA published a final rule in the **Federal Register** for Docket No. FAA–2018–0632 (83 FR 40662, August 16, 2018), amending the Chicago Class B and Chicago Class C airspace in Chicago, IL. The amendment was published under Order 7400.11B (dated August 3, 2017, and effective September 15, 2017), but became effective under Order 7400.11C (dated August 13, 2018, and effective September 15, 2018). This action incorporates this rule into the current FAA Order 7400.11C.

Class B airspace designations are published in paragraph 3000 and Class C airspace designations are published in paragraph 4000 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class B and Class C airspace designations 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 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by incorporating this amendment into FAA Order 7400.11C for a final rule published in the **Federal Register** of August 16, 2018, for the above titled, Amendment of Chicago Class B and Chicago Class C Airspace; Chicago, IL.

Accordingly, as this is an administrative correction to update the final rule amendment into FAA Order 7400.11C, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Also, to bring this rule and legal description current, I find that good cause exists, under 5 U.S.C. 553(d), for making this amendment effective in less than 30 days.

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. Therefore, this regulation: (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR 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. Section 71.1 is revised to read as follows:

For Docket No. FAA–2018–0632; Airspace Docket No. 17–AWA–4 (83 FR 40662, August 16, 2018). On page 40662, column 3, line 59, and page 40663, column 1, line 10, under **ADDRESSES**; and on page 40663, column 2, line 15, and line 17, under Availability and Summary of Documents for Incorporation by Reference remove ''. . . FAA Order 7400.11B . . .'' and add in its place ''. . . FAA Order 7400.11C . . .''.

On page 40663, column 1, line 66, under History remove ''. . . FAA Order 7400.11B dated August 3, 2017, and effective September 15, 2017, . . .'' and add in its place ''. . . FAA Order 7400.11C dated August 13, 2018, and effective September 15, 2018 . . .''.

On page 40663, column 2, line 12, under Availability and Summary of Documents for Incorporation by Reference; and on page 40664, column 1, line 22, under Amendatory Instruction 2 remove ''. . . FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, . . .'' and add in its place ''. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .''.

Issued in Washington, DC, on October 5, 2018.

Rodger A. Dean Jr.,

Manager, Airspace Policy Group.

[FR Doc. 2018–22193 Filed 10–10–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Part 800

RIN 1505–AC60

Provisions Pertaining to Certain Investments in the United States by Foreign Persons

AGENCY: Office of Investment Security, Department of the Treasury.

ACTION: Interim rule.

SUMMARY: This interim rule sets forth amendments to the regulations in part 800 of 31 CFR that implement, and make updates consistent with, certain provisions of the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA). Among other things, this interim rule implements certain provisions of FIRRMA that became immediately effective upon its enactment and provides clarity as to the current process and procedures with respect to the reviews and investigations undertaken by the Committee on

Foreign Investment in the United States pursuant to part 800, in light of FIRRMA.

DATES: *Effective date:* These provisions are effective October 11, 2018.

Applicability date: See § 800.103.

Comment date: Written comments must be received by November 10, 2018.

ADDRESSES: Written comments on the interim rule may be submitted through one of two methods:

• *Electronic Submission of Comments:* Interested persons may submit comments electronically through the Federal government eRulemaking Portal at *https://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department to make them available to the public. Comments submitted electronically through the *https://www.regulations.gov* website can be viewed by other commenters and interested members of the public.

• *Mail:* Send to U.S. Department of the Treasury, Attention: Thomas Feddo, Deputy Assistant Secretary for Investment Security, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

In general, Treasury will post all comments to *www.regulations.gov* without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. All comments received, including attachments and other supporting material, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For questions about this interim rule, contact: Thomas Feddo, Deputy Assistant Secretary for Investment Security; Laura Black, Director of Investment Security Policy and International Relations; Meena Sharma, Senior Policy Advisor; or Juliana Gabrovsky, Policy Advisor, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, telephone: (202) 622–3425, email: *CFIUS.FIRRMA@treasury.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On August 13, 2018, President Trump signed into law the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), Subtitle A of Title XVII of Pub. L. 115–232 (Aug. 13, 2018), which amends section 721 of the Defense Production Act of 1950 (DPA). Pursuant to section 1727 of FIRRMA, a number of provisions of FIRRMA took effect immediately upon enactment of the statute, while the effectiveness of other provisions is delayed. A number of the immediately effective provisions of FIRRMA required revisions to certain provisions of part 800. This interim rule amends part 800 to make such revisions and makes several other updates consistent with FIRRMA.

This interim rule is intended to provide clarity regarding the processes and procedures of the Committee on Foreign Investment in the United States (CFIUS, or the Committee) pending the full implementation of FIRRMA.

II. Waiver of Public Comment Requirement for Temporary Provisions

The interim rule set forth in this document implements certain immediately effective provisions of, and makes updates consistent with, FIRRMA. Section 709(a) of the DPA (50 U.S.C. 4559(a)) provides that regulations issued under the DPA are not subject to the rulemaking requirements of the Administrative Procedure Act (APA). Moreover, to the extent that the rulemaking requirements of the APA were determined to apply to this interim rule, the provisions of the APA requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date (5 U.S.C. 553), as well as the provisions of Executive Order 13771, are inapplicable because this interim rule involves a foreign affairs function of the United States. By its terms, this interim rule regulates the conduct of foreign persons seeking to acquire certain interests in particular U.S. businesses, precisely because the acquisition of such interests could harm the strategic national security interests of the United States vis-à-vis other nations.

Notwithstanding that the rulemaking requirements of the APA do not apply to this interim rule, section 709(b)(1) of the DPA provides that, except as otherwise provided in section 709, any regulation issued under the DPA must be published in the **Federal Register** and opportunity for public comment must be provided for not less than 30 days, consistent with the requirements of 5 U.S.C. 553(b).

Section 709(b)(2) of the DPA (50 U.S.C. 4559(b)(2)), however, provides that the requirements of section 709(b)(1) may be waived if: (1) The officer authorized to issue the regulation finds that urgent and compelling circumstances make compliance with such requirements impracticable; (2) the regulation is issued on a temporary basis [1]; and (3) the publication of such temporary rule is accompanied by the finding made under (1) (and a brief statement of the reasons for such finding) and an opportunity for public comment is provided for not less than 30 days before any regulation becomes final.

The regulatory amendments set forth in this document meet the three requirements of section 709(b)(2) of the DPA for the reasons below, and therefore qualify for waiver of the public comment requirement of section 709(b)(1) of the DPA.

First, as required by section 709(b)(2)(A) of the DPA, and for the reasons described in part III, below, upon the approval of the Secretary of the Treasury, the Assistant Secretary of the Treasury for International Markets finds, and the Committee agrees, that urgent and compelling circumstances make completion of the process for public participation in rulemaking set forth in section 709 of the DPA impracticable prior to the effectiveness of this interim rule.

Second, this interim rule is limited in duration as the amendments addressed in this rule will be further addressed in the final rule implementing FIRRMA, which is forthcoming and will supersede this interim rule. Thus, these amendments are being issued on a temporary basis pending the full implementation of FIRRMA.

Third, consistent with the requirement of section 709(b)(2)(C) of the DPA, if the Committee intends to make the provisions of this interim rule final, CFIUS will complete the process for public participation in rulemaking set forth in section 709 of the DPA in conjunction with the issuance of a final rule.

III. Urgent and Compelling Circumstances for Interim Rule

Upon enactment of FIRRMA, certain of the Committee's regulations in part 800 were rendered inconsistent with section 721. These inconsistencies could lead to ambiguity regarding the procedural aspects of the national security reviews and investigations undertaken by the Committee. Given that parties involved in cross-border transactions regularly include CFIUS among the regulatory regimes that are assessed in transaction negotiations and planning, urgent and compelling circumstances exist that require immediate and clear guidance. One of the factors that makes the United States

[1] Temporary regulations with no specific expiration date are ''interim rules'' for purposes of **Federal Register** classification.

an attractive destination for foreign investment is the transparency and clarity of the rules and procedures that govern the national security reviews and investigations carried out by CFIUS. This interim rule seeks to ensure, in a timely manner, that the rules and procedures that the Committee applies to its national security reviews and investigations remain clear to parties actively involved in transaction negotiations and planning.

As a result, the Committee is providing an immediate opportunity for public comment on this interim rule and will consider and address such comments in the process of promulgating any final rule, consistent with section 709(b)(3) of the DPA. This approach appropriately balances the urgency of the interim rule with the need for public participation in the formulation of any final rule.

IV. Discussion of Interim Rule

Overview of Key Amendments to the Regulations at Part 800

This interim rule makes amendments to the regulations at part 800 that are largely technical in nature. It implements certain immediately effective provisions of, and makes updates consistent with, FIRRMA. The discussion below summarizes the key changes made by this interim rule.

Section 800.103. This section is amended to provide clarity with respect to the applicability of the amendments to part 800 included in this interim rule. These amendments apply with respect to any covered transaction the review of which is initiated under section 721 on or after October 11, 2018. Certain of the provisions in FIRRMA that are addressed in this interim rule, however, took effect upon enactment of the statute. Most notably for transaction parties, FIRRMA's extension of the CFIUS review period from 30 days to 45 days went into effect immediately, and this interim rule updates part 800 to reflect the current practice of CFIUS. As indicated on the CFIUS website of the Department of the Treasury on August 13, 2018, upon the enactment of FIRRMA, CFIUS began applying the 45-day review period with respect to any covered transaction the review of which is initiated under section 721 on or after the date of FIRRMA's enactment.

Section 800.104. FIRRMA expands the definition of ''covered transaction'' to include transactions, transfers, agreements, or arrangements, the structure of which is designed or intended to evade or circumvent the application of section 721. Therefore, section 800.104, which addressed transactions or devices for avoidance, has been removed.

Section 800.202. The amendment to this section implements section 1720 of FIRRMA and expressly provides for the application of section 1001 of title 18, United States Code, to all information provided to the Committee under section 721 by any party to a covered transaction.

Section 800.207. The revision to the definition of ''covered transaction'' is consistent with the language in FIRRMA.

Section 800.209. The revision to the definition of ''critical technologies'' is consistent with the language in FIRRMA, including, and in particular, adding a sixth category as subpart (f) to capture emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018.

Section 800.224. The revision to the definition of ''transaction'' is consistent with the language in FIRRMA defining a ''covered transaction'' to include certain changes in rights that a foreign person has with respect to a U.S. business in which the foreign person has an investment, as well as transactions the structure of which is designed or intended to evade or circumvent the application of section 721. Corresponding changes are made to the definition of ''party or parties to a transaction'' in section 800.220.

Sections 800.301 and 800.302. The revisions to these sections add examples that are intended to illustrate the application of the expanded scope of ''covered transactions'' to the particular hypothetical situations. The examples are presented for the purpose of aiding the understanding of readers. They neither limit the definition set forth in subpart B of part 800 nor exhaust the scenarios to which such definition could apply.

Section 800.401. The revisions to this section implement a shift to electronic submissions of voluntary notices, rather than requiring a hardcopy submission, which is consistent with the focus of FIRRMA on ensuring that the procedures of the Committee enable the Committee's efficient operation.

Section 800.402. The revisions to section 800.402 modify certain of the requirements regarding the content of voluntary notices based on FIRRMA including, and in particular, adding a provision allowing parties to stipulate that the transaction that is the subject of the voluntary notice is a covered transaction and, as relevant, a foreign government-controlled transaction. The Committee notes that stipulating that a transaction is covered or foreign government-controlled allows the Committee to expend fewer resources in determining whether the transaction meets these criteria, potentially speeding the resolution of a review. Although the parties, by stipulating, are averring that they view the transaction to be covered and/or foreign government-controlled, neither the Committee nor the President is bound by the parties' stipulations.

Section 800.502. The revision to the timing of the review period, extending the period from 30 days to 45 days, is consistent with FIRRMA. This change is reflected in certain other sections of part 800 that are updated by this interim rule.

Section 800.506. The revisions to this section are consistent with FIRRMA and define the ''extraordinary circumstances'' pursuant to which an investigation period can be extended by one 15-day period.

Section 800.702. The revisions to this section are consistent with FIRRMA, including, and in particular, incorporating additional exceptions with respect to information sharing.

Section 800.801. The revisions to this section are consistent with FIRRMA including, and in particular, removing the language ''intentionally or through gross negligence'' in the provisions allowing for the imposition of civil penalties. By their terms, the revisions do not apply the new standard to material misstatements, omissions, or certifications made preceding the implementation of this rule, or to violations occurring after the implementation of this rule, in connection with mitigation agreements, material conditions, or orders entered into or imposed prior to the implementation of this rule.

Section 800.802. The addition of this section is consistent with FIRRMA including authorizing the Committee to, in addition to other remedies, negotiate a remediation plan for lack of compliance with a mitigation agreement or condition entered into or imposed under section 721(l), require filings for future covered transactions for five years, or seek injunctive relief.

Executive Order 12866

These regulations are not subject to the requirements of Executive Order 12866 because they relate to a foreign affairs function of the United States.

Paperwork Reduction Act

The collection of information contained in this rule has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44

U.S.C. 3507(d)) and assigned control number 1505–0121. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies when an agency is required to publish a general notice of proposed rulemaking under section 553(b) of the APA, or any other law. As set forth below, because regulations issued pursuant to the Defense Production Act of 1950 (50 U.S.C. 4559) are not subject to the APA, or other law requiring the publication of a general notice of proposed rulemaking, the RFA does not apply.

This interim rule implements section 721 of the DPA. Section 709(a) of the DPA provides that the regulations issued under it are not subject to the rulemaking requirements of the APA. Section 709(b)(1) instead provides that any regulation issued under the DPA be published in the **Federal Register** and opportunity for public comment be provided for not less than 30 days. (Notwithstanding the notice requirements of section 709(b)(1), section 709(b)(2) of the DPA waives the DPA's public comment provision for temporary provisions. As discussed in part II above, this interim rule implements, and makes updates consistent with, certain immediately effective provisions of FIRRMA and is issued pursuant to the section 709(b)(2) waiver provision.) Section 709(b)(3) of the DPA also provides that all comments received during the public comment period be considered and the publication of the final regulation contain written responses to such comments. Consistent with the plain text of the DPA, legislative history confirms that Congress intended that regulations under the DPA be exempt from the notice and comment provisions of the APA and instead provided that the agency include a statement that interested parties were consulted in the formulation of the final regulation. See H.R. Conf. Rep. No. 102–1028, at 42 (1992) and H.R. Rep. No. 102–208 pt. 1, at 28 (1991). The limited public participation procedures described in the DPA do not require a general notice of proposed rulemaking as set forth in the RFA. Further, the mechanisms for publication and public participation are sufficiently different to distinguish the DPA procedures from a rule that requires a general notice of proposed rulemaking. In providing the President with expanded authority to suspend or prohibit the acquisition, merger, or takeover of, or certain other investments in, a domestic firm by a foreign firm if such action would threaten to impair the national security, Congress could not have contemplated that regulations implementing such authority would be subject to RFA analysis. For these reasons, the RFA does not apply to these regulations.

List of Subjects in 31 CFR Part 800

Foreign investments in the United States, Investigations, National defense, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, Code of Federal Regulations, Title 31, Subtitle B, Chapter VIII, Part 800 is amended as follows:

PART 800—REGULATIONS PERTAINING TO CERTAIN INVESTMENTS IN THE UNITED STATES BY FOREIGN PERSONS

■ 1. The authority citation for part 800 is revised to read as follows:

Authority: 50 U.S.C. 4565; E.O. 11858, as amended, 73 FR 4677.

■ 2. The heading for part 800 is revised to read as set forth above.

Subpart A—General

■ 3. In § 800.101, remove ''(50 U.S.C. App. 2170)'' after ''Defense Production Act of 1950'' and add in its place ''(50 U.S.C. 4565)''.

■ 4. Amend § 800.103 by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 800.103 Applicability rule; prospective application of certain provisions.

(a) Except as provided in paragraphs (b) and (c) of this section and otherwise in this part, the regulations in this part apply from the effective date.

* * * * *

(c) The amendments to this part published in the **Federal Register** on October 11, 2018, apply with respect to any covered transaction the review of which is initiated under section 721 on or after October 11, 2018.

§ 800.104 [Removed]

■ 5. Remove § 800.104.

Subpart B—Definitions

■ 6. Amend § 800.202 as follows:

■ a. In paragraph (a) add ''under the penalties provided in section 1001 of title 18, United States Code'' after the word ''certifying''; and

■ b. In the Note to § 800.202, remove ''at *http://www.treasury.gov/offices/international-affairs/cfius/index.shtml*'' and add in its place '', currently available at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius*'' after ''website''.

■ 7. Revise § 800.207 to read as follows:

§ 800.207 Covered transaction.

The term *covered transaction* means any transaction that is proposed or pending after August 23, 1988, by or with any foreign person that could result in foreign control of any U.S. business, including such a transaction carried out through a joint venture.

■ 8. Revise § 800.209 to read as follows:

§ 800.209 Critical technologies.

The term *critical technologies* means the following:

(a) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130).

(b) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations (EAR) (15 CFR parts 730–774), and controlled—

(1) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(2) For reasons relating to regional stability or surreptitious listening.

(c) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by 10 CFR part 810 (relating to assistance to foreign atomic energy activities).

(d) Nuclear facilities, equipment, and material covered by 10 CFR part 110 (relating to export and import of nuclear equipment and material).

(e) Select agents and toxins covered by 7 CFR part 331, 9 CFR part 121, or 42 CFR part 73.

(f) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018.

■ 9. Amend § 800.220 as follows:

■ a. In paragraph (e), remove the second ''and'';

■ b. Redesignate paragraph (f) as paragraph (h);
■ c. Add paragraphs (f) and (g);
■ d. In redesignated paragraph (h), remove ''paragraphs (a) through (e)'' and add in its place ''paragraphs (a) through (g)'' after ''described in''.

The additions read as follows:

§ 800.220 Party or parties to a transaction.

* * * * *

(f) In the case of a change in rights that a person has with respect to an entity in which that person has an investment, the person whose rights change as a result of the transaction and the entity to which those rights apply;

(g) In the case of a transfer, agreement, arrangement, or any other type of transaction, the structure of which is designed or intended to evade or circumvent the application of section 721, any person that participates in such transfer, agreement, arrangement, or other type of transaction; and''; and

* * * * *

■ 10. Amend § 800.222 by removing ''50 U.S.C. App. 2170'' after ''Defense Production Act of 1950,'' and adding in its place ''50 U.S.C. 4565''.

■ 11. Revise § 800.224 to read as follows:

§ 800.224 Transaction.

The term *transaction* means:

(a) A proposed or completed merger, acquisition, or takeover, including without limitation:

(1) The acquisition of an ownership interest in an entity;

(2) The acquisition or conversion of convertible voting instruments of an entity;

(3) The acquisition of proxies from holders of a voting interest in an entity;

(4) A merger or consolidation;

(5) The formation of a joint venture; and

(6) A long-term lease under which a lessee makes substantially all business decisions concerning the operation of a leased entity, as if it were the owner;

(b) Any change in rights that a person has with respect to an entity in which that person has an investment; and

(c) Any other transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application of section 721.

Example. Corporation A, a foreign person, signs a concession agreement to operate the toll road business of Corporation B, a U.S. business, for 99 years. Corporation B, however, is required under the agreement to perform safety and security functions with respect to the business and to monitor compliance by Corporation A with the operating requirements of the agreement on an ongoing basis. Corporation B may terminate the agreement or impose other penalties for breach of these operating requirements. Assuming no other relevant facts, this is not a transaction.

Note to § 800.224: See § 800.304 regarding factors the Committee will consider in determining whether to include the rights to be acquired by a foreign person upon the conversion of convertible voting instruments as part of the Committee's assessment of whether a transaction that involves such instruments is a covered transaction.

Subpart C—Coverage

■ 12. Amend § 800.301 by adding paragraphs (e) and (f) to read as follows:

§ 800.301 Transactions that are covered transactions.

* * * * *

(e) A change in the rights that a foreign person has with respect to a U.S. business in which the foreign person has an investment, if that change could result in foreign control of the U.S. business.

Example. Corporation A, a foreign person, holds a 10 percent ownership interest in Corporation X, a U.S. business. Corporation A and Corporation X enter into a contractual arrangement pursuant to which Corporation A will provide consulting and other advisory services to Corporation X in exchange for the right to appoint the Chief Executive Officer and the Chief Technical Officer of Corporation X. Corporation A does not acquire any additional ownership interest in Corporation X pursuant to the contractual arrangement. The transaction is a covered transaction.

(f) A transaction the structure of which is designed to evade or circumvent the application of section 721.

Example. Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. With a view towards circumventing section 721, Corporation A transfers money to a U.S. citizen, who, pursuant to informal arrangements with Corporation A and on its behalf, purchases all the shares in Corporation X, a U.S. business. The transaction is a covered transaction.

■ 13. Amend § 800.302 by adding paragraph (f) to read as follows:

§ 800.302 Transactions that are not covered transactions.

* * * * *

(f) A change in the rights that a foreign person has with respect to a U.S. business in which that foreign person has an investment, if that change could not result in foreign control of the U.S. business.

Example. Corporation A, a foreign person, holds a 10 percent ownership interest in Corporation X, a U.S. business. Corporation A and Corporation X enter into a contractual arrangement pursuant to which Corporation A gains the right to purchase an additional interest in Corporation X to prevent the dilution of Corporation A's *pro rata* interest in Corporation X in the event that Corporation X issues additional instruments conveying interests in Corporation X. Corporation A does not acquire any additional rights or ownership interest in Corporation X pursuant to the contractual arrangement. Assuming no other relevant facts, the transaction is not a covered transaction.

Subpart D—Notice

■ 14. Revise § 800.401(a) and (e) to read as follows:

§ 800.401 Procedures for notice.

(a) A party or parties to a proposed or completed transaction may file a voluntary notice of the transaction with the Committee. Voluntary notice to the Committee is filed by sending one electronic copy of the notice that includes, in English, the information set out in § 800.402, including the certification required under paragraph (l) of that section. See the Committee's section of the Department of the Treasury website, currently available at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius,* for electronic submission instructions.

* * * * *

(e) Upon receipt of the electronic copy of a notice filed under paragraph (a) of this section, including the certification required by § 800.402(l), the Staff Chairperson shall promptly inspect such notice for completeness.

* * * * *

■ 15. Amend § 800.402 as follows:
■ a. In paragraph (c)(1)(viii), remove ''and'';
■ b. In paragraph (c)(1)(ix), add ''and'' after ''transaction;''
■ c. Add paragraph (c)(1)(x);
■ d. In paragraph (l), remove ''available at *http://www.treas.gov/offices/international-affairs/cfius/index.shtml*'' and add in its place ''currently available at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius*'' after ''website''; and
■ e. Add paragraph (n).

The additions read as follows:

§ 800.402 Contents of voluntary notice.

* * * * *

(c) * * *

(1) * * *

(x) A copy of any partnership agreements, integration agreements, or other side agreements relating to the transaction.'';

* * * * *

(n) A party filing a voluntary notice may stipulate that the transaction is a covered transaction and, if the party stipulates that the transaction is a covered transaction, that the transaction is a foreign government-controlled transaction. A stipulation offered by any party pursuant to this section must be accompanied by a description of the basis for the stipulation. The required description of the basis shall include, but is not limited to, discussion of all relevant information responsive to paragraphs (c)(6)(iv) through (c)(6)(vi) of this section. A party that offers such a stipulation acknowledges that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is a covered transaction and/or a foreign government-controlled transaction for the purposes of section 721 and all authorities thereunder, and waives the right to challenge any such determination. Neither the Committee nor the President is bound by any such stipulation, nor does any such stipulation limit the ability of the Committee or the President to act on any authority provided under section 721 with respect to any covered transaction.

■ 16. Amend § 800.403 as follows:
■ a. In paragraph (b), remove ''thirty-day'' and add ''specified by § 800.502'' after ''review period'';
■ b. In Example 1, remove ''thirty-day''; and
■ c. In Example 2, remove ''25th'' and add in its place ''40th'' and remove ''30'' and add in its place ''45''.

Subpart E—Committee Procedures: Review And Investigation

■ 17. Amend § 800.501 as follows:
■ a. In paragraph (a) introductory text, add a new sentence before the existing sentence; and
■ b. In paragraph (b) remove ''thirty-day''.

The addition reads as follows:

§ 800.501 General.

(a) In any review or investigation of a covered transaction, the Committee should consider the factors specified in section 721(f) and, as appropriate, require parties to provide to the Committee the information necessary to consider such factors. * * *

* * * * *

■ 18. Amend § 800.502 by revising the section heading and paragraph (b) to read as follows:

§ 800.502 Beginning of forty-five day review period.

* * * * *

(b) A 45-day period for review of a transaction shall commence on the date on which the voluntary notice has been accepted, agency notice has been received by the Staff Chairperson of the Committee, or the Chairperson of the Committee has requested a review pursuant to § 800.401(b). Such review shall end no later than the forty-fifth day after it has commenced, or if the forty-fifth day is not a business day, no later than the next business day after the forty-fifth day.

* * * * *

■ 19. Amend § 800.505(a) by removing ''thirty-day''.

■ 20. Amend § 800.506 as follows:
■ a. In paragraph (a), remove ''The Committee'' and add in its place ''Subject to paragraph (e) of this section, the Committee'' before ''shall''; and
■ b. Add paragraphs (e) and (f) to read as follows:

§ 800.506 Completion or termination of investigation and report to the President.

* * * * *

(e) In extraordinary circumstances, the Chairperson may, upon a written request signed by the head of a lead agency, extend an investigation for one 15-day period. A request to extend an investigation must describe, with particularity, the extraordinary circumstances that warrant the Chairperson extending the investigation. The authority of the head of a lead agency to request the extension of an investigation may not be delegated to any person other than the deputy head (or equivalent thereof) of the lead agency. If the Chairperson extends an investigation pursuant to this paragraph (e) with respect to a covered transaction, the Committee shall promptly notify the parties to the transaction of the extension.

(f) For purposes of paragraph (e) of this section, ''extraordinary circumstances'' means circumstances for which extending an investigation is necessary and the appropriate course of action due to a force majeure event or to protect the national security of the United States.''

■ 21. Add § 800.510 to subpart E to read as follows:

§ 800.510 Tolling of deadlines during lapse in appropriations.

Any deadline or time limitation under this subpart E shall be tolled during a lapse in appropriations.

Subpart G—Provision and Handling of Information

■ 22. Amend § 800.701 as follows:
■ a. In paragraph (a) remove ''50 U.S.C. App. 2155(a)'' after ''pursuant to'' and add in its place ''50 U.S.C. 4555(a)'';
■ b. In paragraph (c) remove ''at *http://www.treas.gov/offices/international-affairs/cfius/index.shtml*'' and add in its place '', currently available at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius*'' after ''website''; and
■ c. In paragraph (d), remove ''at *http://www.treas.gov/offices/international-affairs/cfius/index.shtml*'' and add in its place '', currently available at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius*'' after ''website''.

■ 23. Amend § 800.702 as follows:
■ a. Revise paragraph (a).
■ b. Redesignate paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e).
■ c. Add new paragraph (b).
■ d. In redesignated paragraph (e), remove ''50 U.S.C. App. 2155(d)'' after ''The provisions of'' and add in its place ''50 U.S.C. 4555(d)''.

The revision and addition read as follows:

§ 800.702 Confidentiality.

(a) Except as provided in paragraph (b) of this section, any information or documentary material filed with the Committee pursuant to this part, including information or documentary material filed pursuant to § 800.401(f), shall be exempt from disclosure under 5 U.S.C. 552, and no such information or documentary material may be made public.

(b) Paragraph (a) of this section shall not prohibit disclosure of the following:

(1) Information relevant to any administrative or judicial action or proceeding;

(2) Information to Congress or to any duly authorized committee or subcommittee of Congress;

(3) Information important to the national security analysis or actions of the Committee to any domestic governmental entity, or to any foreign governmental entity of a United States ally or partner, under the exclusive direction and authorization of the Chairperson, only to the extent necessary for national security purposes, and subject to appropriate confidentiality and classification requirements; or

(4) Information that the parties have consented to be disclosed to third parties.''; and

* * * * *

Subpart H—Penalties

■ 24. Amend § 800.801 as follows:

■ a. In paragraph (a) remove '', after the effective date, intentionally or through gross negligence,'';
■ b. Revise paragraph (b);
■ c. Redesignate paragraph (g) as paragraph (h); and
■ d. Add a new paragraph (g).

The revision and addition read as follows:

§ 800.801 Penalties.

* * * * *

(b) Any person who, after the effective date, violates, intentionally or through gross negligence, a material provision of a mitigation agreement entered into before October 11, 2018, with, a material condition imposed before October 11, 2018 by, or an order issued before October 11, 2018 by, the United States under section 721(l) may be liable to the United States for a civil penalty not to exceed $250,000 per violation or the value of the transaction, whichever is greater. Any person who violates a material provision of a mitigation agreement entered into on or after October 11, 2018, with, a material condition imposed on or after October 11, 2018, by, or an order issued on or after October 11, 2018, by, the United States under section 721(l) may be liable to the United States for a civil penalty not to exceed $250,000 per violation or the value of the transaction, whichever is greater.'';

* * * * *

(g) Section 1001 of title 18, United States Code, shall apply to all information provided to the Committee under section 721 by any party to a covered transaction.

* * * * *

■ 25. Add § 800.802 to subpart H to read as follows:

§ 800.802 Effect of lack of compliance.

If, at any time after a mitigation agreement or condition is entered into or imposed under section 721(l), the Committee or lead agency, as the case may be, determines that a party or parties to the agreement or condition are not in compliance with the terms of the agreement or condition, the Committee or lead agency may, in addition to the authority of the Committee to impose penalties pursuant to section 721(h) and to unilaterally initiate a review of any covered transaction pursuant to section 721(b)(1)(D)(iii):

(a) Negotiate a plan of action for the party or parties to remediate the lack of compliance, with failure to abide by the plan or otherwise remediate the lack of compliance serving as the basis for the Committee to find a material breach of the agreement or condition;

(b) Require that the party or parties submit a written notice under clause (i) of section 721(b)(1)(C) with respect to a covered transaction initiated after the date of the determination of noncompliance and before the date that is five years after the date of the determination to the Committee to initiate a review of the transaction under section 721(b); or

(c) Seek injunctive relief.

Dated: October 4, 2018.

Heath Tarbert,

Assistant Secretary for International Markets.

[FR Doc. 2018–22187 Filed 10–10–18; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Part 801

RIN 1505–AC61

Determination and Temporary Provisions Pertaining to a Pilot Program To Review Certain Transactions Involving Foreign Persons and Critical Technologies

AGENCY: Office of Investment Security, Department of the Treasury.

ACTION: Interim rule.

SUMMARY: This interim rule sets forth the scope of, and procedures for, a pilot program of the Committee on Foreign Investment in the United States (CFIUS, or the Committee) under section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA). Pursuant to section 1727(c) of FIRRMA, this pilot program implements the authorities provided in two sections of FIRRMA that did not take effect upon the statute's enactment. First, the pilot program expands the scope of transactions subject to review by CFIUS to include certain investments involving foreign persons and critical technologies. Second, the pilot program makes effective FIRRMA's mandatory declarations provision for all transactions that fall within the specific scope of the pilot program. The pilot program is temporary and will end no later than March 5, 2020.

DATES: *Effective date:* These provisions are effective November 10, 2018.

Applicability date: See § 801.103.

Comment date: Written comments must be received by November 10, 2018.

ADDRESSES: Written comments on the interim rule may be submitted through one of two methods:

• *Electronic Submission of Comments:* Interested persons may submit comments electronically through the Federal government eRulemaking Portal at *https://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department to make them available to the public. Comments submitted electronically through the *https://www.regulations.gov* website can be viewed by other commenters and interested members of the public.

• *Mail:* Send to U.S. Department of the Treasury, Attention: Thomas Feddo, Deputy Assistant Secretary for Investment Security, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

In general, Treasury will post all comments to *www.regulations.gov* without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. All comments received, including attachments and other supporting material, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For questions about this interim rule, contact: Thomas Feddo, Deputy Assistant Secretary for Investment Security; Laura Black, Director of Investment Security Policy and International Relations; Meena Sharma, Senior Policy Advisor; or Juliana Gabrovsky, Policy Advisor, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622–3425; email: *CFIUS.pilotprogram@treasury.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), Subtitle A of Title XVII of Public Law 115–232 (Aug. 13, 2018), amended section 721 of the Defense Production Act of 1950 (DPA). Prior to the enactment of FIRRMA, section 721 of the DPA (section 721) authorized the President, acting through the Committee, to review mergers, acquisitions, and takeovers by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States, to determine the effects of such transactions on the national security of the United States. FIRRMA modified and broadened the authorities of the President and CFIUS under section 721 in several ways including, without limitation, by expanding the scope of

foreign investments in the United States subject to national security review pursuant to section 721.

Section 1727(a) of FIRRMA made certain provisions of FIRRMA effective immediately upon enactment on August 13, 2018. Section 1727(b) of FIRRMA, however, delayed the effectiveness of any provision of FIRRMA not specified in section 1727(a) until the earlier of: (1) The date that is 18 months after the date of enactment of FIRRMA (*i.e.,* February 13, 2020); or (2) the date that is 30 days after publication in the **Federal Register** of a determination by the chairperson of CFIUS that the regulations, organizational structure, personnel, and other resources necessary to administer the new provisions are in place.

Notwithstanding section 1727(b), section 1727(c) of FIRRMA authorizes CFIUS to conduct one or more pilot programs to implement any authority provided pursuant to any provision of, or amendment made by, FIRRMA that did not take effect immediately upon enactment. Section 1727(c) states that a pilot program may not commence until the date that is 30 days after publication in the **Federal Register** of a determination by the chairperson of CFIUS of the scope of, and procedures for, the pilot program. This document and the interim rule set forth herein constitute the required determination of the scope of, and procedures for, a CFIUS pilot program relating to critical technologies pursuant to section 1727(c)(2) of FIRRMA.

II. Waiver of Public Comment Requirement for Temporary Provisions

The interim rule set forth in this document implements a pilot program, pursuant to section 721, relating to foreign investment into certain U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies. Section 709(a) of the DPA (50 U.S.C. 4559(a)) provides that regulations issued under the DPA are not subject to the rulemaking requirements of the Administrative Procedure Act (APA). Moreover, to the extent that the rulemaking requirements of the APA were determined to apply to this interim rule, the provisions of the APA requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date (5 U.S.C. 553), as well as the provisions of Executive Order 13771, are inapplicable because this interim rule involves a foreign affairs function of the United States. By its terms, the pilot program to be implemented pursuant to this interim rule regulates the conduct of foreign persons seeking to acquire certain interests in particular U.S. businesses, precisely because the acquisition of such interests could harm the strategic national security interests of the United States vis-à-vis other nations.

Notwithstanding that the rulemaking requirements of the APA do not apply to this interim rule, Section 709(b)(1) of the DPA provides that, except as otherwise provided in section 709, any regulation issued under the DPA must be published in the **Federal Register** and opportunity for public comment must be provided for not less than 30 days, consistent with the requirements of 5 U.S.C. 553(b).

Section 709(b)(2) of the DPA (50 U.S.C. 4559(b)(2)), however, provides that the requirements of section 709(b)(1) may be waived if: (1) The officer authorized to issue the regulation finds that urgent and compelling circumstances make compliance with such requirements impracticable; (2) the regulation is issued on a temporary basis [1]; and (3) the publication of such temporary regulation is accompanied by the finding made under (1) (and a brief statement of the reasons for such finding) and an opportunity for public comment is provided for not less than 30 days before any regulation becomes final.

The regulations set forth in this document meet the three requirements of section 709(b)(2) of the DPA for the reasons below, and therefore qualify for waiver of the public comment requirement of section 709(b)(1) of the DPA.

First, as required by section 709(b)(2)(A) of the DPA, and for the reasons described in part III, below, the Secretary of the Treasury finds, and the Committee agrees, that urgent and compelling circumstances make completion of the process for public participation in rulemaking set forth in section 709 of the DPA impracticable prior to the effectiveness of this interim rule.

Second, pursuant to section 1727(c)(1) of FIRRMA, the authority for a pilot program is time limited to no more than 570 days following the date of FIRRMA's enactment, making any FIRRMA pilot program inherently temporary. Consistent with that limitation and the requirement of section 709(b)(2)(B) of the DPA, these regulations are issued on a temporary basis. Section 801.101 sets forth the duration of the pilot program regulations.

[1] Temporary regulations with no specific expiration date are ''interim rules'' for purposes of **Federal Register** classification.

Third, consistent with the requirement of section 709(b)(2)(C) of the DPA, if the Committee intends to make the provisions of this interim rule final, CFIUS will complete the process for public participation in rulemaking set forth in section 709 of the DPA in conjunction with the issuance of a final rule.

Given the pilot program's scope and objectives, considering and responding to public comments prior to the effectiveness of this interim rule would be inconsistent with U.S. foreign affairs interests because it would delay the effective date of the pilot program, which could provide threat actors with time to harm U.S. national security by quickly acquiring U.S. critical technologies, contrary to the urgent and compelling circumstances justifying this program, as discussed below.

As a result, the Committee is providing an immediate opportunity for public comment on this interim rule and will consider and address such comments in the process of promulgating any final rule, consistent with section 709(b)(3) of the DPA. This approach appropriately balances the urgency of the pilot program with the need for public participation in the formulation of any final rule.

III. Urgent and Compelling Circumstances for the Pilot Program

The passage of FIRRMA was based upon concerns that, as noted at section 1702(b)(4) of FIRRMA, ''the national security landscape has shifted in recent years, and so has the nature of the investments that pose the greatest potential risk to national security. . . .'' FIRRMA provides CFIUS time to develop the resources and regulations necessary to administer all of FIRRMA's provisions before the statute becomes fully effective. Notwithstanding this, FIRRMA also provides the authority for pilot programs and, in doing so, recognizes the need to immediately assess and address significant risks to national security posed by some foreign investments.

In order to be effective in identifying and addressing these national security risks, FIRRMA recognizes that there may be circumstances in which the Committee deems it appropriate to require mandatory declarations for specific types of transactions. This pilot program establishes mandatory declarations for certain transactions involving investments by foreign persons in certain U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies. The purpose of the pilot program is to assess and address

ongoing risks to the national security of the United States resulting from two urgent and compelling circumstances: (1) The ability and willingness of some foreign parties to obtain equity interests in U.S. businesses in order to affect certain decisions regarding, or to obtain certain information relating to, critical technologies; and (2) the rapid pace of technological change in certain U.S. industries. The Committee has developed this pilot program without exempting any country from the mandatory declaration requirement in order to understand and examine, in a comprehensive manner, the nature of foreign direct investment as it relates to critical technologies and the pilot program industries. Further, foreign investors that may present national security concerns are becoming increasingly sophisticated in structuring investments in a manner that may obfuscate those concerns, including by utilizing entities in other jurisdictions. As a result, CFIUS is implementing this pilot program on a global basis. The pilot program will inform the full implementation of FIRRMA, including the Committee's approach with respect to the country specification provision in FIRRMA.

Technological superiority has long underpinned the United States' military strategy and national security innovation base. The Administration supports protecting our national security from emerging risks while maintaining an open investment policy. Although the vast majority of foreign direct investment in the United States provides economic benefits to our nation—including the promotion of economic growth, productivity, competitiveness, and job creation—some foreign direct investment threatens to undermine the technological superiority that is critical to U.S. national security. Specifically, the threat to critical technology industries is more significant than ever as some foreign parties seek, through various means, to acquire sensitive technologies with relevance for U.S. national security. Foreign investment in U.S. critical technologies has grown significantly in the past decade, and an enhanced framework is needed to address the potential impacts of this growth on U.S. national security.

Prior to FIRRMA, CFIUS's authorities did not sufficiently address the new and emerging risks that foreign direct investment can pose to U.S. technological superiority. For example, foreign investors do not need to acquire a controlling interest in order to affect certain decisions made by, or obtain certain information from, a U.S. business with respect to the use, development, acquisition, or release of critical technology. CFIUS's authorities, however, only applied to transactions that could result in foreign control of a U.S. business. Consequently, CFIUS had no authority to prevent a foreign entity from acquiring a non-controlling interest in a U.S. business that produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies. FIRRMA provides CFIUS new authorities to address the national security concerns that may arise from these investments, but those authorities were not immediately effective upon FIRRMA's enactment.

Together, the pace of technological change in certain critical technology industries, the significant growth in foreign investment in certain industries relevant to national security, and the current inability of CFIUS to examine certain non-controlling transactions creates urgent and compelling circumstances for the pilot program that make completion of the process for public participation in rulemaking set forth in section 709 of the DPA impracticable prior to the effectiveness of this interim rule. Implementing the pilot program expeditiously is necessary both to protect critical technologies and to evaluate how best to implement certain aspects of FIRRMA in the long-term. The temporary nature of the pilot program and the short timeframe within which to gather data to help inform the full implementation of FIRRMA compel a rapid implementation of this interim rule. Delaying effectiveness of the interim rule would create an unacceptable risk of erosion of U.S. technological superiority. Without immediate action, foreign parties will be able to influence the use of, and decisions made by U.S. businesses with respect to, critical technologies through the types of investments FIRRMA is intended to address. The list of pilot program industries identified in Annex A has been carefully developed by the U.S. government to narrowly scope the pilot program to include only those industries in which the threat of erosion of technological superiority from some foreign direct investment requires immediate action. As noted above, the Committee invites comments on this interim rule, will consider any comments received, and if the Committee intends to make the provisions of this interim rule final, will include in any final rule responses to such comments.

Notwithstanding the issuance of this interim rule, the regulations at part 800 remain in effect.

IV. Discussion of the Pilot Program Interim Rule

Subpart-by-Subpart Overview of the Pilot Program Interim Rule

The interim rule builds upon existing rules governing CFIUS's review of transactions for national security considerations and adds a pilot program with two purposes. First, the pilot program expands the scope of transactions subject to review by CFIUS to include transactions subject to a portion of FIRRMA's ''other investments'' provision. Second, the pilot program makes effective FIRRMA's mandatory declarations provision for transactions that fall within the specific scope of the pilot program. The scope, procedures, and terms used in the pilot program are specific to the pilot program and subject to change in the proposed final rule implementing FIRRMA. The following discussion provides an overview of each subpart of the interim rule.

Subpart A

Subpart A sets forth the scope of the pilot program, its applicability based on the timing of certain events relating to a transaction, and the effect of the pilot program on other laws. FIRRMA authorizes the Committee to conduct one or more pilot programs to implement any authority provided pursuant to any provision of, or amendment made by, FIRRMA that did not take effect on the date of its enactment. This pilot program expands the scope of transactions subject to review by CFIUS to include certain investments by foreign persons in certain U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies. The pilot program also requires the submission of declarations with basic information regarding certain covered transactions, unless the parties elect to file a notice instead. The purpose of implementing a pilot program addressing these areas is to confront the rapid changes in certain critical technology industries, the significant growth of certain types of foreign investment in those industries, and the current inability of CFIUS to review non-controlling transactions, which creates an unacceptable risk of undermining U.S. technological superiority in industries with national security implications. The regulations in this interim rule supplement existing regulations implementing section 721 of the DPA, which remain in effect. Consistent with section 1727(c)(1) of FIRRMA, the pilot program implemented through these regulations

will end no later than March 5, 2020, the date that is 570 days after the enactment of FIRRMA. These regulations will be amended, replaced, or removed no later than the date on which the pilot program ends.

As set forth in section 801.103(b), these regulations do not apply to transactions for which the completion date is prior to the pilot program effective date, or transactions for which the parties have executed a binding written agreement or other document establishing the material terms of the transaction prior to October 11, 2018.

Consistent with CFIUS's existing regulations under part 800, the pilot program does not affect or limit other authorities of the government.

Subpart B

Subpart B sets forth defined terms used in the remainder of the pilot program regulations. The following discussion describes several key terms from subpart B.

Section 801.203. FIRRMA defines the term ''investment'' as including the acquisition of a ''contingent equity interest,'' but does not define the term ''contingent equity interest.'' The pilot program interim rule provides a definition for the term *contingent equity interest.*

Section 801.204. The term *critical technologies* is defined consistent with the definition set forth in FIRRMA.

Section 801.206. The term *investment* is defined consistent with the definition set forth in FIRRMA.

Section 801.207. FIRRMA provides clarification that certain types of investments by foreign persons as limited partners or the equivalent on an advisory board or a committee of an investment fund will not be considered ''other investments'' for the purposes of FIRRMA, as reflected in section 801.304 of these regulations. The term *investment fund* is defined in subpart B by reference to the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*).

Section 801.208. In this interim rule, the Committee is implementing the portion of the definition of the term *material nonpublic technical information* in FIRRMA that is related to critical technologies. The portion of FIRRMA's definition of the term ''material nonpublic technical information'' that relates to critical infrastructure is not part of this pilot program.

Section 801.209. The term *pilot program covered investment* implements most of the definition of ''other investment'' in FIRRMA. The pilot program, however, does not implement a portion of the third part of the ''other investment'' definition in FIRRMA regarding involvement, other than through voting of shares, in substantive decisionmaking regarding sensitive personal data of U.S. citizens or critical infrastructure.

Section 801.210. The term *pilot program covered transaction* includes the new concept of ''pilot program covered investment,'' described above. The term *pilot program covered transaction* also includes transactions that could result in foreign control of a U.S. business, consistent with the language in FIRRMA, but only to the extent that the U.S. business is a pilot program U.S. business.

Section *801.213.* The term *pilot program U.S. business* includes any U.S. business that produces, designs, tests, manufactures, fabricates, or develops a critical technology that is either utilized in connection with the U.S. business's activity in one or more pilot program industries, or designed by the U.S. business specifically for use in one or more pilot program industries. For purposes of the pilot program, this definition has been narrowly scoped to allow CFIUS to assess and address the foreign investment transactions most likely to raise concerns regarding the technological superiority of the United States in industries of national security importance.

Subpart C

Subpart C describes the coverage of the pilot program with a focus on pilot program covered investments. The analysis as to whether a transaction could result in control of a pilot program U.S. business by a foreign person generally follows the same analysis as under part 800, with the additional requirement that the U.S. business in question must be a pilot program U.S. business. The examples provided throughout subpart C are intended to illustrate the application of the definitions to the particular hypothetical situations. The examples are presented for the purpose of aiding the understanding of readers. They neither limit the definitions set forth in subpart B nor exhaust the scenarios to which such definitions could apply.

Subpart C illustrates that, where CFIUS has concluded all action under section 721 for a pilot program covered investment (regardless of whether the notification was made through a declaration or a notice), any incremental investment that meets the requirements of section 801.209, even if involving the same foreign person in the same pilot program U.S. business, will nevertheless be a pilot program covered investment and subject to this pilot program.

Subpart C also implements portions of section 1703 of FIRRMA that limit the application of CFIUS authority over certain types of investment fund investments and provides an explicit exception for investments involving air carriers.

Subpart D

Subpart D requires that the parties to a pilot program covered transaction submit to the Committee a declaration regarding the transaction, unless the parties elect to submit a written notice pursuant to subpart E instead. Generally, mandatory declarations must be made at least 45 days before the expected completion date of the transaction. As noted in section 801.401(d), the regulatory safe harbor described in section 800.204(e) is not available for pilot program covered transactions for which the Committee completes all action under section 721 on the basis of a declaration, irrespective of whether the transaction could result in foreign control of a U.S. business. Any subsequent or incremental acquisition that constitutes a pilot program covered transaction must be submitted to CFIUS through a notice or declaration. For the avoidance of doubt, transactions that could result in control of a pilot program U.S. business by a foreign person and that are filed as a written notice, and for which the Committee completes all action under section 721, would receive the benefit of the regulatory safe harbor described in section 800.204(e).

FIRRMA distinguishes declarations from notices in three primary respects: (1) The length of the submission; (2) the time for CFIUS's consideration of the submission; and (3) the Committee's options for disposition of the submission. The interim rule recognizes these distinctions in the manner described below.

First, section 801.403 sets forth the information required in a declaration, which is consistent with FIRRMA's requirement that CFIUS establish declarations as ''abbreviated notices that would not generally exceed 5 pages in length.'' As part of the declaration process, parties will have the opportunity to voluntarily stipulate that the transaction is a pilot program covered transaction and, if so, whether the transaction could result in control of a pilot program U.S. business by a foreign person and whether the transaction is a foreign-government controlled transaction. Such stipulations would streamline certain aspects of CFIUS's review of a declaration, thereby reducing the burden on CFIUS and potentially

leading to a faster resolution for the submitting parties.

Second, consistent with FIRRMA, section 801.404 requires that the Committee take action on a declaration within 30 days of the Committee's receipt of the declaration from the Staff Chairperson. The Staff Chairperson will circulate the declaration to the Committee after inspecting the declaration and determining it to be complete. This implements FIRRMA's distinction that CFIUS complete review of a notice within 45 days and take action upon a declaration within 30 days.

Finally, section 801.407 implements FIRRMA's mandate that the Committee take one of four actions with respect to a declaration: (1) Request that the parties file a notice; (2) inform the parties that CFIUS cannot complete action under section 721 on the basis of the declaration, and that they may file a notice to seek written notification from the Committee that the Committee has completed all action under section 721 with respect to the transaction; (3) initiate a unilateral review of the transaction through an agency notice; or (4) notify the parties that CFIUS has completed all action under section 721.

Section 801.407 also makes clear that parties may not submit more than one declaration for the same or a substantially similar transaction without approval from the Staff Chairperson. The purpose of this is to avoid situations where, due to the abbreviated information requests, a party or parties file a declaration even before the material terms of a transaction have been agreed upon, subsequently complete their negotiations, and attempt to withdraw and resubmit a new declaration for the same or a substantially similar transaction.

The distinctions between notices and declarations outlined here—that is, the complexity of the submission and the parties' desired timing—underpin the primary interrelated factors that parties should consider when determining whether a pilot program covered transaction is best notified to the Committee through a declaration or a notice.

As noted above, the scope, procedures, and certain terms used in the pilot program are specific to the pilot program and subject to change in the proposed final rule implementing FIRRMA.

Subpart E

Subpart E generally applies the existing CFIUS procedural regulations in part 800 to notices of pilot program covered transactions. This subpart recognizes that parties, at their discretion, may elect to file a notice for a pilot program covered transaction instead of a declaration. The purpose of the subpart is to clarify that, where parties elect to file a notice instead of a declaration, or file a notice for a pilot program covered transaction following the Committee's action on a declaration, the procedural elements of CFIUS's existing regulations under part 800 generally will apply to that notice. Certain additional information will be required from the parties with respect to any pilot program covered investment notified to the Committee through a notice.

For the avoidance of doubt, while the pilot program implements certain provisions of FIRRMA that allow CFIUS to review certain non-controlling transactions involving critical technology in specified industries, it does not change CFIUS's analysis with respect to a transaction that could result in foreign control of a U.S. business under the regulations at part 800.

Additionally, a party (or parties) to a pilot program covered transaction that has filed a written notice pursuant to section 800.401(a) regarding the transaction may not submit to the Committee a declaration regarding the same transaction, or a substantially similar transaction, without the approval of the Staff Chairperson. The purpose of the declaration is to allow for an assessment of certain information relating to certain transactions that may not, because of the scope and other factors, necessitate the collection of all of the information set forth in section 800.402(c). As noted above, parties should consider whether the transaction is of the type that would be appropriate for a declaration, or whether it would be more appropriate to notify the Committee of the transaction by filing a written notice.

Subpart F

Subpart F implements authorities provided pursuant to, and amendments made by, FIRRMA.

Executive Order 12866

These regulations are not subject to the general requirements of Executive Order 12866 because they relate to a foreign affairs function of the United States pursuant to section 3(d)(2) of that order.

Paperwork Reduction Act

The collection of information contained in this rule has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and assigned control number 1505–0121. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies when an agency is required to publish a general notice of proposed rulemaking under section 553(b) of the APA, or any other law. As set forth below, because regulations issued pursuant to the DPA are not subject to the rulemaking provisions of the APA, or other law requiring the publication of a general notice of proposed rulemaking, the RFA does not apply.

This interim rule implements section 721 of the DPA. Section 709(a) of the DPA provides that the regulations issued under it are not subject to the rulemaking requirements of the APA. Section 709(b)(1) instead provides that any regulation issued under the DPA be published in the **Federal Register** and opportunity for public comment be provided for not less than 30 days. (Notwithstanding the notice requirements of section 709(b)(1), section 709(b)(2) of the DPA waives the DPA's public comment provision for temporary provisions. As discussed in part II above, this interim rule implements a pilot program and is issued pursuant to the section 709(b)(2) waiver provision.) Section 709(b)(3) of the DPA also provides that all comments received during the public comment period be considered and the publication of the final regulation contain written responses to such comments. Consistent with the plain text of the DPA, legislative history confirms that Congress intended that regulations under the DPA be exempt from the notice and comment provisions of the APA and instead provided that the agency include a statement that interested parties were consulted in the formulation of the final regulation. See H.R. Conf. Rep. No. 102–1028, at 42 (1992) and H.R. Rep. No. 102–208 pt. 1, at 28 (1991). The limited public participation procedures described in the DPA do not require a general notice of proposed rulemaking as set forth in the RFA. Further, the mechanisms for

publication and public participation are sufficiently different to distinguish the DPA procedures from a rule that requires a general notice of proposed rulemaking. In providing the President with expanded authority to suspend or prohibit the acquisition, merger, or takeover of, or certain other investments in, a domestic firm by a foreign firm if such action would threaten to impair the national security, Congress could not have contemplated that regulations implementing such authority would be subject to RFA analysis. For these reasons, the RFA does not apply to these regulations.

List of Subjects in 31 CFR Part 801

Foreign investments in the United States, Investigations, National defense, Reporting and recordkeeping requirements.

■ Accordingly, under the authority provided by section 1727(c) of FIRRMA, for the reasons stated in the preamble, the Department of the Treasury amends 31 CFR chapter VIII by adding part 801 as follows:

PART 801—PILOT PROGRAM TO REVIEW CERTAIN TRANSACTIONS INVOLVING FOREIGN PERSONS AND CRITICAL TECHNOLOGIES

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Subpart F—Implementation of Certain Authority Provided in FIRRMA

801.601 Implementation of certain authority regarding covered transactions.
801.602 Implementation of certain authority regarding mandatory declarations.

Annex A to Part 801—Industries

Authority: 50 U.S.C. 4565; Pub. L. 115–232.

Subpart A—General

§ 801.101 Scope.

The regulations in this part implement a pilot program in accordance with section 1727(c) of the Foreign Investment Risk Review Modernization Act of 2018. Pursuant to section 1727(c), the pilot program implements authorities provided in certain provisions of, or amendments made by, the Foreign Investment Risk Review Modernization Act of 2018 that did not take effect on the date of its enactment. This pilot program expands the scope of transactions reviewable by CFIUS to include certain investments by foreign persons in certain U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies. The pilot program also requires that parties to a pilot program covered transaction notify CFIUS of the transaction by either submitting a declaration or filing a written notice. The regulations in this part supplement the existing regulations implementing section 721 of the Defense Production Act of 1950, as amended, under part 800 to Title 31 CFR Chapter VIII, which remain in effect. The pilot program implemented through these regulations will end no later than the date on which the full regulations implementing the Foreign Investment Risk Review Modernization Act of 2018 become effective, and in no event later than the date that is 570 days after the enactment of the Foreign Investment Risk Review Modernization Act of 2018. These regulations will be amended, replaced, or removed no later than the date on which the pilot program ends.

§ 801.102 Effect on other law.

Unless otherwise indicated, nothing in this part shall be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, or review provided by or established under any other provision of federal law, including the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), or any other authority of the President or the Congress under the Constitution of the United States.

§ 801.103 Applicability rule.

(a) Except as provided in paragraph (b) of this section and otherwise in this part, the regulations in this part apply from the pilot program effective date.

(b) The regulations in this part do not apply to any transaction for which:

(1) The completion date is prior to the pilot program effective date; or

(2) The following has occurred before October 11, 2018:

(i) The parties to the transaction have executed a binding written agreement or other document establishing the material terms of the transaction;

(ii) A party has made a public offer to shareholders to buy shares of a pilot program U.S. business; or

(iii) A shareholder has solicited proxies in connection with an election of the board of directors of a pilot program U.S. business or has requested the conversion of convertible voting securities.

Subpart B—Definitions

§ 801.201 General.

Unless otherwise indicated, terms used in the regulations in this part that are defined in §§ 800.201 through 800.228 of this chapter have the meanings set forth therein.

§ 801.202 Completion date.

The term *completion date* means, with respect to a transaction, the date upon which an ownership interest, including a contingent equity interest, is conveyed, assigned, delivered, or otherwise transferred to a person, or a change in rights occurs.

§ 801.203 Contingent equity interest.

The term *contingent equity interest* means a financial instrument that currently does not entitle its owner or holder to voting rights but is convertible into an equity interest with voting rights.

§ 801.204 Critical technologies.

The term *critical technologies* means the following:

(a) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130).

(b) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations (EAR) (15 CFR parts 730–774) and controlled:

(1) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(2) For reasons relating to regional stability or surreptitious listening.

(c) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by 10 CFR part 810 (relating to assistance to foreign atomic energy activities).

(d) Nuclear facilities, equipment, and material covered by 10 CFR part 110 (relating to export and import of nuclear equipment and material).

(e) Select agents and toxins covered by 7 CFR part 331, 9 CFR part 121, or 42 CFR part 73.

(f) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018.

§ 801.205 FIRRMA.

The term *FIRRMA* means the Foreign Investment Risk Review Modernization Act of 2018, Subtitle A of Title XVII of Public Law 115–232 (Aug. 13, 2018).

§ 801.206 Investment.

The term *investment* means the acquisition of equity interest, including contingent equity interest.

§ 801.207 Investment fund.

The term *investment fund* means any entity that is an ''investment company,'' as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), or would be an ''investment company'' but for one or more of the exemptions provided in section 3(b) or 3(c) thereunder.

§ 801.208 Material nonpublic technical information.

(a) The term *material nonpublic technical information* means information that is not available in the public domain, and is necessary to design, fabricate, develop, test, produce, or manufacture critical technologies, including processes, techniques, or methods.

(b) The term *material nonpublic technical information* does not include financial information regarding the performance of an entity.

§ 801.209 Pilot program covered investment.

The term *pilot program covered investment* means an investment, direct or indirect, by a foreign person in an unaffiliated pilot program U.S. business that could not result in control by a foreign person of a pilot program U.S. business and that affords the foreign person:

(a) Access to any material nonpublic technical information in the possession of the pilot program U.S. business;

(b) Membership or observer rights on the board of directors or equivalent governing body of the pilot program U.S. business or the right to nominate an individual to a position on the board of directors or equivalent governing body of the pilot program U.S. business; or

(c) Any involvement, other than through voting of shares, in substantive decisionmaking of the pilot program U.S. business regarding the use, development, acquisition, or release of critical technology.

§ 801.210 Pilot program covered transaction.

The term *pilot program covered transaction* means:

(a) Any pilot program covered investment; or

(b) Any transaction by or with any foreign person that could result in foreign control of any pilot program U.S. business, including such a transaction carried out through a joint venture.

§ 801.211 Pilot program effective date.

The term *pilot program effective date* means November 10, 2018.

§ 801.212 Pilot program industry.

The term *pilot program industry* means any industry identified in Annex A to part 801 by reference to the North American Industry Classification System (NAICS).

§ 801.213 Pilot program U.S. business.

The term *pilot program U.S. business* means any U.S. business that produces, designs, tests, manufactures, fabricates, or develops a critical technology that is:

(a) Utilized in connection with the U.S. business's activity in one or more pilot program industries; or

(b) Designed by the U.S. business specifically for use in one or more pilot program industries.

§ 801.214 Unaffiliated pilot program U.S. business.

The term *unaffiliated pilot program U.S. business* means, with respect to a foreign person, a pilot program U.S. business in which that foreign person does not directly hold more than fifty percent of the outstanding voting interest or have the right to appoint more than half of the members of the board of directors or equivalent governing body.

Subpart C—Pilot Program Covered Transactions

§ 801.301 Control.

For the sole purpose of determining whether a transaction could result in control of a pilot program U.S. business by a foreign person, the provisions set forth in subpart C of this part (excluding § 800.302(b) of this chapter and the examples thereunder) regarding covered transactions shall apply to any pilot program covered transaction declared to the Committee pursuant to § 801.401 or notified to the Committee pursuant to § 801.501.

§ 801.302 Transactions that are pilot program covered transactions.

Transactions that are pilot program covered transactions include, without limitation:

(a) A transaction that meets the requirements of § 801.209, irrespective of the percentage of voting interest acquired.

Example 1. Corporation A, a foreign person, proposes to acquire a four percent, non-controlling equity interest in Corporation B. Corporation B is a U.S. business that manufactures a critical technology as part of its business in a pilot program industry. Corporation B is therefore a pilot program U.S. business. Pursuant to the terms of the investment, a designee of Corporation A will have the right to observe the meetings of the board of directors of Corporation B. The proposed transaction is a pilot program covered investment and therefore a pilot program covered transaction.

Example 2. Corporation A, a foreign person, proposes to acquire a four percent, non-controlling equity interest in Corporation B, a pilot program U.S. business as described above. Pursuant to the terms of the investment, Corporation A has approval rights with respect to Corporation B's licensing of a critical technology to third parties. Corporation A is therefore involved

in substantive decisionmaking with respect to Corporation B and the proposed transaction is a pilot program covered investment and a pilot program covered transaction.

(b) A transaction that meets the requirements of § 801.209, irrespective of the fact that the Committee concluded all action under section 721 for a previous pilot program covered investment by the same foreign person in the same pilot program U.S. business, where such transaction involves the acquisition of access or rights described by § 801.209 in addition to those notified to the Committee in the transaction for which the Committee previously concluded action.

Example. The Committee concludes all action under section 721 with respect to a pilot program covered investment by Corporation A, a foreign person, in which Corporation A acquires a four percent, non-controlling equity interest with board observer rights in Corporation B, a pilot program U.S. business. One year later, Corporation A proposes to acquire an additional five percent equity interest in Corporation B, resulting in Corporation A holding a nine percent, non-controlling equity interest in Corporation B. Pursuant to the terms of the additional investment, Corporation A will be provided access to material nonpublic technical information in the possession of Corporation B to which Corporation A did not previously have access. The proposed transaction is a pilot program covered investment and therefore a pilot program covered transaction because the transaction involves both an acquisition of an equity interest in a pilot program U.S. business and a new right to access material nonpublic technical information.

(c) A transaction that meets the requirements of § 801.209, irrespective of the fact that the critical technology produced, designed, tested, manufactured, fabricated, or developed by the pilot program U.S. business became controlled pursuant to section 1758 of the Export Control Reform Act of 2018 after the pilot program effective date, unless any of the criteria set forth in paragraphs (b)(2)(i) through (b)(2)(iii) of § 801.103 is satisfied with respect to the transaction prior to the critical technology becoming controlled pursuant to section 1758 of the Export Control Reform Act of 2018.

Example. Corporation A, a foreign person, has executed a written agreement establishing the material terms of a proposed non-controlling investment in Corporation B, a pilot program U.S. business. The proposed investment will afford Corporation A access to material nonpublic technical information in the possession of Corporation B. The only controlled technology produced, designed, tested, manufactured, fabricated, or developed by Corporation B became controlled pursuant to section 1758 of the Export Control Reform Act of 2018 after the pilot program effective date but prior to the date upon which the written agreement establishing the material terms of the investment was executed. The proposed transaction is a pilot program covered investment and therefore a pilot program covered transaction.

(d) A transaction by or with any foreign person that could result in foreign control of any pilot program U.S. business.

Example. Corporation A, a foreign person, acquires a 40 percent interest and the ability to determine important matters with respect to Corporation B, a U.S. pilot program business. The proposed transaction is a pilot program covered transaction.

§ 801.303 Transactions that are not pilot program covered transactions.

Transactions that are not pilot program covered transactions include, without limitation:

(a) An investment by a foreign person in a U.S. business that manufactures a technology that it utilizes in connection with its activity in one or more pilot program industries, but does not produce, design, test, manufacture, fabricate, or develop one or more critical technologies.

Example. Corporation A, a foreign person, proposes to acquire a four percent, non-controlling equity interest in Corporation B, a U.S. business that operates in a pilot program industry. Pursuant to the terms of the investment, a designee of Corporation A will have the right to observe the meetings of the board of directors of Corporation B. Corporation B does not produce, design, test, manufacture, fabricate, or develop any critical technology. Assuming no other relevant facts, the proposed transaction is not a pilot program covered transaction.

(b) An investment by a foreign person in a pilot program U.S. business that does not afford the foreign person any of the rights specified in paragraphs (a), (b), or (c) of § 801.209 or any control rights.

Example. The Committee concluded all action under section 721 with respect to a pilot program covered transaction in which Corporation A, a foreign person, acquired a four percent, non-controlling equity interest with board observer rights in Corporation B, a pilot program U.S. business. One year later, Corporation A proposes to acquire an additional five percent equity interest in Corporation B, which would result in Corporation A holding a nine percent, non-controlling equity interest in Corporation B. The proposed investment does not afford Corporation A any additional rights with respect to Corporation B, including the rights specified in § 801.209. Assuming no other relevant facts, the proposed transaction is not a pilot program covered transaction.

(c) A transaction that results or could result in control by a foreign person of a U.S. business that is not a pilot program U.S. business.

Example. Corporation A, a foreign person, proposes to purchase all of the shares of Corporation B, which is a U.S. business that operates in a pilot program industry but does not produce, design, test, manufacture, fabricate, or develop any critical technology. As the sole owner, Corporation A will have the right to elect directors and appoint other primary officers of Corporation B. Assuming no other relevant facts, the proposed transaction is not a pilot program covered transaction. It is, however, a covered transaction (see § 800.301 of this chapter).

§ 801.304 Treatment of certain investment fund investments.

(a) An indirect investment by a foreign person in a pilot program U.S. business through an investment fund that affords the foreign person (or a designee of the foreign person) membership as a limited partner or equivalent on an advisory board or a committee of the fund shall not be considered a pilot program covered transaction with respect to the foreign person if:

(1) The fund is managed exclusively by a general partner, a managing member, or an equivalent;

(2) The foreign person is not the general partner, managing member, or equivalent;

(3) The advisory board or committee does not have the ability to approve, disapprove, or otherwise control:

(i) Investment decisions of the investment fund; or

(ii) Decisions made by the general partner, managing member, or equivalent related to entities in which the investment fund is invested;

(4) The foreign person does not otherwise have the ability to control the investment fund, including the authority:

(i) To approve, disapprove, or otherwise control investment decisions of the investment fund;

(ii) To approve, disapprove, or otherwise control decisions made by the general partner, managing member, or equivalent related to entities in which the investment fund is invested; or

(iii) To unilaterally dismiss, prevent the dismissal of, select, or determine the compensation of the general partner, managing member, or equivalent;

(5) The foreign person does not have access to material nonpublic technical information as a result of its participation on the advisory board or committee; and

(6) The investment otherwise meets the requirements of paragraph (4)(D) of subsection (a) of section 721 made effective by part 801.

(b) For the purposes of paragraphs (a)(3) and (4), and except as provided in

paragraph (c) of this section, a waiver of a potential conflict of interest, a waiver of an allocation limitation, or a similar activity, applicable to a transaction pursuant to the terms of an agreement governing an investment fund shall not be considered to constitute control of investment decisions of the investment fund or decisions relating to entities in which the investment fund is invested.

(c) In extraordinary circumstances, the Committee may consider the waiver of a potential conflict of interest, the waiver of an allocation limitation, or a similar activity, applicable to a transaction pursuant to the terms of an agreement governing an investment fund, to constitute control of investment decisions of the investment fund or decisions relating to entities in which the investment fund is invested.

Example 1. Corporation A, a foreign person, makes an investment in an investment fund as a limited partner. The investment confers membership on an advisory board of the investment fund. The investment fund holds 100 percent of the ownership interests in a pilot program U.S. business. Corporation A will have the right to approve decisions made by the general partner with respect to the use and development of the critical technologies produced by the pilot program U.S. business. This transaction is a pilot program covered transaction.

Example 2. Corporation A, a foreign person, makes an investment in an investment fund as a limited partner. The investment confers membership on an advisory board of the investment fund. The investment fund holds 100 percent of the ownership interests in a pilot program U.S. business. Corporation A is not the general partner that wholly manages the investment fund. Corporation A lacks any ability to control the investment fund or its decisions. As a member of the advisory board, Corporation A has the right to vote on the compensation of the general partner and the right to vote on the dismissal of the general partner for cause, but does not have the power to determine either of these matters unilaterally. Assuming no other relevant facts, this transaction is not a pilot program covered transaction with respect to Corporation A.

§ 801.305 Exception for air carriers.

No investment involving an air carrier, as defined in section 40102(a)(2) of title 49, United States Code, that holds a certificate issued under section 41102 of that title shall be a pilot program covered transaction.

§ 801.306 Timing rule for contingent equity interests.

The provisions set forth in § 800.304 of this chapter regarding convertible voting instruments shall apply to contingent equity interests.

Subpart D—Mandatory Declarations Under the Pilot Program

§ 801.401 Mandatory declarations under the pilot program.

(a) Except as provided in paragraph (b) of this section, the parties to a pilot program covered transaction shall submit to the Committee a declaration with information regarding the transaction in accordance with § 801.402.

(b) Notwithstanding paragraph (a) of this section, parties to a pilot program covered transaction may elect to submit a written notice pursuant to subpart E of this part regarding the transaction instead of a declaration. Parties to a pilot program covered transaction that have filed with the Committee a written notice regarding a transaction pursuant to § 801.501 may not submit to the Committee a declaration regarding the same transaction or a substantially similar transaction without the approval of the Staff Chairperson.

(c) Parties shall submit to the Committee the declaration required pursuant to paragraph (a) of this section, or a written notice pursuant to paragraph (b) of this section, no later than:

(1) November 10, 2018, or promptly thereafter, if the completion date of the transaction is between November 10, 2018 and December 25, 2018; or

(2) 45 days before the completion date of the transaction, if the completion date of the transaction is after December 25, 2018.

(d) Section 800.204(e) of this chapter shall not apply with respect to any pilot program covered transaction for which the Committee completes all action under section 721 pursuant to § 801.407(a)(4).

§ 801.402 Procedures for declarations under the pilot program.

(a) A party or parties shall submit a declaration of a pilot program covered transaction pursuant to § 801.401 by submitting electronically the information set out in § 801.403, including the certifications required thereunder, to the Staff Chairperson in accordance with the submission instructions on the Committee's section of the Department of the Treasury website at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.*

(b) No communications other than those described in paragraph (a) of this section shall constitute the submission of a declaration for purposes of section 721.

(c) Information and other documentary material submitted to the Committee pursuant to this section shall be considered to have been filed with the President or the President's designee for purposes of section 721(c).

(d) Persons filing a declaration shall, during the time that the matter is pending before the Committee, promptly advise the Staff Chairperson of any material changes in plans, facts, or circumstances addressed in the declaration, and any material change in information required to be provided to the Committee under § 801.406(a)(3). Such changes shall become part of the declaration filed by such persons under § 801.401, and the certification required under § 801.405(c) shall apply to such changes.

§ 801.403 Contents of declarations under the pilot program.

(a) The party or parties submitting a declaration of a pilot program covered transaction pursuant to § 801.401 shall provide the information set out in this section, which must be accurate and complete with respect to all parties and to the transaction. (See also paragraphs (d) and (e) of this section.)

(b) If fewer than all the parties to a transaction submit a declaration, the Committee may, at its discretion, request that the parties to the transaction file a written notice of the transaction under § 801.501, if the Staff Chairperson determines that the information provided by the submitting party or parties in the declaration is insufficient for the Committee to assess the transaction.

(c) Subject to paragraph (e) of this section, a declaration submitted pursuant to § 801.401 shall describe or provide, as applicable:

(1) The name of the foreign person(s) and pilot program U.S. business(es) that are parties to, or, in applicable cases, the subject of the transaction, as well as the name, telephone number, and email address of the primary point of contact for each party.

(2) The following information regarding the transaction in question, including:

(i) A brief description of the nature of the transaction and its structure (*e.g.,* share purchase, merger, asset purchase);

(ii) The percentage of voting interest acquired;

(iii) The percentage of economic interest acquired;

(iv) Whether the pilot program U.S. business has multiple classes of ownership;

(v) The total transaction value in U.S. dollars;

(vi) The expected closing date; and

(vii) All sources of financing for the transaction.

(3) The following:

(i) A statement as to whether a party to the transaction is stipulating that the transaction is a pilot program covered transaction and a description of the basis for the stipulation; and

(ii) A statement as to whether a party to the transaction is stipulating that the transaction could result in control of a pilot program U.S. business by a foreign person or that the transaction is a foreign government-controlled transaction and, in each case, a description of the basis for the stipulation.

(4) A statement as to whether the foreign person will acquire any of the following in the pilot program U.S. business:

(i) Access to any material nonpublic technical information in the possession of the pilot program U.S. business, and if so, a brief explanation of the type of access and type of information;

(ii) Membership, observer rights, or nomination rights as set forth in § 801.209(b), and if so, a statement as to the composition of the board or other body both before and after the completion date of the transaction;

(iii) Any involvement, other than through voting shares, in substantive decisionmaking of the pilot program U.S. business regarding the use, development, acquisition, or release of critical technologies and if so, a statement as to the involvement in such substantive decisionmaking; or

(iv) Any rights that could result in the foreign person acquiring control of the pilot program U.S. business and, if so, a brief explanation of these rights.

(5) The following information regarding the pilot program U.S. business:

(i) Website address;

(ii) Principal place of business;

(iii) Place of incorporation or organization; and

(iv) A list of the addresses or geographic coordinates (to at least the fourth decimal) of all locations of the pilot program U.S. business, including the pilot program U.S. business's headquarters, facilities, and operating locations.

(6) With respect to the pilot program U.S. business that is the subject of the transaction and any entity of which that pilot program U.S. business is a parent, a brief summary of their respective business activities, as, for example, set forth in annual reports, and the product or service categories of each, including the applicable six-digit NAICS codes.

(7) A statement as to which critical technology or critical technologies the pilot program U.S. business and its subsidiaries produce, design, test, manufacture, fabricate, or develop, and the relevant six-digit NAICS code or codes, as applicable under §§ 801.212 and 801.213, for each critical technology listed. This statement shall include a description (which may group similar items into general product categories) of the items and a list of any relevant Export Control Classification Numbers under the EAR and United States Munitions List categories under the ITAR, and, if applicable, identify whether any are specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by 10 CFR part 810, nuclear facilities, equipment, and materials covered by 10 CFR part 110 or select agents and toxins covered by 7 CFR part 331, 9 CFR part 121 or 42 CFR part 73.

(8) A statement as to whether the pilot program U.S. business has any contracts (including any subcontracts, if known) that are currently in effect or were in effect within the past three years with any U.S. Government agency or component, or in the past 10 years if the contract included access to personally identifiable information of U.S. Government personnel.

(9) A statement as to whether the pilot program U.S. business has any contracts (including any subcontracts, if known) that are currently in effect or were in effect within the past five years involving information, technology, or data that is classified under Executive Order 12958, as amended.

(10) A statement as to whether the pilot program U.S. business has received any grant or other funding from the Department of Defense or the Department of Energy, or participated in or collaborated on any defense or energy program or product involving one or more critical technologies or pilot program industries within the past five years.

(11) A statement as to whether the pilot program U.S. business participated in a Defense Production Act Title III Program (50 U.S.C. 4501 *et seq.*) within the past seven years.

(12) A statement as to whether the pilot program U.S. business has received or placed priority rated contracts or orders under the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700), and the level(s) of priority of such contracts or orders (DX or DO) within the past three years.

(13) The name of the ultimate parent of the foreign person.

(14) A complete organizational chart, including, without limitation, information that identifies the name, principal place of business and place of incorporation or other legal organization (for entities), and nationality (for individuals) for each of the following:

(i) The immediate parent, the ultimate parent, and each intermediate parent, if any, of each foreign person that is a party to the transaction;

(ii) Where the ultimate parent is a private company, the ultimate owner(s) of such parent; and

(iii) Where the ultimate parent is a public company, any shareholder with an interest of greater than five percent in such parent.

(15) Information regarding all foreign government ownership in the foreign person's ownership structure, including nationality and percentage of ownership, as well as any rights that a foreign government holds, directly or indirectly, with respect to the foreign person.

(16) With respect to the foreign person that is party to the transaction and any of its parents, as applicable, a brief summary of their respective business activities, as, for example, set forth in annual reports.

(17) A statement as to whether any party to the transaction has been party to another transaction previously notified or submitted to the Committee, and the case number assigned by the Committee regarding such transaction(s).

(18) A statement (including relevant jurisdiction and criminal case law number or legal citation) as to whether the pilot program U.S. business, the foreign person, or any parent or subsidiary of the foreign person has been convicted in the last ten years of a crime in any jurisdiction.

(d) Each party submitting a declaration shall provide a certification of the information contained in the declaration consistent with § 800.202 of this chapter. A sample certification may be found on the Committee's section of the Department of the Treasury website at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.*

(e) A party that offers a stipulation pursuant to paragraph (c)(3) of this section acknowledges that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is a pilot program covered transaction, a transaction that could result in control of a pilot program U.S. business by a foreign person, or a foreign government-controlled transaction for the purposes of section 721 and all authorities thereunder, and waives the right to challenge any such determination. Neither the Committee nor the President

is bound by any such stipulation, nor does any such stipulation limit the ability of the Committee or the President to act on any authority provided under section 721 with respect to any pilot program covered transaction.

§ 801.404 Beginning of thirty-day period.

(a) Upon receipt of a declaration submitted pursuant to § 801.401, the Staff Chairperson shall promptly inspect the declaration and shall promptly notify in writing all parties to a transaction that have submitted a declaration that:

(1) The Staff Chairperson has accepted the declaration and circulated the declaration to the Committee, and the date on which the assessment described in paragraph (b) of this section begins; or

(2) The Staff Chairperson has determined not to accept the declaration and circulate the declaration to the Committee because the declaration is incomplete, and provide an explanation of the material respects in which the declaration is incomplete.

(b) A thirty-day period for assessment of a pilot program covered transaction that is the subject of a declaration shall commence on the date on which the declaration is received by the Committee from the Staff Chairperson. Such period shall end no later than the thirtieth day after it has commenced, or if the thirtieth day is not a business day, no later than the next business day after the thirtieth day.

§ 801.405 General.

(a) In assessing a pilot program covered transaction submitted pursuant to § 801.401, the Committee should consider the factors specified in section 721(f) and, as appropriate, require parties to provide to the Committee the information necessary to consider such factors. The Committee's assessment shall examine, as appropriate, whether:

(1) The transaction constitutes a pilot program covered transaction and whether it could result in foreign government control over a pilot program U.S. business;

(2) There is credible evidence to support a belief that any foreign person exercising control of the pilot program U.S. business or exercising rights related to a pilot program covered investment might take action that threatens to impair the national security of the United States; and

(3) Provisions of law, other than section 721 and the International Emergency Economic Powers Act, provide adequate and appropriate authority to protect the national security of the United States with respect to the risk arising from the pilot program covered transaction.

(b) During the thirty-day assessment period, the Staff Chairperson may invite the parties to a pilot program covered transaction to attend a meeting with the Committee staff to discuss and clarify issues pertaining to the transaction.

(c) If the Committee notifies the parties to a transaction that have submitted a declaration pursuant to § 801.401 that the Committee intends to complete all action under section 721 with respect to that transaction, each party that has submitted additional information subsequent to the original declaration shall file a certification as described in § 800.202 of this chapter. A sample certification may be found on the Committee's section of the Department of the Treasury website at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.*

(d) If a party fails to provide the certification required under paragraph (c) of this section, the Committee may, at its discretion, take any of the actions under § 801.407(a).

§ 801.406 Rejection, disposition, or withdrawal of declarations.

(a) The Committee, acting through the Staff Chairperson, may:

(1) Reject any declaration that does not comply with § 801.403 and so inform the parties promptly in writing;

(2) Reject any declaration at any time, and so inform the parties promptly in writing, if, after the declaration has been submitted and before the Committee has taken one of the actions specified in § 801.407(a):

(i) There is a material change in the pilot program covered transaction as to which a declaration has been submitted; or

(ii) Information comes to light that contradicts material information provided in the declaration by the party (or parties); or

(3) Reject any declaration at any time after the declaration has been submitted, and so inform the parties promptly in writing, if the party (or parties) that submitted the declaration does not provide follow-up information requested by the Staff Chairperson within two business days of the request, or within a longer time frame if the party (or parties) so request in writing and the Staff Chairperson grants that request in writing.

(b) The Staff Chairperson shall notify the parties that submitted a declaration when the Committee has found that the transaction that is the subject of a declaration is not a pilot program covered transaction.

(c) Parties to a transaction that have submitted a declaration pursuant to § 801.401(a) may request in writing, at any time prior to the Committee taking action under § 801.407(a), that such declaration be withdrawn. Such request shall be directed to the Staff Chairperson and shall state the reasons why the request is being made and state whether the transaction that is the subject of the declaration is being fully and permanently abandoned. An official of the Department of the Treasury will promptly advise the parties to the transaction in writing of the Committee's decision.

(d) The Committee may not request or recommend that a declaration be withdrawn and refiled, except to permit parties to a pilot program covered transaction to correct material errors or omissions in the declaration submitted with respect to that pilot program covered transaction.

(e) A party (or parties) may not submit more than one declaration for the same or a substantially similar transaction without approval from the Staff Chairperson.

§ 801.407 Committee actions.

(a) Upon receiving a declaration submitted pursuant to § 801.401 with respect to a pilot program covered transaction, the Committee may, at the discretion of the Committee:

(1) Request that the parties to the transaction file a written notice pursuant to subpart E;

(2) Inform the parties to the transaction that the Committee is not able to complete action under section 721 with respect to the transaction on the basis of the declaration and that the parties may file a written notice under part 800 to seek written notification from the Committee that the Committee has concluded all action under section 721 with respect to the transaction;

(3) Initiate a unilateral review of the transaction under § 801.504; or

(4) Notify the parties in writing that the Committee has concluded all action under section 721 with respect to the transaction.

(b) The Committee shall take action under paragraph (a) within the time period set forth in § 801.404(b).

§ 801.408 Confidentiality.

The provisions of § 800.702 of this chapter shall apply to information submitted to the Committee through a declaration.

§ 801.409 Penalties.

(a) Any person who fails to comply with the requirements of § 801.401 may be liable to the United States for a civil

penalty not to exceed the value of the pilot program covered transaction.

(b) The provisions of § 800.801(a), (d), (e), (f), (g), and (h) shall apply to a declaration submitted to the Committee pursuant to § 801.401.

Subpart E—Notice of Pilot Program Covered Transaction

§ 801.501 Notice of pilot program covered transactions.

Parties to a pilot program covered transaction may notify the Committee of the transaction by filing with the Committee a written notice pursuant to § 800.401(a) of this chapter and this subpart.

§ 801.502 Applicability of part 800.

(a) The provisions set forth in Subpart D—Notice; Subpart E—Committee Procedures: Review and Investigation; Subpart F—Finality of Action; Subpart G—Provision and Handling of Information; and Subpart H—Penalties of Part 800 regarding covered transactions shall apply to any pilot program covered transaction notified to the Committee.

(b) Section 800.204(e) shall not apply with respect to any pilot program covered investment for which the Committee completes all action under section 721 pursuant to § 800.504 or § 800.506(d) of this chapter.

§ 801.503 Additional contents of written notice.

(a) In addition to the information required pursuant to § 800.402(c), a written notice of a pilot program covered transaction filed pursuant to § 800.401(a) of this chapter shall include the following information:

(1) A statement as to whether a party to the transaction is stipulating that the transaction is a pilot program covered transaction and a description of the basis for the stipulation;

(2) A statement as to whether the foreign person will acquire any of the following in the pilot program U.S. business:

(i) Access to any material nonpublic technical information in the possession of the pilot program U.S. business, and if so, a brief explanation of the type of access and type of information;

(ii) Membership, observer rights, or nomination rights as set forth in § 801.209(b), and if so, a statement as to the composition of the board or other body both before and after the transaction; or

(iii) Any involvement, other than through voting shares, in substantive decisionmaking of the United States business regarding the use, development, acquisition, or release of critical technologies and if so, a statement as to the involvement in such substantive decisionmaking; and

(3) With respect to the pilot program U.S. business that is the subject of the transaction, a statement as to which critical technology or critical technologies the pilot program U.S. business and its subsidiaries produce, design, test, manufacture, fabricate, or develop, and the relevant six-digit NAICS code, as applicable under §§ 801.212 and 801.213, for each critical technology listed. This statement shall include a description (which may group similar items into general product categories) of the items and a list of any relevant Export Control Classification Numbers under the EAR and United States Munitions List categories under the ITAR, and, if applicable, identify whether any are specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by 10 CFR part 810, nuclear facilities, equipment, and materials covered by 10 CFR part 110 or select agents and toxins covered by 7 CFR part 331, 9 CFR part 121 or 42 CFR part 73.

(b) If the party (or parties) stipulate pursuant to § 800.402(n) of this chapter that the pilot program covered transaction that is the subject of the written notice could result in a covered transaction under part 800, the party (or parties) are not required to include in the written notice the information required by this section.

(c) A party that offers a stipulation acknowledges that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is a pilot program covered transaction, a transaction that could result in control of a pilot program U.S. business by a foreign person, or a foreign government-controlled transaction for the purposes of section 721 and all authorities thereunder, and waives the right to challenge any such determination. Neither the Committee nor the President is bound by any such stipulation, nor does any such stipulation limit the ability of the Committee or the President to act on any authority provided under section 721 with respect to any pilot program covered transaction.

§ 801.504 Agency notice of pilot program covered transactions.

Any member of the Committee, or his designee at or above the Under Secretary or equivalent level, may file an agency notice to the Committee through the Staff Chairperson regarding a pilot program covered transaction for which no declaration has been submitted pursuant to § 801.401 and no written notice has been filed under § 801.501(a) if that member has reason to believe that the transaction is a pilot program covered transaction and may raise national security considerations. Notices filed under this paragraph are deemed accepted upon their receipt by the Staff Chairperson.

Subpart F—Implementation of Certain Authority Provided In FIRRMA

§ 801.601 Implementation of certain authority regarding covered transactions.

Paragraphs (4)(A)(ii) (solely with respect to clauses (iii)(II) and (iv)(II) (solely with respect to an investment described in section 721(a)(4)(B)(iii)(II)) of subparagraph (B)), (4)(B)(iii)(II), (4)(B)(iv)(II) (solely with respect to an investment described in section 721(a)(4)(B)(iii)(II)), (4)(D)(i)(I), 4(D)(i)(II), (4)(D)(i)(III)(bb), (4)(D)(ii)(I)(bb), (4)(D)(ii)(II), (4)(D)(iii)(I), (4)(D)(iv), and (4)(D)(v) of subsection (a) of section 721 shall take effect on the pilot program effective date solely with respect to any pilot program covered transaction. Paragraph (4)(A)(ii) (solely with respect to clauses (iv)(I) and (v) of subparagraph (B)) of subsection (a) of section 721 shall take effect on the pilot program effective date.

§ 801.602 Implementation of certain authority regarding mandatory declarations.

Paragraphs (1)(C)(v)(I), (II), (III), (IV)(aa), (IV)(cc), (IV)(dd), (IV)(ee), (IV)(ff), and (IV)(gg) of subsection (b) of section 721 shall take effect on the pilot program effective date solely with respect to any pilot program covered transaction.

Annex A to Part 801—Industries

Aircraft Manufacturing
NAICS Code: 336411
Aircraft Engine and Engine Parts Manufacturing
NAICS Code: 336412
Alumina Refining and Primary Aluminum Production
NAICS Code: 331313
Ball and Roller Bearing Manufacturing
NAICS Code: 332991
Computer Storage Device Manufacturing
NAICS Code: 334112
Electronic Computer Manufacturing
NAICS Code: 334111
Guided Missile and Space Vehicle Manufacturing
NAICS Code: 336414
Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing
NAICS Code: 336415
Military Armored Vehicle, Tank, and Tank Component Manufacturing
NAICS Code: 336992
Nuclear Electric Power Generation
NAICS Code: 221113

Optical Instrument and Lens Manufacturing
NAICS Code: 333314
Other Basic Inorganic Chemical Manufacturing
NAICS Code: 325180
Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing
NAICS Code: 336419
Petrochemical Manufacturing
NAICS Code: 325110
Powder Metallurgy Part Manufacturing
NAICS Code: 332117
Power, Distribution, and Specialty Transformer Manufacturing
NAICS Code: 335311
Primary Battery Manufacturing
NAICS Code: 335912
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing
NAICS Code: 334220
Research and Development in Nanotechnology
NAICS Code: 541713
Research and Development in Biotechnology (except Nanobiotechnology)
NAICS Code: 541714
Secondary Smelting and Alloying of Aluminum
NAICS Code: 331314
Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing
NAICS Code: 334511
Semiconductor and Related Device Manufacturing
NAICS Code: 334413
Semiconductor Machinery Manufacturing
NAICS Code: 333242
Storage Battery Manufacturing
NAICS Code: 335911
Telephone Apparatus Manufacturing
NAICS Code: 334210
Turbine and Turbine Generator Set Units Manufacturing
NAICS Code: 333611

Dated: October 4, 2018.

Steven T. Mnuchin,

Secretary.

[FR Doc. 2018–22182 Filed 10–10–18; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0855]

RIN 1625–AA00

Safety Zone; Ohio River, Cincinnati, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Ohio River, extending the entire width of the river, from mile marker (MM) 469 to MM 470.5 in Cincinnati, OH. This safety zone is necessary to provide for the safety of persons, vessels, and the marine environment during the Yeatman's Cove fireworks display. Entry into, transiting through, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

DATES: This rule is effective from 8 p.m. through 9 p.m. on October 11, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0855 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Matthew Roberts, Marine Safety Detachment Cincinnati, U.S. Coast Guard; telephone 513–921–9033, email *SECOHV-WWM@USCG.Mil.*

SUPPLEMENTARY INORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. This safety zone must be established by October 11, 2018, and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule. The NPRM process would delay the establishment of the safety zone until after the scheduled date of the fireworks and compromise public safety.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to public interest because immediate action is necessary to respond to the potential safety hazards associated with 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 Sector Ohio Valley (COTP) has determined that potential hazards associated with the fireworks display will be a safety concern for all navigable waters of the Ohio River extending from mile marker (MM) 469 to MM 470.5. The purpose of this rule is to ensure safety of persons, vessels, and the marine environment before, during, and after the Yeatman's Cove fireworks.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 8 p.m. through 9 p.m. on October 11, 2018. The temporary safety zone will cover all navigable waters of the Ohio River, extending the entire width of the river, from MM 469 to MM 470.5. The duration of the temporary safety zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled fireworks display.

No vessel or person will be permitted to enter the temporary safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Ohio Valley. Persons or vessels may request permission to enter the safety zone from the COTP or a designated representative. They may be contacted on VHF–FM radio channel 16 or phone at 1–800–253–7465. If permission is granted, all persons and vessels must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative. The COTP or a designated representative will inform the public of the enforcement date and times for this safety zone, as well as any changes, through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking.

Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the temporary safety zone. This temporary safety zone impacts a one and a half-mile stretch of the Ohio River for one hour on one evening. Moreover, the Coast Guard will issue BNMs via VHF–FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the temporary safety zone may be small entities, for the reasons stated in section V. A. above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone that will prohibit entry on a one and a half mile stretch of the Ohio River for one hour. This rule 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 preliminary Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.T08–0855 to read as follows:

§ 165.T08–0855 Safety Zone; Ohio River, Cincinnati, OH.

(a) *Location.* All navigable waters of the Ohio River, extending the entire width of the river, from mile marker (MM) 469 to MM 470.5 in Cincinnati, OH.

(b) *Effective period.* This section is effective from 8 p.m. through 9 p.m. on October 11, 2018.

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

(2) Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM radio channel 16 or phone at 1–800–253–7465.

(3) If permission is granted, all persons and vessels must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative.

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

Dated: October 5, 2018.

M.B. Zamperini,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2018–22155 Filed 10–10–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0905]

RIN 1625–AA00

Safety Zone; Upper Mississippi River, Mile 182.5, St. Louis, MO

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters within 500 yards of the McKinley Highway and Railroad Bridge located on the Upper Mississippi River at mile marker (MM) 182.5. The safety zone is needed to protect persons, vessels, and the marine environment from potential hazards created by the installation of electrical lines across the river. Entry of persons or vessels into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative.

DATES: This rule is effective without actual notice from October 11, 2018 until October 19, 2018. For the purposes of enforcement, actual notice will be used from September 28, 2018 until October 11, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2018–0905 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Kyle Weitzell, Sector Upper Mississippi River Waterways Management Division, U.S. Coast Guard; telephone 314–269–2573, email *Kyle.W.Weitzell@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)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The final details regarding this project were not determined until September 17, 2018. We must establish this safety zone by September 28, 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 establishment of the safety zone until after the date of the electrical line work and compromise public safety.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is necessary to respond to the potential safety hazards associated with electrical line installation over the Upper Mississippi River.

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 potential hazards associated with electrical line installation over the Upper Mississippi River will be a safety concern for anyone within 500 yards of the McKinley Highway and Railroad Bridge at MM 182.5. This rule is needed to protect persons, vessels, and the marine environment on the navigable waters within the safety zone while electrical lines are pulled across the river.

IV. Discussion of the Rule

This rule establishes a temporary safety zone for a three week period from September 28, 2018 through October 19, 2018, or until the electrical line work is completed, whichever occurs first. The safety zone will cover all navigable waters within 500 yards of the McKinley Highway and Railroad Bridge at MM 182.5 on the Upper Mississippi River, extending the entire width of the river. Transit into and through this safety zone is prohibited during periods of enforcement. This zone will be enforced on approximately nine days during the effective period, during daylight hours, and for approximately five hours on each day. This zone will begin each day that electrical line work is to be performed from approximately 9 a.m. through 2 p.m. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs) and/or through other means of public notice at least 12 hours in advance of each enforcement period, and a safety vessel will coordinate all vessel traffic during the enforcement periods. In addition, the COTP or a designated representative will release regular BNMs while the zone is in effect and will also announce the suspension of zone date via VHF–FM marine channel 16.

The duration of this temporary safety zone is intended to protect persons, vessels, and the marine environment on these navigable waters while the electrical lines are being pulled across the river. No vessel or person will be

permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Upper Mississippi River. To seek entry into the safety zone, contact the COTP or the COTP's designated representative by telephone at 314–269–2332 or on VHF–FM channel 16. Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative. The COTP or a designated representative will inform the public of the enforcement dates and times for this safety zone, as well as any emergent safety concerns that may delay the suspension of the zone each day, through BNMs, Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone impacts a one-half mile stretch of the Upper Mississippi River for approximately five hours on each of nine days. Moreover, the Coast Guard will issue BNMs via VHF–FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the temporary safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator because the rule will allow persons and vessels to seek permission to enter the zone and coordinated entry may be arranged on a case by case basis. Additionally, coordination with several waterways users has taken place to mitigate as much impact as possible.

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 that is anticipated to last approximately 5 hours per day for approximately 9 days during the effective period of this rule which will prohibit entry within 500 yards of the McKinley Highway and Railroad Bridge at MM 182.5 on the Upper Mississippi River. It is categorically excluded from

further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0905 to read as follows:

§ 165.T08–0905 Safety Zone; Upper Mississippi River, mile 182.5, St. Louis, MN.

(a) *Location.* The following area is a safety zone: All navigable waters within 500 yards of the McKinley Highway and Railroad Bridge at mile marker (MM) 182.5 on the Upper Mississippi River, extending the entire width of the river.

(b) *Effective period.* This section is effective from September 28, 2018 through October 19, 2018.

(c) *Enforcement periods.* This section will be enforced on approximately 9 days during the effective period. This section will be enforced each day that electrical line work is to be performed from approximately 9 a.m. through 2 p.m. The Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs) and/or through other means of public notice at least 12 hours in advance of each enforcement period, and a safety vessel will coordinate all vessel traffic during the enforcement periods. In addition, the COTP or a designated representative will release regular BNMs while the zone is in effect and will also announce the suspension of enforcement of the zone on VHF–FM marine channel 16.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry of vessels or persons into this zone is prohibited unless specifically authorized by the 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.

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. To seek entry into the safety zone, contact the COTP or the COTP's representative by telephone at 314–269–2332 or on VHF–FM channel 16.

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

(e) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement dates and times for this safety zone, as well as any emergent safety concerns that may delay the enforcement of the zone each day, through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: September 28, 2018.

S.A. Stoermer,

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

[FR Doc. 2018–22033 Filed 10–10–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0937]

RIN 1625–AA00

Safety Zone; Transmission Line Survey, Tennessee River Mile Marker 300 to 302, Decatur, AL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Tennessee River from mile marker 300 to mile marker 302. This safety zone is necessary to protect persons, property, and the marine environment from potential hazards associated with the underwater survey of several transmission lines. Entry of vessels or persons into this zone is prohibited unless authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

DATES: This rule is effective from 8 a.m. on October 10, 2018 through 6 p.m. on October 17, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0937 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Nicholas Jones, Marine Safety Detachment Nashville, U.S. Coast Guard; telephone 615–736–5421, email *MSDNashville@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Ohio Valley
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

On September 25, 2018, Triton Diving Services notified Marine Safety Detachment Nashville that their underwater transmission line survey at mile marker 301 of the Tennessee River would be ready to commence on October 10, 2018. Triton Diving Services estimates that the work will take one week, and will conclude no later than October 17, 2018.

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 (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 it is impracticable. We must establish this safety zone by October 10, 2018, and 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 safety zone until after the underwater transmission line survey and compromise public safety.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to respond to potential safety hazards associated with the underwater transmission line survey.

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 Ohio Valley (COTP) has determined that potential hazards associated with the underwater transmission line survey will be a safety concern for anyone on a two-mile stretch of the Tennessee River. This rule is necessary to protect persons, vessels, and the marine environment during the transmission line operations.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 8 a.m. on October 10, 2018 through 6 p.m. on October 17, 2018, or until the underwater transmission line survey work is finished, whichever occurs earlier. The safety zone covers all navigable waters from mile marker 300 to mile marker 302 on the Tennessee River in Decatur, AL. The safety zone will be enforced for two periods on each day of the effective period, in the morning from 8 a.m. through noon, and in the afternoon from 1 p.m. through 6 p.m. A safety vessel will coordinate all vessel traffic during the enforcement periods. The duration of the safety zone is intended to protect persons, vessels, and the marine environment during the transmission line operations.

No vessel or person is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of Sector Ohio Valley, U.S. Coast Guard. They may be contacted on VHF Channel 13 or 16, or at 1–800–253–7465. All persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all directions issued by the COTP or the designated representative. The COTP or a designated representative will inform the public of the enforcement times and dates for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget, and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration, of the temporary safety zone. This safety zone prohibits transit on a two-mile stretch of the Tennessee River for about 9 hours on each day of the 7 day period. Breaks in the work will allow for vessels to pass through the safety zone between the morning and afternoon enforcement periods, and a safety vessel will be on-scene to help waterway users coordinate their transits. Moreover, the Coast Guard will issue BNMs via VHF–FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the temporary safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule prohibits transit on a one-mile stretch of the Tennessee River for about 12 hours on weekdays only during a one-month period. 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 U. S. Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.2.

■ 2. Add new § 165.T08–0937 to read as follows:

§ 165.T08–0937 Safety Zone; Transmission Line Survey, Tennessee River, Miles 300 to 302, Decatur, AL.

(a) *Location.* All navigable waters of the Tennessee River from mile marker 300.0 to mile marker 302.0, Decatur, AL.

(b) *Effective period.* This section is effective from 8 a.m. on October 10, 2018 through 6 p.m. on October 17, 2018, or until the underwater transmission line survey work is finished, whichever occurs earlier.

(c) *Enforcement periods.* This section will be enforced each day during the effective period from 8 a.m. through noon, and from 1 p.m. through 6 p.m. A safety vessel will coordinate all vessel traffic during the enforcement periods.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.801 of this part, entry into this area is prohibited unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of Sector Ohio Valley, U.S. Coast Guard.

(2) Persons or vessels requiring entry into or passage through the area must request permission from the COTP or a designated representative. U.S. Coast Guard Sector Ohio Valley may be contacted on VHF Channel 13 or 16, or at 1–800–253–7465.

(3) A safety vessel will coordinate all vessel traffic during the enforcement of this safety zone. All persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all directions issued by the COTP or the designated representative.

(e) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and dates for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

Dated: October 5, 2018.

M.B. Zamperini,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2018–22160 Filed 10–10–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 42

[Docket No. PTO–P–2018–0036]

RIN 0651–AD16

Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (''USPTO'' or ''Office'') revises the claim construction standard for interpreting claims in *inter partes* review (''IPR''), post-grant review (''PGR''), and the transitional program for covered business method patents (''CBM'') proceedings before the Patent Trial and Appeal Board (''PTAB'' or ''Board''). In particular, the Office is replacing the broadest reasonable interpretation (''BRI'') standard such that claims shall now be construed using the same claim construction standard that is used to construe the claim in a civil action in federal district court. This rule reflects that the PTAB in an AIA proceeding will apply the same standard applied in federal courts to construe patent claims. The Office also amends the rules to add that any prior claim construction determination concerning a term of the claim in a civil action, or a proceeding before the International Trade Commission (''ITC''), that is timely made of record in an IPR, PGR, or CBM proceeding will be considered.

DATES:

Effective Date: The changes in this final rule take effect on November 13, 2018.

Applicability Date: This rule is effective on November 13, 2018 and applies to all IPR, PGR and CBM petitions filed on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Michael Tierney and Jacqueline Wright Bonilla, Vice Chief Administrative Patent Judges, by telephone at (571) 272–9797.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose: This final rule revises the rules for IPR, PGR, and CBM proceedings that implemented provisions of the Leahy-Smith America Invents Act (''AIA'') providing for trials

before the Office, by replacing the BRI standard for interpreting unexpired patent claims and substitute claims proposed in a motion to amend with the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b). The rule adopts the same claim construction standard used by Article III federal courts and the ITC, both of which follow *Phillips* v. *AWH Corp.,* 415 F.3d 1303 (Fed. Cir. 2005) (en banc), and its progeny. Under the final rule, the PTAB will apply in an AIA proceeding the same standard applied in federal courts to construe patent claims. This final rule also amends the rules to add a new provision which states that any prior claim construction determination in a civil action or proceeding before the ITC regarding a term of the claim in an IPR, PGR, or CBM proceeding will be considered if that determination is timely filed in the record of the IPR, PRG or CBM proceeding.

Summary of Major Provisions: The Office is using almost six years of historical data, user experiences, and stakeholder feedback to further shape and improve PTAB proceedings, particularly IPR, PGR, and CBM proceedings (''AIA proceedings''). As part of the Office's continuing efforts to improve AIA proceedings, the Office now changes the claim construction standard applied in AIA proceedings involving unexpired patent claims and substitute claims proposed in a motion to amend. The Supreme Court of the United States has endorsed the Office's ability to choose an approach to claim construction for AIA proceedings. *Cuozzo Speed Techs., LLC* v. *Lee,* 136 S. Ct. 2131, 2144–46 (2016) (''That [the appropriate claim construction standard for AIA proceedings] is a question that Congress left to the particular expertise of the Patent Office.'').

In the notice of proposed rulemaking, the Office sought comments on the Office's proposed changes to the claim construction standard used for interpreting unexpired patent claims and substitute claims proposed in a motion to amend. Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceeding Before the Patent Trial and Appeal Board, 83 FR 21221 (May 9, 2018).

The Office received a total of 374 comments, including 297 comments from individuals, 45 comments from associations, 1 comment from a law firm, and 31 comments from corporations. The majority of the comments were supportive of changing the claim construction standard along the lines set forth in the proposed rule. For example, major bar associations, industry groups, patent practitioners, legal professors and scholars, and individuals all supported the change. The commentators also provided helpful insights and suggested revisions, which have been considered in developing this final rule. While there was broad support expressed for using the federal court standard set forth in the proposed rule, some commentators indicated that they were opposed to the change. The Office appreciates the thoughtful comments representing a diverse set of views from the various public stakeholder communities. Upon careful consideration of the public comments, taking into account the effect of the rule changes on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete instituted proceedings, the Office adopts the proposed rule changes (with minor deviations in the rule language, as discussed below). Any deviations from the proposed rule are based upon a logical outgrowth of the comments received.

In particular, this final rule fully adopts the federal court claim construction standard, in other words, the claim construction standard that is used to construe the claim in a civil action under 35 U.S.C. 282(b), which is articulated in *Phillips* and its progeny. This rule states that the PTAB in an AIA proceeding will apply the same standard applied in federal courts to construe patent claims. The claim construction standard adopted in this final rule also is consistent with the same standard that the Office has applied in interpreting claims of expired patents and soon-to-be expired patents. *See, e.g., Wasica Fin. GmbH* v. *Cont'l Auto. Sys., Inc.,* 853 F.3d 1272, 1279 (Fed. Cir. 2017) (noting that ''[t]he Board construes claims of an expired patent in accordance with *Phillips* . . . [and] [u]nder that standard, words of a claim are generally given their ordinary and customary meaning''). This final rule also revises the rules to add that the Office will consider any prior claim construction determination concerning a term of the claim that has been made in a civil action, or a proceeding before the ITC, if that prior claim construction is timely made of record in an AIA proceeding.

Costs and Benefits: This final rule is significant under Executive Order 12866 (Sept. 30, 1993).

Background

On September 16, 2011, the AIA was enacted into law (Pub. L. 112–29, 125 Stat. 284 (2011)), and within one year, the Office implemented rules to govern Office practice for AIA proceedings, including IPR, PGR, CBM, and derivation proceedings pursuant to 35 U.S.C. 135, 316 and 326 and AIA sec. 18(d)(2). *See* Rules of Practice for Trials Before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions, 77 FR 48612 (Aug. 14, 2012); Changes to Implement *Inter Partes* Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents, 77 FR 48680 (Aug. 14, 2012); Transitional Program for Covered Business Method Patents—Definitions of Covered Business Method Patent and Technological Invention, 77 FR 48734 (Aug. 14, 2012). Additionally, the Office published a Patent Trial Practice Guide to advise the public on the general framework of the regulations, including the procedure and times for taking action in each of the new proceedings. *See* Office Patent Trial Practice Guide, 77 FR 48756 (Aug. 14, 2012).

Previously, in an effort to gauge the effectiveness of the rules governing AIA proceedings, the Office led a nationwide listening tour in April and May of 2014. During the listening tour, the Office solicited feedback on how to make AIA proceedings more transparent and effective by adjusting the rules and guidance to the public where necessary. To elicit even more input, in June of 2014, the Office published a Request for Comments in the **Federal Register** and, at public request, extended the period for receiving comments to October 16, 2014. *See* Request for Comments on Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board, 79 FR 36474 (June 27, 2014) (''Request for Comments''). The Request for Comments asked seventeen questions on ten broad topics, including a general catchall question, to gather public feedback on any changes to AIA proceedings that might be beneficial. *See* Request for Comments, 79 FR at 36476–77. At least one question was directed to the claim construction standard.

Upon receiving comments from the public and carefully reviewing the comments, the Office published two final rules in response to the public feedback on this request for comments. In the first final rule, the Office changed the existing rules to, among other things: (1) Increase the page limit for patent owner's motion to amend by ten pages and allow a claims appendix to be filed with the motion; and (2) increase the page limit for petitioner's reply to patent owner's response by ten pages. Amendments to the Rules of Practice for

Trials Before the Patent Trial and Appeal Board, 80 FR 28561 (May 19, 2015). In the second final rule, the Office changed the existing rules to, among other things: (1) Allow new testimonial evidence to be submitted with a patent owner's preliminary response; (2) allow a claim construction approach that emulates the approach used by a district court for claims of patents that will expire before entry of a final written decision; (3) replace page limits with word count limits for major briefing; and (4) add a Rule 11-type certification for papers filed in a proceeding. Amendments to Rules of Practice for Trials Before the Patent Trial and Appeal Board, 81 FR 18750 (April 1, 2016).

The Office last issued a rule package regarding AIA proceedings on April 1, 2016. This final rule was based on comments received during a comment period that opened on August 20, 2015 (only a month after the Federal Circuit's July 2015 decision in the appeal of the first IPR filed, *Cuozzo Speed Technologies, LLC* v. *Lee*) and that closed on November 18, 2015. At that time, the appeal of the Federal Circuit's decision in *Cuozzo* had not yet been decided by the Supreme Court (it was decided on June 20, 2016). Due to the life cycle of AIA trial proceedings and appeals, the comments received during this 2015 comment period came when few Federal Circuit decisions had been issued, and there had been no decisions on AIA appeals from the Supreme Court. From 2016 to present there has been a six-fold increase in the number of opinions relating to AIA proceedings issued by the Federal Circuit as compared to the prior 2012–2015 time frame. Additionally, since the last rule package, the Office has continued to receive extensive stakeholder feedback requesting adoption of the district court claim construction standard for all patents challenged in AIA proceedings. Many of the comments are based on case law and data that was not available when the comments to the last rule package were received in FY 2015. Further, recent studies not available at the time of the 2016 rule package support the concerns expressed by stakeholders regarding the unfairness of using a different claim construction standard in AIA proceedings than that used by the district courts. *See* Niky R. Bagley, *Treatment of PTAB Claim Construction Decisions: Aspiring to Consistency and Predictability,* 32 Berkeley Tech. L.J. 315, 355 (2018) (the application of a different standard may encourage a losing party to attempt a second bite at the apple, resulting in a waste of the parties' and judicial resources alike); Kevin Greenleaf et al., *How Different are the Broadest Reasonable Interpretation and Phillips Claim Construction Standards* 15 (2018), available at *http://www.ipo.org/wp-content/uploads/2018/07/BRI-v-Phillips-Final.pdf* (prospect of differing claim constructions for same claim term is troubling and these differences can determine the outcome of a case); Laura E. Dolbow, *A Distinction without a Difference: Convergence in Claim Construction Standards,* 70 V and L. Rev. 1071, 1103 (2017) (maintaining the separate standards presents problems with inefficiency, lack of uniformity, and decreased confidence in patent rights).

Claim Construction Standard

Prior to this rulemaking, the PTAB construed unexpired patent claims and proposed substitute claims in AIA proceedings using the BRI standard. The BRI standard differs from the standard used in federal courts and the ITC, which construe patent claims in accordance with the principles that the United States Court of Appeals for the Federal Circuit articulated in *Phillips.*

Although the BRI standard is consistent with longstanding agency practice for patents in examination, the fact that the Office uses a claim construction standard in AIA proceedings that is different from that used by federal courts and the ITC means that decisions construing the same or similar claims in those fora may be different from those in AIA proceedings and vice versa. Minimizing differences between claim construction standards used in the various fora will lead to greater uniformity and predictability of the patent grant, improving the integrity of the patent system. In addition, using the same standard in the various fora will help increase judicial efficiency overall. One study found that 86.8% of patents at issue in AIA proceedings also have been the subject of litigation in the federal courts, and the Office is not aware of any change in this percentage since this study was undertaken. Saurabh Vishnubhakat, Arti K. Rai & Jay P. Kesan, *Strategic Decision Making in Dual PTAB and District Court Proceedings,* 31 Berkeley Tech. L.J. 45 (2016) (available at *https://ssrn.com/abstract=2731002*). The high percentage of overlap between AIA proceedings and district court litigation favors using a claim construction standard in AIA proceedings that is the same as the standard used by federal courts and the ITC. That is, the scope of an issued patent should not depend on the happenstance of which court or governmental agency interprets it, at least as far as the objective rules go. Employing the same standard for AIA proceedings and district courts improves uniformity and predictability as it allows the different fora to use the same standards in interpreting claims. *See, e.g., Automated Packaging Sys., Inc.* v. *Free Flow Packaging Int'l, Inc.,* No. 18–cv–00356, 2018 WL 3659014, at *3 (N.D. Cal. Aug. 2, 2018) (finding that a party's failure to advance a particular claim construction during an IPR proceeding ''is not probative to *Markman* claim construction'' because material differences exist between the broadest reasonable interpretation and claim construction under *Phillips*); *JDS Techs., Inc.* v. *Avigilon USA Corp.,* No. 15–cv–10385, 2017 WL 4248855, at *6 (E.D. Mich. Jul. 25, 2017) (holding that arguments in IPR submissions are not relevant to claim construction because ''the USPTO's broadest reasonable construction standard of claim construction has limited significance in the context of patent infringement, which is governed by the more comprehensive scrutiny and principles required by *Phillips* and its progeny'').

In addition, having AIA proceedings use the same claim construction standard that is applied in federal courts and ITC proceedings also addresses the concern that potential unfairness could result from using an arguably broader standard in AIA proceedings. According to some patent owners, the same claim construction standard should apply to both a validity (or patentability) determination and an infringement determination. Because the BRI standard potentially reads on a broader universe of prior art than does the *Phillips* standard, a patent claim could potentially be found unpatentable in an AIA proceeding on account of claim scope that the patent owner would not be able to assert in an infringement proceeding. For example, even if a competitor's product would not be found to infringe a patent claim (under the *Phillips* standard) if it was sold after the patent's effective filing date, the same product nevertheless could potentially constitute invalidating prior art (under the BRI standard) if publicly sold before the patent's effective filing date. As noted by one study, the possibility of differing constructions for the same claim term is troubling, especially when claim construction takes place at the same time in parallel district court proceedings and USPTO proceedings. *Greenleaf* at 3.

The Office's goal is to implement a balanced approach, providing greater predictability and certainty in the patent

system. The Office has carefully considered the submitted comments in view of ''the effect of [the] regulation on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the proceedings in promulgating regulations.'' 35 U.S.C. 316(b) and 326(b). Under 35 U.S.C. 316(a)(4) and 326(a)(4), the Office shall prescribe regulations establishing and governing IPR, PGR, and CBM proceedings and the relationship of such reviews to other proceedings, including civil actions under 35 U.S.C. 282(b). Under 35 U.S.C. 316(a)(2) and 326(a)(2), the Office must prescribe regulations ''setting forth the standards for the showing of sufficient grounds to institute a review.'' Congress intended these administrative trial proceedings to provide ''quick and cost effective alternatives'' to litigation in the courts. H.R. Rep. No. 112 – 98, pt. 1, at 48 (2011), as reprinted in 2011 U.S.C.C.A.N. 67, 78; *see also id.* at 40 (''[The AIA] is designed to establish a more efficient and streamline patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs.''). The claim construction standard could be outcome determinative. *PPC Broadband, Inc.* v. *Corning Optical Comm'ns RF, LLC,* 815 F.3d 734, 740–42 (Fed. Cir. 2016) (noting that ''[t]his case hinges on the claim construction standard applied—a scenario likely to arise with frequency''); *see also Rembrandt Wireless Techs., LP* v. *Samsung Elecs. Co.,* 853 F.3d 1370, 1377 (Fed. Cir. 2017) (noting that ''the Board in IPR proceedings operates under a broader claim construction standard than the federal courts''); *Google LLC* v. *Network-1 Techs., Inc.,* No. 2016–2509, 2018 WL 1468370, at *5 (Fed. Cir. Mar. 26, 2018) (nonprecedential) (holding that ''[i]n order to be found reasonable, it is not necessary that a claim be given its *correct* construction under the framework laid out in *Phillips.*''). Using the same claim construction standard as the standard applied in federal courts would ''seek out the correct construction—the construction that most accurately delineates the scope of the claim invention—under the framework laid out in *Phillips.*'' *PPC Broadband,* 815 F.3d at 740.

In this final rule, the Office revises the rules to provide that a patent claim, or a claim proposed in a motion to amend, shall be construed using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b), including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent. This rule reflects that the PTAB in an AIA proceeding will apply the same standard applied in federal courts to construe patent claims. This change replaces the BRI standard for construing unexpired patent claims and proposed substitute claims in IPR, PGR, and CBM proceedings with the federal court claim construction standard, which is articulated in *Phillips* and its progeny.

Under the amended rules as adopted in this final rule, the Office will construe patent claims and proposed substitute claims in an IPR, PGR, or CBM proceeding by taking into account the claim language itself, the specification, the prosecution history of the patent, and extrinsic evidence, among other things, as briefed by the parties. Having the same claim construction standard for both the original patent claims and proposed substitute claims will reduce the potential for inconsistency in the interpretation of the same or similar claim terms. Additionally, using the federal court claim construction standard is appropriate because, among other things, amendments proposed in AIA proceedings are required to be narrowing, are limited to a reasonable number of substitute claims, and are required to address patentability challenges asserted against the original patent claims. Using the same claim construction standard for interpreting both the original and amended claims also avoids the potential of added complexity and inconsistencies between PTAB and federal court proceedings, and this allows, among other things, the patent owner to understand the scope of the claims and more effectively file motions to amend. Additionally, having the same construction will reduce the potential for situations where a claim term of an original patent claim is construed one way under the federal court standard and yet the very same or similar term is construed a different way under BRI where it appears in a proposed substitute claim.

The Office will apply the standard used in federal courts, in other words, the claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b), which is articulated in *Phillips.* This rule reflects that the PTAB in an AIA proceeding will apply the same standard applied in federal courts to construe patent claims. For example, claim construction begins with the language of the claims. *Phillips,* 415 F.3d at 1312–14. The ''words of a claim are generally given their ordinary and customary meaning,'' which is ''the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, *i.e.,* as of the effective filing date of the patent application.'' *Id.* at 1312–13. The specification is ''the single best guide to the meaning of a disputed term and . . . acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication.'' *Id.* at 1321 (internal quotation marks omitted). Although the prosecution history ''often lacks the clarity of the specification and thus is less useful for claim construction purposes,'' it is another source of intrinsic evidence that can ''inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be.'' *Id.* at 1317. Extrinsic evidence, such as expert testimony and dictionaries, may be useful in educating the court regarding the field of the invention or helping determine what a person of ordinary skill in the art would understand claim terms to mean. *Id.* at 1318–19. However, extrinsic evidence in general is viewed as less reliable than intrinsic evidence. *Id.*

Additionally, to the extent that federal courts and the ITC apply the doctrine of construing claims to preserve their validity as described in *Phillips,* the Office will apply this doctrine in those rare circumstances in AIA proceedings. *Phillips,* 415 F.3d at 1327–28. As the Federal Circuit recognized in *Phillips,* this doctrine is ''of limited utility.'' *Id.* at 1328. Federal courts have not applied that doctrine broadly and have ''certainly not endorsed a regime in which validity analysis is a regular component of claim construction.'' *Id.* at 1327. The doctrine of construing claims to preserve their validity has been limited to cases in which ''the court concludes, after applying all the available tools of claim construction, that the claim is still ambiguous.'' *Id.* (quoting *Liebel-Flarsheim Co.* v. *Medrad, Inc.,* 358 F.3d 898, 911 (Fed. Cir. 2004)). Moreover, the Federal Circuit ''repeatedly and consistently has recognized that courts may not redraft claims, whether to make them operable or to sustain their validity.'' *Rembrandt Data Techs., LP* v. *AOL, LLC,* 641 F.3d 1331, 1339 (Fed. Cir. 2011); *see also MBO Labs., Inc.* v. *Becton, Dickinson & Co.,* 474 F.3d 1323, 1332 (Fed. Cir. 2007) (noting that ''validity construction

should be used as a last resort, not first principle'').

When construing claims in IPR, PGR, and CBM proceedings, the Office will take into account the prosecution history that occurred previously at the Office, including before an examiner during examination, reissue, reexamination, and prior AIA proceedings. *Aylus Networks, Inc.* v. *Apple Inc.,* 856 F.3d 1353, 1361 (Fed. Cir. 2017) (''Because an IPR proceeding involves reexamination of an earlier administrative grant of a patent, it follows that statements made by a patent owner during an IPR proceeding can be considered during claim construction and relied upon to support a finding of prosecution disclaimer.''). This will also include prosecution before an examiner in a related application where relevant (*Trading Technologies Intern., Inc.* v. *Open E Cry, LLC,* 728 F.3d 1309 (Fed. Cir. 2013)) and any argument made on appeal of a rejection before the grant of the patent for which review is sought, as those arguments are before the examiner when the decision to allow an application is made (*see TMC Fuel Injection System, LLC* v. *Ford Motor Co.,* 682 Fed. Appx. 895 (Fed. Cir. 2017)).

During an AIA proceeding, the patent owner may file a motion to amend an unexpired patent to propose a reasonable number of substitute claims, but the proposed substitute claims ''may not enlarge the scope of the claims of the patent or introduce new matter.'' 35 U.S.C. 316(d) and 326(d); 37 CFR 42.121(a)(2) and 42.221(a)(2); *see also Aqua Prods., Inc.* v. *Matal,* 872 F.3d 1290, 1306 (noting that ''[t]he patent owner proposes an amendment that it believes is sufficiently *narrower* than the challenged claim to overcome the grounds of unpatentability upon which the IPR was instituted''). As discussed above, and among other things, having the same claim construction standard for both the original patent claims and proposed substitute claims will reduce the potential for inconsistency in the interpretation of the same or similar claim terms.

The Office does not expect that this rule will result in direct costs to applicable entities. The Office's understanding is informed partly by the PTAB's experience in applying *Phillips* in some AIA trials (as noted herein, PTAB has used *Phillips* for AIA trials concerning expired patents since 2012 and for AIA trials concerning soon-to-be-expired patents since 2016). In the PTAB proceedings that are currently conducted using the *Phillips* standard, PTAB applies the same procedures—including the same page limits and other briefing requirements—as in the PTAB proceedings that use the BRI standard. In other words, the PTAB currently uses the same regulations, procedures, and guidance for both types of AIA trials: *i.e.,* for both the AIA trials that use the BRI standard as well as those AIA trials (concerning expired and soon-to-expire patents) that use the *Phillips* standard. These are found in the Code of Federal Regulations (at 37 CFR part 42) and on USPTO's website, including at the following page where USPTO has links to the relevant regulations as well as the Trial Practice Guide that informs the public of standard practices before PTAB during AIA trials: *https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/resources.* Because these are used now for trials under both BRI and *Phillips,* USPTO does not need to revise these procedures and guidance to implement the change set forth in this final rule, and does not need to make regulatory changes other than those set forth in this final rule.

Moreover, PTAB has not found that parties to these AIA proceedings under *Phillips* require expanded page limits or otherwise incur more expense in their AIA trials than parties in AIA proceedings under BRI. The USPTO's experience is that arguments under *Phillips* are not more complicated or more lengthy than arguments under the BRI standard. Rather, both standards are familiar to patent practitioners appearing before the USPTO and district courts. Consequently USPTO expects that these proceedings utilizing the *Phillips* standard will operate procedurally in much the same way as BRI proceedings using the BRI standard, that they will cost USPTO and parties no more to conduct, and that they will be completed within the statutory deadline. In sum, the direct result of USPTO changing the claim construction standard argued in some AIA trials from one well-known standard to another well-known (as noted, a standard already used in some AIA trials) will not have direct economic impacts.

Given the fact that 86.8% of PTAB proceedings have been the subject of litigation in Federal court, where parties are already using the *Phillips* standard, the Office reasonably anticipates expanding the use of the *Phillips* standard to all AIA trials should result in parties realizing some efficiency in the legal work required for their PTAB proceedings. Not only will applying the federal court claim construction standard in AIA proceedings lead to greater consistency with the federal courts and the ITC, where such consistency will lead to greater certainty as to the scope of issued patent claims, but it will also help achieve the goal of increasing judicial efficiency and eliminate arguments relating to different standards across fora. The Office has not increased the page limits of briefs for the AIA trials that currently use *Phillips,* and the paperwork burden associated with briefings for trials is covered by the current information collections based on the current page limits, thus the overall cost burden on respondents is not expected to change. It is possible that this rule may produce a slight reduction in the indirect costs as a result of improving efficiency by reducing wasted effort in conducting duplicative efforts in construing claims. For example, in some cases there may be savings in legal fees because the parties may be able to leverage work done in the district court. Using the same claim construction standard across the fora would increase efficiency, as well reduce cost and burden because parties would only need to focus their resources to develop a single set of claims construction arguments. In summary, given the Office's experience with existing PTAB proceedings currently conducted using the *Phillips* standard and the efficiencies that may be realized by having consistency between all AIA trials and the standard use in federal court litigation, the Office does not expect that this rule change will impose costs on parties.

Implementation

The changes to the claim construction standard will apply to proceedings where a petition is filed on or after the effective date of the final rule. The Office will apply the federal court claim construction standard, in other words, the claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b), which is articulated in *Phillips,* to construe patent claims and proposed substitute claims in AIA proceedings in which trial has not yet been instituted before the effective date of the final rule. The Office will continue to apply the BRI standard for construing unexpired patent claims and proposed substitute claims in AIA proceedings where a petition was filed before the effective date of the final rule.

As to comments received regarding filing a prior claim construction determination, parties should submit the prior claim construction determination by a federal court or the ITC in an AIA proceeding as soon as that determination becomes available. Preferably, a prior claim construction determination should be submitted with the petition, preliminary response, or

response, with explanations. *See* the response to comment 37 below for more information.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, part 42, is amended as follows:

Sections 42.100, 42.200, and 42.300: Sections 42.100(b), 42.200(b), and 42.300(b) are amended to replace the first sentence with the following: A claim of a patent, or a claim proposed in a motion to amend, shall be construed using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b), including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent. This revision replaces the BRI standard for construing unexpired patent claims and proposed substitute claims during an IPR, PGR, or CBM proceeding with the same claim construction standard that is used in federal courts and ITC proceedings. As discussed above, the Office will apply the standard used in federal courts and the ITC, which construe patent claims in accordance with the principles that the Federal Circuit articulated in *Phillips.* This rule reflects that the PTAB in an AIA proceeding will apply the same standard applied in federal courts to construe patent claims. The Office will construe patent claims and proposed substitute claims based on the record of the IPR, PGR, or CBM proceeding, taking into account the claim language itself, specification, and prosecution history pertaining to the patent, as well as relevant extrinsic evidence, all as in prevailing jurisprudence of Article III courts. The Office will take into account the prosecution history that occurred previously in proceedings at the Office prior to the IPR, PGR, or CBM proceeding at issue, including in another AIA proceeding, or before an examiner during examination, reissue, and reexamination. As in a district court proceeding, the parties should point out the specific portions of the specification, prosecution history, and relevant extrinsic evidence they want considered, and explain the relevancy of any such evidence to the arguments they advance. Each party bears the burden of providing sufficient support for any construction advanced by that party.

The Office has considered using different claim construction standards for IPR, PGR, and CBM proceedings, but, for consistency, the Office adopts the same claim construction to be applied in all IPR, PGR, and CBM proceedings. By maintaining consistency among the various proceedings, the integrity, predictability and reliability of the patent system is thus enhanced.

Sections 42.100(b), 42.200(b), and 42.300(b) are also amended to state that ''[a]ny prior claim construction determination concerning a term of the claim in a civil action, or a proceeding before the [ITC], that is timely made of record in the . . . proceeding will be considered.'' Under this provision, the Office will consider any prior claim construction determination in a civil action or ITC proceeding if a federal court or the ITC has construed a term of the involved claim previously using the same standard, and the claim construction determination has been timely made of record in the IPR, PGR, or CBM proceeding.

Sections 42.100(b), 42.200(b), and 42.300(b) are further amended by deleting the second and third sentences, eliminating the procedure for requesting a district court-type claim construction approach for a patent expiring during an IPR, PGR, or CBM proceeding. Such a procedure is no longer needed because the Office will use the same claim construction standard that is used in federal courts and ITC proceedings uniformly for interpreting all claims in an IPR, PGR, or CBM proceeding.

Response to Comments

The Office received a total of 374 written submissions of comments from intellectual property organizations, businesses, law firms, legal professors and scholars, patent practitioners, and others. The comments provided support for, opposition to, and diverse recommendations on the proposed rules. The large majority of the comments were supportive of changing the claim construction standard along the lines proposed in the proposed rule. For example, major bar associations, industry groups, patent practitioners, legal professors and scholars, and individuals supported the change.

The Office appreciates the thoughtful comments, and has considered and analyzed the comments thoroughly. All of the comments are posted on the PTAB website at *https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/comments-changes-claim-construction.*

The Office's responses address the comments that are directed to the proposed changes set forth in the notice of proposed rulemaking. 83 FR 21221. Any comments directed to topics that are beyond the scope of the notice of proposed rulemaking will not be addressed at this time.

Uniformity, Predictability, and Certainty

Comment 1: Most comments strongly supported the proposed rules that adopt the *Phillips* claim construction standard for interpreting claims in IPR, PGR, and CBM proceedings (''AIA proceedings''), harmonizing the claim construction standard between AIA proceedings before the PTAB and the proceedings before federal courts and the ITC. For example, most of the comments noted that this rule change should lead to greater consistency with the federal courts and ITC, and such consistency will lead to greater certainty as to the scope of issued patent claims. The comments also indicated that the rule change will promote a balanced approach, providing greater predictability and certainty in the patent system, which will, in turn, increase judicial efficiency and reduce economic waste. The comments further explained that adopting the *Phillips* standard will potentially provide for more accurate claim constructions and reduce incentives for parallel-track litigation and increase efficiency between fora.

Responses: The Office agrees with these comments. Under the amended rules, as adopted in this final rule, the Office will construe a claim using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b), aligning the claim construction standard used in AIA proceedings with the standard used in federal courts and ITC proceedings. As noted by the commentators, the rule change will lead to greater consistency and harmonization with the federal courts and the ITC and lead to greater certainty and predictability in the patent system. We further agree this will increase judicial efficiencies between PTAB and other fora. For example, several trade associations and corporations commented that the use of the same claim construction standard will reduce duplication of efforts by parties and by the various tribunals. This is important because, as one study indicated, there is significant overlap between AIA proceedings and district court litigation. Saurabh Vishnubhakat, Arti K. Rai & Jay P. Kesan, ''Strategic Decision Making in Dual PTAB and District Court Proceedings,'' 31 Berkeley Rec. L.J. 45 (2016), *https://ssrn.com/abstract=2731002.* As suggested by the authors of the study, the application of the same standard of claim construction by the PTAB, federal courts, and the ITC would increase efficiency as it would

enhance the ability of federal courts and the ITC to rely upon PTAB claim constructions in subsequent proceedings. *Id.* at 81.

Comment 2: Some comments opposed the proposed rule changes, arguing that Congress intended the PTAB to use the BRI standard in AIA proceedings, Congress has declined to change the claim construction standard, the Office should wait until Congress changes the claim construction standard, and the BRI standard is appropriate for the reasons provided by the Office in the initial AIA proceeding final rule in 2012 (77 FR at 48697–99), the 2016 final rule (81 FR at 18752), and the government briefs in *Cuozzo Speed Techs., LLC* v. *Lee,* 136 S. Ct. 2131 (2016) and *Oil States Energy Services, LLC* v. *Greene's Energy Group, LLC,* 138 S. Ct. 1365 (2018). Another comment suggested that the Office has previously taken the position in *Cuozzo* that the history, congressional intent, amendments, and statutory framework of the AIA support the BRI in AIA proceedings. A few comments requested that, if the Office adopts the proposed changes, the Office should implement procedures that will safeguard the AIA's goal of improving patent quality and minimize unfairness to the parties. Some of the comments suggested that the proposal is arbitrary and capricious, and the Office did not provide adequate notice, explanation, or evidence and should issue a new proposed rule.

Response: The Office appreciates the thoughtful comments. Since the publication of the second final rule in 2016, the Director has considered the significant experience the Office has now had with its almost six years of AIA proceedings. The Office also now has the benefit of several additional years of Federal Circuit decisions, resulting in hundreds of additional decisions that were not available during the first several years of AIA implementation. This additional experience, and recent studies, support the numerous concerns expressed by stakeholders with the use of BRI, and that compelling reasons exist to apply the same standard in AIA proceedings as that used in district court.

The Supreme Court has endorsed the Office's ability to choose an approach to claim construction for AIA proceedings. *Cuozzo,* 136 S. Ct. at 2142–46 (''That is a question that Congress left to the particular expertise of the Patent Office.''). Congress did not expressly set forth a claim construction standard in the statute, but rather deferred to the Office's expertise to select the appropriate standard for construing claims in AIA proceedings. *Id.* (noting that ''neither the statutory language, its purpose, [nor] its history suggest that Congress considered what standard the agency should apply when reviewing a patent claim in inter partes review'').

Notably, the statutory provision set forth in 35 U.S.C. 316(a)(4) grants the Office authority to issue ''regulations . . . establishing and governing inter partes review under this chapter and the relationship of such review to other proceedings under this title.'' For PGR and CBM proceedings, 35 U.S.C. 326(a)(4) contains a similar provision. Furthermore, under 35 U.S.C. 316(a)(2) and 326(a)(2), the Office must prescribe regulations ''setting forth the standards for the showing of sufficient grounds to institute a review.'' In prescribing regulations under 35 U.S.C. 316(a) and 326(a), and among other things, the Director has considered ''the effect of any such regulation on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete proceedings instituted under this chapter,'' in accordance with 35 U.S.C. 316(b) and 326(b). In addition, the Director has carefully considered all of the comments received. As stated in the notice of proposed rulemaking, and with all of this information in mind, the Office's goal is to implement a fair and balanced approach, providing greater predictability and certainty in the patent system. This, in turn, implements the congressional intent of the AIA. H.R. Rep. No. 112 – 98, pt. I at 48 (2011), as reprinted in 2011 U.S.C.C.A.N. 67, 78; *see also id.* at 40 (''[The AIA] is designed to establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs.'').

Prior to this final rule, the PTAB already has been applying the principles articulated in *Phillips* and its progeny for interpreting claims of expired patents and soon-to-be-expired patents in AIA proceedings. Using this standard for interpreting all other claims will result in a uniform standard for all claims under review in AIA proceedings before the PTAB, in federal court litigations, and at the ITC. Significantly, as noted by some of the comments, applying the federal court claim construction standard in AIA proceedings will lead to greater consistency with the federal courts and the ITC, and such consistency will lead to greater certainty as to the scope of issued patent claims, and will help achieve the goal of increasing judicial efficiency and eliminate arguments relating to different standards across fora, which will lead to cost savings for all litigants. As one commenter observed, the adoption of the federal court claim construction standard is consistent with ''uniform interpretation of the patent laws,'' which is a well-recognized goal of the patent system as it allows the strength of patents to be meaningfully and positively predicted. Hearings on H.R. 6033, H.R. 6934, H.R. 3806 and H.R. 2414, Before the Subcomm. on Courts, Civil Liberties and the Admin. of Justice of the House Comm. on the Judiciary, 96th Cong., 797 (1980).

The Office recognizes that in some respects AIA proceedings serve a different purpose than that of litigation in the federal courts. *Cuozzo,* 136 S. Ct. at 2143–44. For example, Congress intended AIA proceedings to provide ''quick and cost effective alternatives'' to litigation in the courts, as well as to ''provide a meaningful opportunity to improve patent quality and restore confidence in the presumption of validity that comes with issued patents in court.'' H.R. Rep. No. 112 – 98, pt. I at 48 (2011), as reprinted in 2011 U.S.C.C.A.N. 67, 78; *see also id.* at 40 (''[The AIA] is designed to establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs.''). The changes in the proposed rule will better effect these purposes, for example by reducing costs associated with duplicative proceedings, and improving efficiency by reducing wasted effort.

As to the comment pointing to prior arguments advanced in connection with the *Cuozzo* case, the Supreme Court expressly rejected the argument that the history, congressional intent, amendments, and statutory framework of the AIA required the use of BRI in AIA proceedings: ''Finally, neither the statutory language, its purpose, or its history suggest that Congress considered what standard the agency should apply when reviewing a patent claim in inter partes review.'' *Cuozzo,* 136 S. Ct. at 2142–46. The Court further held that such decisions were left to the sound discretion of the Office: ''[W]e do not decide whether there is a better alternative as a policy matter. That is a question that Congress left to the particular expertise of the Patent Office.'' *Id.* As explained in detail in this final rule package, the six years of experience with AIA proceedings, the many additional parallel court cases, as well as the numerous requests from stakeholders concerned with the use of BRI and comments received, make clear that using the same claim construction standard as in federal courts and the ITC better serves the public and the intent

of the AIA to provides, among other things, ''a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs.'' AIA H.R. Rep. No. 112 – 98, pt. I at 48 (2011), as reprinted in 2011 U.S.C.C.A.N. 67, 78; *see also id.* at 40. Indeed, many of the bases originally advanced in 2012 as justifying the use of BRI have not been borne out. *See e.g., Greenleaf* at 11 (''It is not clear, given more than five years of experience with PTAB post-grant proceedings, that there is any justification for using BRI for issued patents).

As to the suggestion that the rulemaking has been arbitrary and capricious, the Office has proceeded with the implementation of AIA proceedings deliberately and with caution, continuously engaging the public and seeking feedback to gauge the effectiveness of the rules and procedures that govern AIA proceedings. At each stage of the process, including in this final rule, the Office has supported its exercise of discretion with reasoned analysis in response to comments received. For example, in the initial 2012 rulemaking, the Office adopted the BRI standard for construing claims of unexpired patents based on its prior experience, as well as adopting the principles articulated in *Phillips* and its progeny for interpreting claims of expired patents. 77 FR 48680. To elicit even more input, in June of 2014, the Office published a Request for Comments in the **Federal Register** and, at public request, extended the period for receiving comments to October 16, 2014. *See* Request for Comments on Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board, 79 FR 36474 (June 27, 2014) (''Request for Comments''). The Request for Comments asked seventeen questions on ten broad topics, including a general catchall question, to gather public feedback on any changes to AIA proceedings that might be beneficial. See Request for Comments, 79 FR at 36476–77. This was followed by the 2016 rulemaking, where the Office incrementally expanded the use of the district court claim construction standard, which is articulated in *Phillips,* to interpret claims of soon-to-be-expired patents in AIA proceedings. 81 FR 18750.

As noted above, since the time of the last AIA rule package, the Federal Circuit has issued a six-fold increase in the number of decisions relating to AIA proceedings. And now, in light of these decisions and based on the PTAB's experience over six years, including applying the federal court claim construction standard in AIA proceedings in certain contexts, the Office has determined that employing the district court standard for interpreting all claims in AIA proceedings will continue to enhance predictability and reliability of the patent system.

The PTAB's use of the district court standard, for interpreting all claims in AIA proceedings, will address concerns that have been continually expressed by stakeholders and demonstrated in recent studies that the use of a different claim construction standard in AIA proceedings wastes resources and has the potential for resulting in troubling differences in construction-outcomes between proceedings. *See Bagley* at 354; *Greenleaf* at 9. Notably, the PTAB will continue to provide a second look at an earlier administrative grant of a patent by determining whether to review the claims challenged by a petitioner based on the prior art and grounds asserted in the petition, with any final action taking into account the evidence in the entire record of any instituted proceeding. In addition, the PTAB will consider the claim language itself, the specification, prosecution history pertaining to the patent, and any prior claim construction determinations from the federal courts and the ITC that have been timely made of record, to provide a claim construction determination in accordance with the amended rules as adopted in this final rule. The PTAB will consider the issues as briefed by the parties, and may review whatever portions of the record are required to arrive at the ''correct'' construction pursuant to *Phillips* and its progeny. The PTAB also will continue to provide an initial claim construction determination in the institution decision based on the record at the preliminary stage, including the parties' proposed claim constructions and supporting evidence. If a trial is instituted, the parties will continue to have sufficient opportunities to submit additional arguments and evidence during the trial, addressing the PTAB's initial claim construction determination before the oral hearing. The PTAB will continue to consider the entirety of the trial record before entering a final written decision that sets forth any final claim construction determination. A party dissatisfied with the final written decision, including the final claim construction determination, will continue to have the opportunity to file a request for rehearing without prior authorization from the PTAB and the right to appeal the decision to the Federal Circuit. All parties will continue to have a full and fair opportunity to present arguments and evidence prior to any final determination. The vast majority of commentators, including those few opposed to the change, agree that the PTAB's current procedures are effective in implementing the goals of the AIA, and those procedures remain available.

As in the federal courts and ITC, the PTAB will ''seek out the correct construction—the construction that most accurately delineates the scope of the claim invention—under the framework laid out in *Phillips.*'' *PPC Broadband,* 815 F.3d at 740. To promote fairness, balance, predictability, and certainty in the patent system, the Office is exercising its statutory authority under 35 U.S.C. 316(a)(2), 316(a)(4), 326(a)(2), and 326(a)(4) to adopt the federal court claim construction standard, which is articulated in *Phillips,* for interpreting claims in AIA proceedings, harmonizing the claim construction standards between AIA proceedings and proceedings before the federal courts and ITC. *See, e.g.,* 35 U.S.C. 316(a)(4) (''The Director shall prescribe regulations . . . establishing and governing inter partes review of this chapter and the relationship of such review to other proceedings under this title.''). Fundamentally, each of the federal courts, the ITC, and the PTAB will use the same objective standards under the *Phillips* framework to arrive at the claim construction when performing their analysis. Predictability and reliability of the patent system are thus enhanced, for example by increasing the likelihood that a claim will be construed in the same manner by the federal courts, the ITC, and the PTAB.

Consistency

Comment 3: Many comments stated that the rule change will promote consistency between the various fora. The comments suggested this would result in a more uniform and fair patent system. The comments further asserted adoption of the *Phillips* standard prevents parties from taking inconsistent positions, such as a patent challenger arguing for a broad scope in a PTAB proceeding (under BRI) and a narrow scope (under *Phillips*) in district court to avoid a finding of infringement.

Response: The Office agrees that aligning the claim construction standard used in PTAB proceedings with that used by the federal courts and the ITC promotes consistency in claim construction rulings and patentability determinations. The Federal Circuit has stated that when a party loses in a court proceeding challenging a patent, ''the

PTO ideally should not arrive at a different conclusion'' on the same presentations and arguments. *See In re Baxter,* 678 F.3d 1357, 1365 (Fed. Cir. 2012). Adoption of the *Phillips* standard will reduce the potential for inconsistent results between different fora. We further agree that consistency leads to a more uniform, reliable, and predictable patent system. Specifically, as discussed above, the adoption of the federal court claim construction standard is consistent with ''uniform interpretation of the patent laws,'' which is a well-recognized goal of the patent system as it allows the strength of patents to be meaningfully and positively predicted. Hearings on H.R. 6033, H.R. 6934, H.R. 3806 and H.R. 2414, Before the Subcomm. on Courts, Civil Liberties and the Admin. of Justice of the House Comm. on the Judiciary, 96th Cong., 797 (1980).

Comment 4: Some comments stated that the BRI standard ensures claims will be interpreted consistently among different proceedings before the Office, and applying different claim construction standards for different parts of the Office will lead to inconsistency, confusion, and complexity within the Office. A few comments also asserted that adopting the *Phillips* standard will frustrate the Office's statutory authority to consolidate different proceedings involving the same patent. Some of the comments further suggested that the Office may find claims patentable over prior art in an AIA proceeding applying the *Phillips* standard and at the same time unpatentable over the same prior art in a reexamination applying the BRI standard. The comments noted that, if the PTAB does not apply the BRI standard in AIA proceedings, the Office will be required to approve in an AIA proceeding a patent claim that it would have rejected in an initial examination or reexamination considering the same prior art.

Response: As the Federal Circuit recently explained, ''[i]n many cases, the claim construction will be the same under [both the BRI and *Phillips*] standards.'' *In re CSB-System Int'l, Inc.,* 832 F.3d 1335, 1341 (Fed. Cir. 2016). ''Even under the broadest reasonable construction rubric . . . , the board must always consider the claims in light of the specification and teachings in the underlying patent.'' *In re Power Integrations, Inc.,* 884 F.3d 1370, 1375 (Fed. Cir. 2018) (citation and internal quotation marks omitted). ''And there is no reason why this construction could not coincide with that of a court in litigation.'' *Id.* Moreover, in an AIA proceeding, ''[t]he PTO should also consult the patent's prosecution history in proceedings in which the patent has been brought back to the agency for a second review.'' *Microsoft Corp.* v. *Proxyconn, Inc.,* 789 F.3d 1292, 1298 (Fed. Cir. 2015), *overruled on other grounds by Aqua Prods., Inc.* v. *Matal,* 872 F.3d 1290 (Fed. Cir. 2017) (en banc). ''[T]he Board's construction cannot be divorced from the specification and the record evidence'' and ''must be consistent with the one that those skilled in the art would reach.'' *Id.* (citations and internal quotation marks omitted). ''A construction that is unreasonably broad and which does not reasonably reflect the plain language and disclosure will not pass muster.'' *Id.* (citation and internal quotation marks omitted). In addition, the recent IPO study acknowledged that ''[i]t is difficult to dissect or predict the differences between outcomes under BRI or *Phillips*'' and that ''[t]he claim construction procedure under both standards appears to be very similar if not identical.'' *Greenleaf,* at 9. The IPO study indicates that, since 1986, ''there have been very few decisions in which courts have attributed a variance in claim interpretation to the differences between the two standards.'' *Id.* at 1. In sum, consistent with the IPO study and the Federal Circuit, we believe that the patentability determination reached will be consistent for BRI and *Phillips* in the vast majority of cases decided.

Furthermore, the Office already has been applying the principles articulated in *Phillips* to claims of expired patents and soon-to-be expired patents that were previously examined, reexamined, or reissued, under the BRI standard. Based on the Office's years of experience, employing the federal court claim construction standard, which is articulated in *Phillips,* for interpreting all claims in AIA proceedings will not lead to inconsistency, confusion, and complexity within the Office. For example, the Office has been applying the *Phillips* standard in ex parte reexamination, *e.g.* with regard to expired claims, since its implementation in 1981.

In direct contrast to AIA proceedings, the Office is required by statute to conduct reissue and reexamination proceedings according to the procedures established for initial examination. 35 U.S.C. 251(c) and 305. Under 35 U.S.C. 315(d) and 325(d), during the pendency of an AIA proceeding, ''if another proceeding or matter involving the patent is before the Office, the Director may determine the manner in which the [AIA proceeding] or other proceeding or matter may proceed, including providing for stay, transfer, consolidation, or termination of any such matter or proceeding.'' The Office has exercised its discretion under these statutory provisions to stay and/or terminate reexaminations and reissue proceedings. The Office has not, to date, merged or consolidated a reexamination or reissue proceeding with an AIA proceeding. Prior to making a determination to consolidate proceedings, the Office will consider whether the claim construction standard would have any material effect on the claim construction determinations in the specific proceedings at issue, for example by considering whether a term at issue in any of the proceedings has a different construction under the different claim construction standards. Additionally, as to comments that the Office will arrive at different claim constructions in AIA proceedings and reexaminations, the Office has existing tools to address these situations, including, *e.g.,* the use of discretion under 35 U.S.C. 325(d).

As stated in the notice of proposed rulemaking, one study found that 86.8% of patents at issue in AIA proceedings also have been the subject of litigation in the federal courts. Saurabh Vishnubhakat, Arti K. Rai & Jay P. Kesan, *Strategic Decision Making in Dual PTAB and District Court Proceedings,* 31 Berkeley Tech. L.J. 45 (2016), *http://ssrn.com/abstract=2731002.* Based on these data, feedback the Office has received from the public, recent case law regarding claim construction standards, and the submitted comments, it is appropriate to harmonize the claim construction standard used in AIA proceedings with the standard used in the federal courts and ITC proceedings.

In addition, unlike initial examination of pre-issued claims in a patent application, patent owners in AIA proceedings have not filed as many motions to amend as previously anticipated (through June 30, 2018, the Office has decided only 196 motions to amend, granting 4%, granting-in-part 6%, and denying 90%). As noted in a comment received from a trade association, patent owners are reluctant to substantially amend claims that have been asserted in a co-pending infringement litigation. This comment stated that ''this is generally believed to be due to intervening rights [*e.g.,* under 35 U.S.C. 318(c), 328(c), and 252] and the loss of past damages [for infringement in a co-pending litigation] after amendment, not to any inability to amend.'' *See, e.g.,* McKeown, *Amendment Efforts at PTAB Trend Downward,* LexisNexis Newsroom (Dec. 2014), available at *https://*

www.lexisnexis.com/legalnewsroom/intellectual-property/b/patent-lawblog/archive/2014/12/16/amendment-efforts-at-ptab-trend-downward.aspx (noting that ''historically, patentees would rarely amend claims at the USPTO that were asserted in a co-pending litigation'' due to intervening rights and tying the lack of use of amendments in IPR to those intervening rights). Claim amendments in AIA proceedings have therefore been relatively rare and substantially different than amendments during examination. Accordingly, one of the original bases suggested for the use of BRI has not been borne out, and the Office no longer believes that the opportunity to amend in an AIA proceeding justifies the use of BRI.

On balance, after years of experience and in view of the comments received, the Office has determined that using a claim construction standard for issued patents subject to AIA proceedings that is consistent with the standard applied in federal courts and the ITC is better for advancing the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the proceedings.

Comment 5: Some comments asserted that harmonizing the claim construction standards between AIA proceedings and the proceedings before the federal courts and the ITC would not necessarily result in the same claim constructions. They pointed out that federal courts applying the *Phillips* standard can reach different constructions for a particular claim (as in the situation where the Federal Circuit disagrees with the construction provided by a district court); many courts may not wholly accept the PTAB's constructions; and the evidentiary standard in AIA proceedings is different from the standard used in the federal courts and the ITC.

Response: The PTAB is required by statute to employ a different evidentiary standard for determining the patentability of a challenged claim than that used in federal courts and the ITC. However, there is no statute applicable to either the PTAB or federal courts that requires any different standards, evidentiary or otherwise, for claim construction. Moreover, as to harmonizing claim construction standards, the Federal Circuit recently explained that the prosecution disclaimer doctrine includes patent owner's statements made in an AIA proceeding, to ensure that ''claims are not argued one way in order to maintain their patentability and in a different way against accused infringers.'' *Aylus Networks, Inc.* v. *Apple Inc.,* 856 F.3d 1353, 1360–61 (Fed. Cir. 2017) (citing *Southwall Techs., Inc.* v. *Cardinal IG Co.,* 54 F.3d 1570, 1576 (Fed. Cir. 1995)). As the Federal Circuit acknowledged, consistency between fora is important.

Under the amended rules, as adopted by this final rule, the PTAB will apply the same claim construction standard as used in federal courts and the ITC, ''seek[ing] out the correct construction—the construction that most accurately delineates the scope of the claim invention—under the framework laid out in *Phillips.*'' *PPC Broadband,* 815 F.3d at 740. The PTAB also will consider any prior claim construction determinations from the PTAB, the federal courts, and the ITC that are timely made of record to promote consistency. Therefore, the amended rules will encourage parties to take a consistent position with respect to claim constructions in their patentability and infringement arguments, to ensure that whatever decision issues, regardless of forum, is reflective of the ''correct'' construction.

As to comments that courts may not wholly accept the PTAB's constructions, this is an issue that federal courts will decide in the particular cases that come before them, based on the record available at that time. Having the same claim construction standard, however, increases the likelihood that courts may consider the PTAB's construction for a given patent.

Clarity and Public Notice

Comment 6: Several comments were in favor of the *Phillips* standard for interpreting claims in AIA procedures because it would promote clarity and eliminate the current disparity in how claims are construed. The comments asserted that the current differences in claim construction standards undermine the public notice function and subject patent owner's property rights to unnecessary and undesirable risks, which discourages investment in innovative ideas and hurts inventors and innovation.

Response: We agree that adoption of the *Phillips* claim construction standard will promote clarity and public notice. By using the same claim construction standard in PTAB proceedings that is used by the federal courts and the ITC, greater certainty on the scope of issued patent claims will be provided to all stakeholders. In particular, we agree with the comments received that reducing the potential for inconsistent results between the PTAB and federal courts would encourage inventors to use the patent system. For example, one trade association commented that a uniform standard would lead to greater certainty and investment, while another trade association stated that the adoption of the federal court claim construct standard promoted certainty, which is a recognized goal of the AIA. Senate Debate, 157 Cong. Rec. S5347, S5354 (daily ed. Sept. 7, 2011) (Statement of Administration Policy on H.R. 1249) (discussing how the AIA created new trial proceedings ''to increase the quality and certainty of patent rights and offer cost-effective, timely alternatives to district court litigation'').

Comment 7: A few comments asserted that the BRI standard promotes clarity and public notice by incentivizing a patentee to amend its claims so that the boundary between its patent rights and the prior art can be more clearly delineated. A few comments also expressed concerns that, if the PTAB applies the *Phillips* standard in AIA proceedings, the district court may construe a claim more broadly than the PTAB's claim construction, resulting in a situation where subject matter that is in the prior art nonetheless may infringe the patent.

Response: The PTAB's construction of a claim under the framework set forth in *Phillips* will promote clarity and public notice. Moreover, since both a district court and the PTAB will use the same standard to construe the claim, there will be reduced likelihood of differences between the scope of claim construction at either forum. The Federal Circuit recently affirmed a district court's claim construction by holding that the statements made by a patent owner during an AIA proceeding, even before institution, are part of the prosecution history and can be relied on to support a finding of prosecution disclaimer. *Aylus Networks,* 856 F.3d at 1361. The court explained that ''[e]xtending the prosecution disclaimer doctrine to IPR proceedings will ensure that claims are not argued one way in order to maintain their patentability and in a different way against accused infringers.'' *Id.* at 1360. ''In keeping with the underlying purposes of the doctrine, this extension will 'promote[ ] the public notice function of the intrinsic evidence and protect[ ] the public's reliance on definitive statements made during''' AIA proceedings. *Id.* (quoting *Omega Eng'g, Inc.* v. *Rayteck Corp.,* 334 F.3d 1314, 1324 (Fed. Cir. 2003)). Accordingly, applying the same standard will alleviate the commentators' concerns with regard to differences in claim scope between the district court and PTAB.

In addition, under the amended rules, as adopted by this final rule, the PTAB

will consider any prior claim construction determinations from federal courts and the ITC that are timely made of record to enhance consistency. Moreover, as noted above, unlike initial examination, the vast majority of AIA proceedings involve patents in litigations, and as noted above, patent owners are reluctant to substantially amend their claims that are involved in an infringement litigation for a variety of reasons, such as to avoid triggering intervening rights. Therefore, one of the originally suggested bases for using BRI in 2012 has not been borne out. Claim amendments in AIA proceedings are relatively rare and substantially different than amendments during examination, and the Office no longer believes that the opportunity to amend in an AIA proceeding justifies the use of BRI.

Fairness

Comment 8: Many comments opined that harmonizing the claim construction standard used in AIA proceedings with that used in the federal courts and ITC proceedings will ensure greater fairness and predictability to the patent system, which will in turn maximize judicial efficiency and minimize economic waste. Several comments acknowledged that harmonizing the claim construction standards would prevent parties from taking inconsistent positions and will properly balance the interests of both patent owners and petitioners. Some of the comments further noted that applying different standards in different fora unfairly advantages the patent challenger because an accused infringer may seek a broad construction for purposes of finding claims unpatentable in an AIA proceeding before the PTAB and a narrow construction for purposes of arguing non-infringement in a federal court action.

Response: The Office agrees with these comments. This final rule adopts the federal court claim construction standard, which is articulated in *Phillips,* for AIA proceedings, aligning the claim construction standard used in AIA proceedings with the standard used in the federal courts and ITC proceedings. This will promote a more fair and balanced system because parties will no longer be able to argue for a broader claim scope in PTAB proceedings than that used by federal courts. Several commenters stated that the BRI standard allows parties to take inconsistent positions between PTAB proceedings for patentability and litigation for infringement. One commenter stated ''[c]urrently, the absence of a uniform claim construction standard permits patent infringers to aggressively argue inconsistent positions on claim scope in different forums with impunity—a broad scope before the PTAB, and a narrow scope in district court. With a uniform application of the *Phillips* standard, patent challengers will have less flexibility to advance inconsistent arguments about claim scope, and will instead be required to choose a single claim construction that best captures the true meaning of the patent claim, because they will not be able to justify different constructions as being the mere result of different claim construction standards.'' The lack of a uniform standard between the PTAB and federal courts runs contrary to the general principle articulated in *Source Search Techs LLC* v. *Lending Tree, LLC,* that ''it is axiomatic that claims are construed the same way for both validity and infringement.'' 588 F.3d 1063, 1075 (Fed. Cir. 2009).

Comment 9: Some comments opposed the proposed rules, asserting that using the *Phillips* standard in AIA proceedings would not alleviate perceived unfairness. A few comments suggested that the *Phillips* standard is susceptible to various reasonable interpretations, which can produce multiple possible constructions, and that there is no certainty that the decision of the PTAB and the courts will be harmonized. Some of the comments also indicated that applying the BRI standard in AIA proceedings is not unfair to patentees because they have the opportunity to amend the claims to obtain more precise claim coverage, and the BRI standard ''serves the public interest by reducing the possibility that claims, finally allowed, will be given broader scope than is justified,'' citing *In re American Academy of Science Tech Center,* 367 F.3d 1359, 1362–63 (Fed. Cir. 2004) (citation and internal quotation marks omitted). These comments asserted that replacing the BRI standard would undermine this goal, resulting in less predictability and inviting gamesmanship from patentees.

Response: As noted above, unlike initial examination, the vast majority of AIA proceedings involve patents in litigation, and, according to several comments, patent owners are reluctant to substantially amend their claims that are involved in an infringement litigation for a number of reasons, such as in order to avoid triggering intervening rights. As stated in the notice of proposed rulemaking, having AIA proceedings use the same claim construction standard that is applied in federal courts and ITC proceedings also addresses the concern that potential unfairness could result from using an arguably broader standard in AIA proceedings. According to some patent owners, the same claim construction standard should apply to both the validity (or patentability) determination and the infringement determination. Because the BRI standard potentially reads on a broader universe of prior art than does the *Phillips* standard, a patent claim could potentially be found unpatentable in an AIA proceeding (under the BRI standard) on account of claim scope that the patent owner would not be able to assert in an infringement proceeding (under the *Phillips* standard). For example, even if a competitor's product would not be found to infringe a patent claim (under the *Phillips* standard) if it was sold after the patent's effective filing date, the same product nevertheless could potentially constitute invalidating prior art (under the BRI standard) if publicly sold before the patent's effective filing date.

Based on its 6 years of experience with AIA proceedings, the Office has determined that the same claim construction standard should apply to both a patentability determination at the PTAB and determinations in federal court on issues related to infringement or invalidity. Under the amended rules as adopted by this final rule, the PTAB also will consider any prior claim construction determination concerning a term of the claim in a civil action or a proceeding before the ITC that is timely made of record in an AIA proceeding. This will increase the likelihood that claims are not argued one way in order to maintain their patentability (or to show that the claims are unpatentable) and in a different way against an opposing party in an infringement case, consistent with recent case law from the Federal Circuit. *See Aylus Networks,* 856 F.3d at 1360. Rather, regardless of forum, the same objective standards will be used for claim construction.

Additionally, as discussed above, one of the originally suggested bases for using the BRI in 2012 has not been borne out. Claim amendments in AIA proceedings are relatively rare and substantially different than amendments during examination, and the Office no longer believes that the opportunity to amend in an AIA proceeding justifies the use of the BRI.

Efficiency, Cost, Timing, and Procedural Issues

Comment 10: Most comments supported harmonizing of the claim construction standard used in AIA

proceedings with the standard used in the proceedings before federal courts and the ITC because different claim construction standards used in various fora encourage forum shopping and parallel duplicative proceedings. According to the comments, using the same claim construction standard across the fora would increase efficiency as well as certainty, and it would reduce cost and burden because parties would only need to focus their resources to develop a single set of claim construction arguments.

Response: The Office agrees with these comments. The existence of different approaches to claim construction determinations may encourage a losing party to attempt for a second bite at the apple, resulting in a waste of the parties' and judicial resources alike. *See* Niky R. Bagley, *Treatment of PTAB Claim Construction Decisions: Aspiring to Consistency and Predictability,* 32 Berkeley Tech. L.J. 315, 354 (2018). Adoption of the *Phillips* standard will increase efficiencies and will reduce costs to parties because it eliminates the incentive to forum shop based upon claim construction standards and eliminates the need to present multiple claim construction arguments under different standards. As discussed above, several trade associations and corporations commented that the use of the same claim construction standard will reduce duplication of efforts by parties and by the various tribunals. As one commenter further stated, ''[w]ith the PTAB and district courts applying the same claim construction standard, there will be a stronger basis for judges in one forum to rely on claim constructions rulings from the other, avoiding unnecessary duplication of work.''

Comment 11: One comment seeks clarification of whether the PTAB would review evidence of infringing products to construe claims. According to the comment, claims cannot be construed under the *Phillips* standard without at least some reference to the product accused of infringement, citing *Wilson Sporting Goods Co.* v. *Hillerich & Bradsby Co.,* 442 F.3d 1322, 1324 (Fed. Cir. 2006), for support.

Response: To the extent that the comment suggests that *Wilson* requires consideration of infringement issues during claim construction, such a reading would overstate that case. In *Wilson,* the Federal Circuit ''repeats its rule that claims may not be construed with reference to the accused device.'' *Wilson,* 442 F.3d at 1330–31. It further explained that ''that rule posits that a court may not use the accused product or process as a form of extrinsic evidence to supply limitations for patent claim language. Thus, the rule forbids a court from tailoring a claim construction to fit the dimensions of the accused product or process and to reach a preconceived judgment of infringement or noninfringement. In other words, it forbids biasing the claim construction process to exclude or include specific features of the accused product or process.'' *Id.* In *Wilson,* the court merely stated that, in certain situations, ''[t]he rule, however, *does not forbid* awareness of the accused product or process to supply the parameters and scope of the infringement analysis'' and ''a trial court *may* refer to the accused product or process for that context during the process.'' *Id.* (emphasis added). As such, *Wilson,* merely stands for the proposition that *it is permissible* to consider an accused product in the context of claim construction for purposes of infringement, not that an accused product *must* be considered in all claim construction disputes.

The Federal Circuit's decision in *Wilson* specifically addresses the district court's claim construction in the context of an *infringement* case. But under 35 U.S.C. 318 and 328, in an instituted AIA proceeding, the PTAB is required to ''issue a final written decision with respect to the *patentability* of any patent claim challenged by the petitioner.'' As required by statute, the PTAB will continue to construe claims in the context of patentability (*e.g.,* the asserted prior art), not infringement. Because infringement issues are generally not before the PTAB in a patentability determination, the PTAB does not, in most circumstances, expect this case to have applicability in IPR proceedings. However, if a party believes that the claims of a particular patent cannot be construed absent consideration of additional evidence not called for in the Board's rules or practices, that party should contact the panel of judges overseeing the proceeding and request a conference call to discuss the facts of that specific issue.

Comment 12: Several comments suggested using the same claim construction procedures as used in the federal court. A few comments expressed concerns that fully adopting the same claim construction standard used by federal courts and the ITC could make it difficult for the Office to comply with the statutory deadline because the claim construction procedure at the federal courts and the ITC often involves considerable briefing, expert testimony, technology tutorials, and *Markman* hearings, which are expensive and time consuming.

Response: The Office has been applying the principles articulated in *Phillips* and its progeny in AIA proceedings for interpreting claims of expired patents, since the effective date of the AIA in 2012, and for interpreting claims of soon-to-be expired patents, since 2016. Even in those proceedings, the Office has met all of its statutory deadlines, utilizing the same efficient and cost effective procedures used in other AIA proceedings that applied the BRI standard. The Office will continue to employ a trial procedure in all AIA proceedings that provides ''quick and cost effective alternatives'' to litigation in the courts, as Congress intended. Thus, as discussed above, USPTO expects that these proceedings utilizing the *Phillips* standard will operate procedurally in much the same way as proceedings utilizing the BRI standard, that they will cost USPTO and parties no more to conduct, and that they will be completed within the statutory deadline.

Comment 13: Some comments expressed concerns that additional briefing and hearings related to claim construction would raise costs. One comment suggested that the PTAB should continue to provide non-final claim construction in the institution decisions. A few comments suggested allowing the parties a full and fair opportunity to present arguments and evidence prior to any final determination.

Response: As discussed above, USPTO expects—based on its prior experience in using the *Phillips* standard for expired and soon-to-expire claims—that these proceedings using the *Phillips* standard will operate procedurally in much the same way as proceedings using the BRI standard, that they will cost USPTO and parties no more to conduct, and that they will be completed within the statutory deadline. The Office will continue to use the trial procedure set forth in its Office Patent Trial Practice Guide, along with any updates and amendments that USPTO may decide to make in the future. As discussed above, USPTO does not need to revise these procedures and guidance to implement the change set forth in the final rule, and does not need to make regulatory changes other than those set forth in the final rule. Both the petitioner and patent owner will continue to have sufficient opportunities, during the preliminary stage, to submit their proposed claim constructions (in a petition and preliminary response, respectively) and

any supporting evidence, including both intrinsic and extrinsic evidence. Upon consideration of the parties' proposed claim constructions and supporting evidence, the PTAB will continue to provide an initial claim construction determination in the institution decision, to the extent that such construction is required to resolve the disputes raised by the parties. If a trial is instituted, the parties also will continue to have opportunities to cross-examine any opposing declarants, and to submit additional arguments and evidence, addressing the PTAB's initial claim construction determination and the opposing party's arguments and evidence before oral hearing. The PTAB also will continue to consider the entirety of the trial record, including the claim language itself, the specification, prosecution history pertaining to the patent, extrinsic evidence as necessary, and any prior claim construction determinations from the federal courts and the ITC that have timely been made of record, before entering a final written decision that sets forth the final claim construction determination. All parties will continue to have a full and fair opportunity to present arguments and evidence prior to any final determination. The vast majority of commentators, including many of those opposed to the change, agree that the Board's current procedures are effective in implementing the goals of the AIA. Those procedures remain available, will continue to apply when this final rule goes into effect, and will be improved in the future as necessary.

Proposed Substitute Claims

Comment 14: Most of the comments supported applying the federal court claim construction standard, which is articulated in *Phillips,* uniformly to both original patent claims and substitute claims proposed in a motion to amend. The comments suggested that using the federal court claim construction standard should lead to greater consistency with the federal courts and the ITC, and such consistency will lead to greater certainty as to the scope of issued patent claims. The comments also indicated that using the federal court claim construction standard is appropriate because amendments proposed in AIA proceedings are required to be narrowing, are limited to a reasonable number of substitute claims, and are required to address patentability challenges asserted against the original patent claims. The comments further noted that using the same claim construction standard for interpreting both the original and amended claims avoids the potential of added complexity and inconsistencies between PTAB and federal court proceedings, and this allows the patent owner to understand the scope of the claims and more effectively file motions to amend. One of the comments stated that the BRI standard is appropriate in the context of the initial *ex parte* examination, but not appropriate for AIA proceedings, which are *inter partes* post-grant proceedings, potentially standing in for district court validity determinations, and allowing only amendments that narrow the scope of the original patent claim.

Response: The Office agrees with these comments. Under the amended rules, as adopted in this final rule, a claim of a patent, or a claim proposed in a motion to amend, ''shall be construed using the same claim construction standard that would be used to construe the claim in a civil action.'' We agree that adoption of the *Phillips* standard is appropriate because, among other things, the claim amendments are limited to a reasonable number and are required to be narrowing. Further, the final rule will reduce the potential for inconsistency in claim construction between PTAB proceedings and the proceedings in federal court and the ITC, which we agree will result in greater certainty of the scope of issued patent claims.

Comment 15: Some comments opposed applying the federal court claim construction standard to substitute claims proposed in a motion to amend because it would create the risk that a district court would construe a claim broadly beyond the claim scope allowed by the Office. According to these comments, it is inappropriate and inconsistent for the Office to employ a different standard when new claims are presented to the PTAB on appeal from an examiner compared to when the same new claims are presented to the PTAB in an AIA proceeding. Some of the comments suggested eliminating amendments or applying the BRI standard in a proceeding in which the patent owner files a motion to amend to protect the public from vague and overly broad amendments. One comment indicated that, if the PTAB applies the federal court claim construction standard in an AIA proceeding, the PTAB should require patent owner to amend its claim to reflect that claim construction.

Response: As noted in the notice of proposed rulemaking, unlike initial examination of new or amended claims in a patent application, the patent owner may file a motion to amend an unexpired patent during an AIA proceeding to propose a reasonable number of substitute claims, but the proposed substitute claims ''may not enlarge the scope of the claims of the patent or introduce new matter.'' 35 U.S.C. 316(d) and 326(d); 37 CFR 42.121(a)(2), 42.221(a)(2). The Federal Circuit recently noted that ''[t]he patent owner proposes an amendment that it believes is sufficiently *narrower* than the challenged claim to overcome the grounds of unpatentability upon which the IPR was instituted.'' *Aqua Prods.,* 872 F.3d at 1306 (emphasis in the original). By requiring a narrower claim, a district court applying the same objective claim construction standards under the *Phillips* framework should not construe a substitute claim beyond the scope allowed by the Office. Further, as to any concern with vague or overly broad amendments, the PTAB is required to issue final written decisions with respect to the patentability of any new claim added, thus ensuring that vagueness and overbreadth issues will be resolved by the Office before issuance.

Further, as to the suggestion that the Office require patent owners to amend claims to reflect a federal court claim construction, such a suggestion is not adopted for a variety of reasons. Among other things, the PTAB will construe claims under the final rule using the same objective standards under the *Phillips* framework as used by the federal courts. Additionally the final rule specifies that ''any prior claim construction determination concerning a term of the claim in a civil action, or a proceeding before the International Trade Commission, that is timely made of record in the covered business method patent review proceeding will be considered.''

Construing Claims To Preserve Validity

Comment 16: Some comments opposed using a standard that applies the doctrine of construing claims to preserve their validity.

Response: In this final rule, the Office fully adopts the federal courts claim construction standard, which is articulated in *Phillips,* for interpreting claims in AIA proceedings. This rule reflects that the PTAB in an AIA proceeding will apply the same standard applied in federal courts to construe patent claims.

To the extent that federal courts and the ITC still apply the doctrine of construing claims to preserve their validity as described in *Phillips,* the Office will apply this doctrine for purposes of claim construction if dictated by the principles of *Phillips* and its progeny, *e.g.,* if those same rare circumstances arise in AIA proceedings.

As the Federal Circuit recognized in *Phillips,* this doctrine is ''of limited utility.'' *Phillips,* 415 F.3d at 1327–28. The Court has not applied that doctrine broadly, and has ''certainly not endorsed a regime in which validity analysis is a regular component of claim construction.'' *Id.* at 1327 (citation omitted). The doctrine of construing claims to preserve their validity has been limited to cases in which ''the court concludes, after applying all the available tools of claim construction, that the claim is still ambiguous.'' *Id.* Moreover, the Federal Circuit ''repeatedly and consistently has recognized that courts may not redraft claims, whether to make them operable or to sustain their validity.'' *Rembrandt Data Techs., LP* v. *AOL, LLC,* 641 F.3d 1331, 1339 (Fed. Cir. 2011); *see also MBO Labs., Inc.* v. *Becton, Dickinson & Co.,* 474 F.3d 1323, 1332 (Fed. Cir. 2007) (noting that ''validity construction should be used as a last resort, not first principle'').

Even in those extremely rare cases in which the courts applied the doctrine, the courts ''looked to whether it is reasonable to infer that the PTO would not have issued an invalid patent, and that the ambiguity in the claim language should therefore be resolved in a manner that would preserve the patent's validity,'' noting that this was ''the rationale that gave rise to the maxim in the first place.'' *Phillips,* 415 F.3d at 1327 (citing *Klein* v. *Russell,* 86 U.S. (19 Wall.) 433, 466, 22 Led. 116 (1873)). ''The applicability of the doctrine in a particular case therefore depends on the strength of the inference that the PTO would have recognized that one claim interpretation would render the claim invalid, and that the PTO would not have issued the patent assuming that to be the proper construction of the term.'' *Id.* at 1328.

Moreover, it also may not be necessary to determine the exact outer boundary of claim scope because only those terms that are in controversy need be construed, and only to the extent necessary to resolve the controversy (*e.g.,* whether the claim reads on a prior art reference). *See Nidec Motor Corp.* v. *Zhongshan Broad Ocean Motor Co. Ltd.,* 868 F.3d 1013, 1017 (Fed. Cir. 2017) (noting that ''we need only construe terms 'that are in controversy, and only to the extent necessary to resolve the controversy'''') (citing *Vivid Techs., Inc.* v. *Am. Sci. & Eng'g, Inc.,* 200 F.3d 795, 803 (Fed. Cir. 1999)). Moreover, the Federal Circuit ''repeatedly and consistently has recognized that courts may not redraft claims, whether to make them operable or to sustain their validity.'' *Rembrandt Data,* 641 F.3d at 1339.

The Rule Language

Comment 17: Some comments, although generally agreeing with the proposed rule change, suggested some changes to the language of the proposed rules. In particular, some of the comments suggested modifying the rule language to summarize all of the claim construction principles set forth in *Phillips* and to include other non-substantive minor edits. Some of the comments suggested deleting the ''including'' phrase: ''including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.'' Although one comment acknowledged that this ''including'' phrase is merely exemplary, other comments suggested the deletion to ensure that there is no difference between the claim construction standard applied in AIA proceedings and the standard used in federal courts and ITC proceedings, and that the deletion also would preserve the ability to respond to future refinements in the law.

Response: As to deleting the ''including'' phrase, the ''including'' phrase is merely exemplary, not excluding additional canons of claim construction, and not intending to reflect any difference between standard articulated by *Phillips* and its progeny, as applied by the courts. This rule reflects that the PTAB in an AIA proceeding will apply the same standard applied in federal courts to construe patent claims. While the comments seeking the deletion of the ''including'' phrase were not adopted, the intent of the final rule language is to ensure that the public understands that the rule does not differ in any way from the standard used in federal courts. The Office has also considered modifying the rule language to summarizing the construction principles of *Phillips* as well as several non-substantive edits, but determined that the language of the rule provides sufficient clarity. Moreover, the intent of the rule is to ensure that the PTAB follows the same claim construction standard applied by federal courts, including any future refinements in the caselaw.

Comment 18: A few comments suggested changing ''such claim in a civil action to invalidate a patent'' to ''the claim in a civil action'' because a civil action may involve infringement of a patent, and is not necessarily limited to invalidity actions.

Response: This suggestion is adopted. Amended §§ 42.100(b), 42.200(b), and 42.300(b), as adopted in this final rule, provide ''a claim . . . shall be construed using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b) . . . .'' Again, the intent of the final rule is to make clear that there is no difference between the claim construction standard applied by the PTAB and the standard applied by the federal courts to construe patent claims.

Comment 19: A few comments suggested adding ''or the Board'' in the last sentence of the proposed rules to make explicit that prior PTAB claim construction determinations concerning a claim term will be considered.

Response: Applying the federal court claim construction standard, which is articulated in *Phillips,* the PTAB will construe a claim based on the record of an AIA proceeding, taking into account the claim language itself, specification, and prosecution history pertaining to the patent. The prosecution history taken into account includes prior PTAB claim construction determinations concerning a term of the claim. To ensure due consideration by the PTAB, the parties should timely submit the relevant portions of the prosecution history that support their arguments along with detailed explanations. The suggested change is not adopted as it is unnecessary; prior PTAB claim construction determinations concerning a claim term will be considered under *Phillips,* for example when they are part of the intrinsic record of the challenged patent

Comment 20: One comment suggested removing the reference to 35 U.S.C. 282(b), which does not itself provide for a civil action.

Response: The reference to 35 U.S.C. 282(b) makes clear that the Office is adopting the same claim construction standard used in civil actions ''involving the validity or infringement of a patent.'' 35 U.S.C. 282(b). This rule reflects that the PTAB in an AIA proceeding will apply the same standard applied in federal courts to construe patent claims.

Materials to be Considered

Comment 21: One comment requested clarification on what aspects of the prosecution history would be considered in a claim construction under the new rule.

Response: The Office may take into account the prosecution history that occurred previously in proceedings at the Office prior to the proceeding at

issue, including in another AIA proceeding, or before an examiner during examination, reissue, and reexamination. The file history typically consists of the patent application as originally filed, the cited prior art, all papers prepared by the examiner during the course of examination, and documents submitted by the applicant in response to the various requirements, objections, and rejections made by examiner. In addition, the file history may contain a written record of oral communications addressing patentability issues between the examiner and applicant. The Office will determine the claim construction based on the record of the proceeding at issue. The parties should timely submit the relevant portions of the prosecution history with detailed explanations as to how the prosecution history support their arguments, to ensure that such material is considered. Each party bears the burden of providing sufficient support for any construction advanced by that party.

Comment 22: Some comments suggested that consideration of prior claim construction determination should also include prior determinations by the Office in a prior PTAB proceeding.

Response: Reference to ''prosecution history'' in the rule includes consideration of relevant determinations on claim construction in prior PTAB proceedings, including determinations made in *ex parte* appeals and AIA proceedings. The prosecution history includes a written record of all communications addressing patentability issues between the PTAB, the petitioner and the patent owner, including all briefing, motions, evidence and decisions set forth in the record of the proceeding.

Comment 23: One comment requested clarification as to whether federal court claim constructions and ITC claim constructions will be considered under the new rules.

Response: Yes, each of amended §§ 42.100, 42.200, and 42.300, as adopted in this final rule, states that ''[a]ny prior claim construction determination concerning a term of the claim in a civil action, or a proceeding before the [ITC], that is timely made of record in the [*inter partes,* post grant or covered business method patent] review proceeding will be considered.'' The PTAB will consider prior claim constructions from district courts or the ITC and give them appropriate weight. Non-exclusive factors to be considered may include, for example, how thoroughly reasoned the prior decision is and the similarities between the record in the district court or the ITC and the record before the PTAB. It may also be relevant whether the prior claim construction is final or interlocutory. These factors will continue to be relevant under the district court claim construction standard, which is articulated in *Phillips.* The PTAB may also continue to consider whether the terms construed by the district court or the ITC are necessary to decide the issues before it. This is not an exclusive list of considerations, and the facts and circumstances of each case will be analyzed as appropriate.

Comment 24: One comment suggested that the PTAB also consider statements made by a patent owner in a prior proceeding in which the patent owner took a position on the scope of any claims of the challenged patent.

Response: Under the amended rules as adopted in this final rule, the PTAB will consider statements regarding claim construction made by patent owners filed in other proceedings in claim construction determinations if the statements are timely made of record. *Cf. Aylus Networks,* 856 F.3d at 1360–61 (extending the prosecution disclaimer doctrine to include patent owner's statements made in a preliminary response that was submitted a prior AIA proceeding). The Board may also consider statements regarding claim construction made by petitioners in other proceedings. To the extent that a party wants such information considered by the Office, that party should point out specifically the statements and explain how those statements support or contradict a party's proposed claim construction in the proceeding at issue. Each party bears the burden of providing sufficient support for any construction advanced by that party. Furthermore the Office may take into consideration statements made by a patent owner about claim scope, such as those submitted under 35 U.S.C. 301(a), for example.

Comment 25: Comments requested clarification on the use of extrinsic evidence, such as technical dictionaries or other scientific background evidence, to demonstrate how a person of ordinary skill in the art would interpret a particular term.

Response: Consistent with *Phillips* and its progeny, the use of extrinsic evidence, such as expert testimony and dictionaries, will continue to be useful in demonstrating what a person of ordinary skill in the art would understand claim terms to mean. *Phillips,* 415 F.3d at 1318–19. The Federal Circuit has recognized that ''extrinsic evidence in general is viewed as less reliable than intrinsic evidence.'' *Id.; Teva Pharm. USA, Inc.* v. *Sandoz, Inc.,* 135 S. Ct. 831, 841 (2015) (noting the use of extrinsic evidence when ''subsidiary facts are in dispute''). Moreover, when the specification is clear about the scope and content of a claim term, there may be no need to turn to extrinsic evidence for claim interpretation. *See 3M Innovative Props. Co.* v. *Tredegar Corp.,* 725 F.3d 1315, 1326–28 (Fed. Cir. 2013). This rule reflects that the PTAB in an AIA proceeding will apply the same standard applied in federal courts to construe patent claims.

Comment 26: One comment sought clarification on the types of civil actions for which claim interpretations would be considered, noting that reference to 35 U.S.C. 282(b) appears to limit the scope of civil actions to only those civil actions that arise seeking declaratory judgment of invalidity, and not to consideration of claim constructions of a patent in an infringement action filed under 35 U.S.C. 271, despite the fact that claim construction standards are identical in both types of proceedings.

Response: Reference to ''a civil action under 35 U.S.C. 282(b)'' refers to the standard that will be used in interpreting claims in IPR, PGR, or CBM proceedings, and encompasses both invalidity and infringement as it relates to a defense ''in any action involving the validity or infringement of a patent.'' The PTAB will consider claim constructions in any civil action or ITC proceeding in which the meaning of the same term of the same patent has been previously construed. This rule reflects that the PTAB in an AIA proceeding will apply the same standard applied in federal courts to construe patent claims.

Comment 27: One comment sought clarification as to the role of the ordinary meaning of the claim term.

Response: The Office will construe claim terms consistent with the standard used in a civil action under 35 U.S.C. 282(b), which includes construing the claim in accordance with the ordinary and customary meaning in light of ''the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art.'' *Phillips,* 415 F.3d at 1314 (citing *Innova/Pure Water, Inc.* v. *Safari Water Filtration Sys., Inc.,* 381 F.3d 1111, 1116 (Fed. Cir. 2004)); *see, e.g., Sumitomo Dainippon Pharma Co., Ltd.* v. *Emcure Pharm. Ltd.,* 887 F.3d 1153, 1157 (Fed. Cir. 2018) (''As a general rule, the ordinary and customary meaning controls unless 'a patentee sets out a definition and acts as

his own lexicographer, or . . . the patentee disavows the full scope of a claim term either in the specification or during prosecution.'''') (quoting *Thorner* v. *Sony Comput. Entm't Am. LLC,* 669 F.3d 1362, 1365 (Fed. Cir. 2012)). This rule reflects that the PTAB in an AIA proceeding will apply the same standard applied in federal courts to construe patent claims.

Comment 28: Some comments sought clarification because the rule does not indicate consideration of the ordinary meaning to the skilled artisan ''at the time of filing the invention'' or as of the ''earliest effective filing date.''

Response: Consistent with Supreme Court and Federal Circuit case law, the *Phillips* claim construction standard applied will be that of the skilled artisan as of the effective filing date. *Phillips,* 415 F.3d at 1313 (Fed. Cir. 2005) (''[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, *i.e.,* as of the effective filing date of the patent application.'') (citing *Innova,* 381 F.3d at 1116 (''A court construing a patent claim seeks to accord a claim the meaning it would have to a person of ordinary skill in the art at the time of the invention.'')). This rule reflects that the PTAB in an AIA proceeding will apply the same standard applied in federal courts to construe patent claims.

Prior Claim Construction Determinations

Comment 29: Some comments suggested that, in applying the *Phillips* standard, the PTAB should consider prior claim constructions from proceedings in federal court or the ITC.

Response: Under the amended rules as adopted in this final rule, the PTAB will consider prior claim construction determinations from federal courts or the ITC that has been timely made of record in an AIA proceeding. *See* 37 CFR 42.100, 42.200, and 42.300.

Comment 30: Some comments sought guidance on the intended meaning of ''considered'' and what level of deference and weight the PTAB will give to prior claim construction determinations. Some comments suggested that the PTAB should defer to a prior claim construction by a district court or the ITC. Others suggest that the proposed rule be modified to expressly require deference to a prior claim construction ruling. One comment expressed concerns that applying the *Phillips* standard may be unfair if the PTAB considers other tribunals' prior claim construction determinations when either or both parties did not participate in the prior proceedings. Another comment expressed concerns that requiring PTAB to consider prior claim construction determinations will encourage venue gamesmanship.

Response: The suggestions that the PTAB must necessarily defer to prior claim constructions are not adopted. The PTAB will consider prior claim constructions from courts or the ITC, if timely made of record, and give them appropriate weight. Non-exclusive factors to be considered may include, for example, how thoroughly reasoned the prior decision is and the similarities between the record in the district court or the ITC and the record before the PTAB. It also may be relevant whether the prior claim construction is final or interlocutory. These factors will continue to be relevant under the federal court claim construction standard, which is articulated in *Phillips.* The PTAB will also consider whether the terms construed by the district court or the ITC are necessary to decide the issues before it. This is not an exclusive list of considerations, and the facts and circumstances of each case will be analyzed as appropriate.

Comment 31: Some comments sought written guidance addressing how the PTAB will consider prior claim constructions. Some suggest a series of detailed questions that the PTAB should answer about what it means for a prior claim construction to be considered.

Response: The PTAB may provide further guidance in the future on the question of how the PTAB will consider prior claim constructions as circumstances warrant. However, at this juncture, the PTAB has not decided the form that such guidance, if any, will take. Guidance, if issued, may take the form of, for example, a guidance document, a Standard Operating Procedure, or designating certain decisions as informative or precedential. The PTAB expects its guidance, if any, will be informed by its experience with cases in which a federal court or the ITC has rendered a claim construction using the same standard as the PTAB.

The PTAB may treat a prior district court claim construction order the same way that such an order may be treated by a different district court. In particular, the PTAB will consider prior claim constructions from district courts or the ITC, if timely made of record, and give them appropriate weight. Non-exclusive factors to be considered may include, for example, how thoroughly reasoned the prior decision is and the similarities between the record in the district court or the ITC and the record before the PTAB. It also may be relevant whether the prior claim construction is final or interlocutory. These factors will continue to be relevant under the district court claim construction standard, which is articulated in *Phillips.* The PTAB will also consider whether the terms construed by the district court or ITC are necessary to decide the issues before it. This is not an exclusive list of considerations, and the facts and circumstances of each case will be analyzed as appropriate. This rule reflects that the PTAB in an AIA proceeding will apply the same standard applied in federal courts to construe patent claims.

Comment 32: Some comments suggested requiring the PTAB in an AIA proceeding to explain in writing its reasoning when its claim construction differs from a prior construction of a district court or the ITC.

Response: As is the current practice, the PTAB will explain in writing its reasoning and the basis for its decisions on claim construction. Depending on the circumstances of a given matter, this may or may not include, for example, a discussion of prior claim construction decisions and explanation of material differences, if any, as appropriate.

Comment 33: Some comments suggested that a prior claim construction by a district court or the ITC will be binding on the PTAB under res judicata.

Response: A claim construction order from a district court may be informative to PTAB, just as claim construction from PTAB may be informative to a district court. The precise legal implications of either such decision would depend on the specific facts of the cases, any applicable legal principles, and an analysis of those specific facts to the applicable legal principles. It is worth noting that district courts themselves may not be bound by each other's claim construction orders. Moreover, in many cases, the PTAB will issue a final decision before the corresponding district court trial has concluded and a final judgment has been entered. Issue preclusion, collateral estoppel, and res judicata must each be premised on, among other things, a final court judgment.

Comment 34: One comment suggested that the Office provide proof that the district courts will be willing to accept the PTAB's claim constructions prior to a final decision knowing that these constructions are not final and might change.

Response: The district courts have the discretion to review and/or adopt the PTAB's initial or final claim constructions, using their own factors and reasoning. A prior non-final claim construction by the PTAB may be

helpful and considered by the district court, just as a prior claim construction by the district court may be helpful and considered by the PTAB, depending on the facts and circumstances of a particular case.

Comment 35: One comment suggested that the PTAB should establish its rules and practices for construing claims in a way that best ensures that later tribunals will honor those constructions. The comment suggests that, in addition to adopting the *Phillips* standard, the PTAB should state its intent that PTAB trial determinations be treated as preclusive on later tribunals.

Response: The district courts have the discretion to review and/or adopt the PTAB's initial or final claim constructions, using their own factors and reasoning. A prior non-final claim construction by the PTAB may be helpful and considered by the district court, just as a prior claim construction by the district court may be helpful and considered by the PTAB, depending on the facts and circumstances of a particular case.

Comment 36: Some comments suggested that the PTAB should defer to its own prior claim constructions.

Response: The PTAB will continue to give due consideration to its own prior claim constructions, and where appropriate, may adopt those constructions. Non-exclusive factors to be considered may include, for example, how thoroughly reasoned the prior decision is and the similarities between the records. It also may be relevant whether the prior claim construction is final or interlocutory. The PTAB will also consider whether the terms previously construed are necessary to decide the issues currently before it. This is not an exclusive list of considerations, and the facts and circumstances of each case will be analyzed as appropriate.

Comment 37: Some comments sought guidance on the timing and procedures for submitting claim construction materials from other tribunals to the PTAB.

Response: Parties should submit a decision on claim construction by a federal court or the ITC in an AIA proceeding as soon as that decision becomes available. Preferably, the prior claim construction is submitted with the petition or preliminary response, with explanations. After a trial is instituted, the PTAB's rules on supplemental information govern the timing and procedures for submitting claim construction decisions. *See* 37 CFR 42.123, 42.223. Under those rules, a party must first request authorization from the PTAB to file a motion to submit supplemental information. If it is more than one month after the date the trial is instituted, the motion must show why the supplemental information reasonably could not have been obtained earlier. Normally, the PTAB will permit such information to be filed, as long as the final oral hearing has not taken place. The PTAB may permit a later filing where it is not close to the one-year deadline for completing the trial. Again, parties should submit the prior claim construction as soon as the decision is available.

Comment 38: One comment asked whether disclosure of prior claim construction determinations is optional or subject to mandatory disclosure under 37 CFR 42.51(b).

Response: Submission of prior claim construction determinations is mandatory under 37 CFR 42.51(b), if it is ''relevant information that is inconsistent with a position advanced by the party during the proceeding.'' In such cases, the determinations should be submitted ''concurrent with the filing of the documents or things that contains the inconsistency.'' *Id.*

Comment 39: A comment suggested that the disclosure of any prior claim constructions by a court or the ITC or any claim constructions the parties or their privies have offered in a court proceeding or before the ITC be required.

Response: The current requirement under 37 CFR 42.51(b) for disclosure of ''relevant information that is inconsistent with a position advanced by the party during the proceeding'' is sufficient. District court and ITC claim construction proceedings may involve terms that are not relevant to issues before the PTAB. To require disclosure of any term construed by a district court or the ITC would result in unnecessary filings and inefficiencies in identifying which terms, if any, are relevant to the trial before the PTAB. Rather, a prior claim construction must be submitted under 37 CFR 42.51(b), if it is ''relevant information that is inconsistent with a position advanced by the party during the proceeding.''

Comment 40: One comment asked whether, if the PTAB decides not to adopt prior claim constructions, the PTAB can make its own claim constructions. The comment further asked whether the PTAB can only make constructions asserted by the parties.

Response: When applying the same *Phillips* standards as applied in federal court or the ITC, the PTAB may or may not adopt a construction that has been proposed by one of the parties. For example, the PTAB is not required to provide constructions that are unnecessary to the issues before it. In addition, where the PTAB makes a claim construction determination in its institution decision that differs from one asserted by the parties, the parties will be afforded an opportunity to brief the issue after institution.

Effective Date of the Rule Change

Comment 41: Several comments opposed retroactive application of the rule and requested the proposed changes only apply to new proceedings filed some time period after announcement of the final rule. Concerns were expressed that retroactive application of the rule would be disruptive and would require significant time, effort, and expense to be spent by the parties (*e.g.,* for supplemental briefing and additional testimony) and may unfairly prejudice petitioners that have filed petitions they may not have decided to file under the *Phillips* standard.

Response: The Office appreciates the concerns that have been raised, and adopts the proposed change. While the Office believes the federal court claim construction standard to be the best standard to use going forward, given the concerns raised in the comments, the changes adopted in this final rule will only apply to petitions filed on or after the effective date of the final rule.

Comment 42: A few comments raised concerns whether the Office has the authority to apply the new standard retroactively under the principles articulated in *Bowen* v. *Georgetown Univ. Hosp.,* 109 S. Ct. 468 (1988) and *Landgraf* v. *USI Film Prods.,* 114 S. Ct. 1483 (1994).

Response: The Office acknowledges the concerns and recognizes that a ''statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms.'' *Bowen,* 109 S. Ct. at 472. The change in claim construction standard, as adopted in this final rule, will only be applied to petitions filed on or after the effective date of the rule.

Comment 43: Several comments suggested the *Phillips* claim construction standard should apply to all proceedings over which the PTAB maintains jurisdiction upon the effective date of the final rule. The comments noted this would be consistent with existing practices under which parties to post-grant proceedings know that claim construction is subject to modification until the end of trial. Additionally, a few comments proposed the *Phillips* standard also be applied to

proceedings remanded from the Federal Circuit Court of Appeals.

Response: The Office recognizes the desire of some commenters to apply the federal court standard as soon as possible to all proceedings. On balance, the Office has determined the rule changes set forth in this final rule will only apply to proceedings where a petition is filed on or after the effective date of the rule.

Comment 44: Some comments expressed concern that, if the rule changes were applied prospectively only, a large number of petitions may be filed prior to the effective date of the rule changes by petitioners seeking to retain the BRI standard, which would strain administrative resources and could cause unnecessary delay.

Response: The Office appreciates the comments. The rule changes adopted in this final rule are applicable to any petition filed on or after the effective date of the final rule. The Office does not anticipate an inordinate number of petitions to be filed during the 30 day period from publication to effective date.

Comment 45: A few comments suggested that, if the rule changes are applied to existing proceedings, the PTAB should provide the parties with the opportunity to file briefs directed to the impact of the change in the claim construction standard in their proceedings.

Response: The Office agrees and has implemented the final rule such that the final rule applies only to petitions filed on or after the effective date. As such, petitioners will have an opportunity to fully brief the federal court claim construction standard in their petitions and patent owners will likewise have an opportunity to fully brief this issue in patent owner preliminary responses.

Additional Suggested Changes

Comment 46: The Office has received a number of suggested changes to the current AIA proceedings. These suggested changes are directed to both procedural and statutory changes that go beyond the scope of this rulemaking. For example, the Office has received comments suggesting procedural and statutory changes such as handling motions to amend similar to *ex parte* reexamination, allowing more live testimony, limiting petitions to a single ground per claim, precluding hedge funds from filing petitions, denying multiple petitions against the same patent, using the substantial new question of patentability standard at institution, awarding attorney fees for small entities and changing the preponderance of the evidence burden of proof to a clear and convincing burden of proof.

Response: The Office appreciates the comments received. The Office continues to undertake a wholesale examination of AIA proceedings to determine which areas need improvement and which areas are working well. The Office may take action in certain areas in the near future based on its own review and in light of input from the IP community, some of which may be reflected in the comments received. The Office will continue to study and make improvements to AIA proceedings as necessary to ensure a balanced system that meets the congressional intent of the AIA.

Comment 47: The Office also has received a number of comments suggesting changes to *ex parte* examination, including reexamination and reissue examination procedures. For example, several comments have requested that the Office adopt a federal court claim construction standard for reexamination proceedings and reissue applications.

Response: The Office appreciates the comments received; however, they are beyond the scope of the current rulemaking, which focuses on AIA proceedings. The Office will take these comments into account as the Office continually seeks to improve the examination process in order to provide high quality, efficient examination.

Rulemaking Considerations

A. Administrative Procedure Act (APA): This final rule revises the rules relating to Office trial practice for IPR, PGR, and CBM proceedings. The changes set forth in this final rule will not change the substantive criteria of patentability. These rule changes involve rules of agency procedure and interpretation. *See Perez* v. *Mortg. Bankers Ass'n,* 135 S. Ct. 1199, 1204 (2015) (Interpretive rules ''advise the public of the agency's construction of the statutes and rules which it administers.'' (citation and internal quotation marks omitted)); *Bachow Commc'ns, Inc.* v. *F.C.C.,* 237 F.3d 683, 690 (D.C. Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals were procedural where they did not change the substantive requirements for reviewing claims.); *Nat'l Org. of Veterans' Advocates, Inc.* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (Rule that clarifies interpretation of a statute is interpretive.); *JEM Broad. Co.* v. *F.C.C.,* 22 F.3d 320, 328 (D.C. Cir. 1994) (Rules are not legislative because they do not ''foreclose effective opportunity to make one's case on the merits.'').

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law). *See Perez,* 135 S. Ct. at 1206 (Notice-and-comment procedures are required neither when an agency ''issue[s] an initial interpretive rule'' nor ''when it amends or repeals that interpretive rule.''); *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'' (quoting 5 U.S.C. 553(b)(3)(A))).

The Office, nevertheless, published the notice of proposed rulemaking for comment as it sought the benefit of the public's views on the Office's proposed changes to the claim construction standard for reviewing patent claims and proposed substitute claims in AIA proceedings before the Board. *See* 83 FR 21221.

B. Regulatory Flexibility Act: For the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes in this final rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

This final rule revises certain rules and trial practice procedures before the Board. Any requirements resulting from these changes are of minimal or no additional burden to those practicing before the Board.

For the foregoing reasons, the changes in this final rule will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be significant, for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits;

(4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs): This rule is not subject to the requirements of E.O. 13771 because this rule results in no more than *de minimis* costs.

F. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this final rule are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes in this final rule do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

O. Paperwork Reduction Act: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This final rule involves information collection requirements which are subject to review by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). This rulemaking does not add any additional information requirements or fees for parties before the Board. Therefore, the Office is not resubmitting information collection packages to OMB for its review and approval because the revisions in this rulemaking do not materially change the information collections approved under OMB control number 0651–0069.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 42

Administrative practice and procedure, Inventions and patents.

For the reasons set forth in the preamble, the Office amends part 42 of title 37 as follows:

PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 1. The authority citation for 37 CFR part 42 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 6, 21, 23, 41, 135, 311, 312, 316, and 321–326; Public Law 112–29, 125 Stat. 284; and Pub. L. 112–274, 126 Stat. 2456.

■ 2. Amend § 42.100 by revising paragraph (b) to read as follows:

§ 42.100 Procedure; pendency.

* * * * *

(b) In an *inter partes* review proceeding, a claim of a patent, or a claim proposed in a motion to amend under § 42.121, shall be construed using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b), including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent. Any prior claim construction determination concerning a term of the claim in a civil action, or a proceeding before the International Trade Commission, that is timely made of record in the *inter partes* review proceeding will be considered.

* * * * *

■ 3. Amend § 42.200 by revising paragraph (b) to read as follows:

§ 42.200 Procedure; pendency.

* * * * *

(b) In a post-grant review proceeding, a claim of a patent, or a claim proposed in a motion to amend under § 42.221, shall be construed using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b), including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of

ordinary skill in the art and the prosecution history pertaining to the patent. Any prior claim construction determination concerning a term of the claim in a civil action, or a proceeding before the International Trade Commission, that is timely made of record in the post-grant review proceeding will be considered.

* * * * *

■ 4. Amend § 42.300 by revising paragraph (b) to read as follows:

§ 42.300 Procedure; pendency.

* * * * *

(b) In a covered business method patent review proceeding, a claim of a patent, or a claim proposed in a motion to amend under § 42.221, shall be construed using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b), including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent. Any prior claim construction determination concerning a term of the claim in a civil action, or a proceeding before the International Trade Commission, that is timely made of record in the covered business method patent review proceeding will be considered.

* * * * *

Dated: October 3, 2018.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2018–22006 Filed 10–10–18; 8:45 am]

BILLING CODE 3510–16–P

POSTAL SERVICE

39 CFR Part 111

POSTNET Barcode

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is amending *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to remove all references to the POSTNET™ barcode.

DATES: *Effective Date:* October 11, 2018.

FOR FURTHER INFORMATION CONTACT: Lizbeth Dobbins at (202) 268–3789 or Garry Rodriguez at (202) 268–7261.

SUPPLEMENTARY INFORMATION: The Postal Service published a notice of proposed rulemaking on July 23, 2018, (83 FR 34806–07) to amend the DMM to remove all references to the POSTNET barcode. This decision was based on the limited use of the POSTNET barcode and the need to simplify the standards in regard to barcoding letter-size and flat-size mailpieces.

The Postal Service received 1 formal response which was in agreement with the removal of POSTNET barcodes in the DMM.

The Postal Service will remove all references to the POSTNET barcode from the DMM. The Postal Service will continue to process mailpieces with a POSTNET barcode to accommodate customers who may have preprinted stock bearing a POSTNET barcode.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

200 Commercial Mail Letters, Cards, Flats, and Parcels

* * * * *

202 Elements on the Face of a Mailpiece

* * * * *

5.0 Barcode Placement Letters and Flats

5.1 Letter-Size

* * * * *

5.1.4 Additional Barcode Permissibility

[Revise the text of 5.1.4 to read as follows:]

An automation letter or a letter claimed at Enhanced Carrier Route saturation or high density automation letter prices may not bear a 5-digit or ZIP+4 Intelligent Mail barcode in the lower right corner (barcode clear zone). The piece may bear an additional Intelligent Mail barcode in the address block only if a qualifying Intelligent Mail barcode with a delivery point routing code appears in the lower right corner.

* * * * *

5.2 Flat-Size

5.2.1 Barcode Placement for Flats

[Revise the fifth sentence of 5.2.1 to read as follows:]

* * * An additional Intelligent Mail barcode may also appear in the address block of an automation flat, when the qualifying Intelligent Mail barcode is not in the address block. * * *

* * * * *

6.0 Barcode Placement for Parcels

* * * * *

[Revise the heading and text of 6.3 to read as follows:]

6.3 Intelligent Mail Barcodes

Intelligent Mail barcodes (IMb) do not meet barcode eligibility requirements for parcels and do not qualify for any barcode-related prices for parcels, but one barcode may be included only in the address block on a parcel, except on eVS parcels. An Intelligent Mail barcode in the address block must be placed according to 5.3.

* * * * *

8.0 Facing Identification Mark (FIM)

* * * * *

8.2 Pattern

[Revise the third sentence in the introductory text of 8.2 to read as follows:]

* * * The required FIM pattern as shown in Exhibit 8.2.0 below depends on the type of mail and the presence of an Intelligent Mail barcode as follows:

* * * * *

204 Barcode Standards

Overview

[Revise the link heading under ''Overview'' to read as follows:]

1.0 Standards for Intelligent Mail Barcodes

* * * * *

[Revise the heading of 1.0 to read as follows:]

1.0 Standards for Intelligent Mail Barcodes

1.1 General

[Revise the text of 1.1 to read as follows:]

An Intelligent Mail barcode is a USPS-developed method to encode ZIP Code information on mail that can be read for sorting by automated machines. Intelligent Mail barcodes also encode other tracking information.

[Delete 1.2, POSTNET Barcode, in its entirety and renumber 1.3 through 1.6 as 1.2 through 1.5.]

* * * * *

507 Mailer Services

* * * * *

4.0 Address Correction Services

* * * * *

4.2 Address Change Service (ACS)

* * * * *

4.2.6 Additional Standards—When Using Intelligent Mail Barcodes

* * * Mailpieces must meet the following specifications:

* * * * *

[Revise the text of item b to read as follows:]

b. Flat-size mailpieces may be mailed at nonautomation or automation prices.

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

604 Postage Payment Methods and Refunds

* * * * *

4.0 Postage Meters and PC Postage Products (''Postage Evidencing Systems'')

* * * * *

4.3 Postage Payment

* * * * *

4.3.3 Placement of Postage

* * * When placing indicia on mailpieces, position indicia at least ¼ inch from the right edge of the mailpiece and ¼ inch from the top edge of the mailpiece and as follows:

* * * * *

[Revise the text of item e to read as follows:]

e. Do not allow the indicia to infringe on the areas reserved for the FIM, Intelligent Mail barcode, or optical character reader (OCR) clear zone.

* * * * *

Index

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[Delete the ''POSTNET'' line item in the Index.]

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Brittany M. Johnson,

Attorney, Federal Compliance.

[FR Doc. 2018–22107 Filed 10–10–18; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2017–0414; FRL–9984–71]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances; Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: EPA is withdrawing significant new use rules (SNURs) promulgated under the Toxic Substances Control Act (TSCA) for 27 chemical substances, which were the subject of premanufacture notices (PMNs). EPA published these SNURs using direct final rulemaking procedures, which requires EPA to take certain actions if an adverse comment is received. EPA received adverse comments and a request to extend the comment period regarding the SNURs identified in the direct final rule. Therefore, the Agency is withdrawing the direct final rule SNURs identified in this document, as required under the direct final rulemaking procedures.

DATES: The direct final rule published at 83 FR 40986 on August 17, 2018, is withdrawn effective October 11, 2018.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2017–0414, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

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

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

A list of potentially affected entities is provided in the **Federal Register** of August 17, 2018 (83 FR 40986) (FRL–9971–37). If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What direct final SNURs are being withdrawn?

In the **Federal Register** of August 17, 2018 (83 FR 40986) (FRL–9971–37), EPA issued direct final SNURs for 27 chemical substances that are identified in that document. Because the Agency received adverse comments and a request to extend the comment period regarding the SNURs identified in the document, EPA is withdrawing the direct final SNURS issued for these 27 chemical substances, which were the subject of PMNs. In addition to the direct final SNURs, elsewhere in the same issue of the **Federal Register** of August 17, 2018 (83 FR 41039) (FRL–9981–82), EPA issued proposed SNURs covering these 27 chemical substances. EPA will address all adverse public comments in a subsequent final rule, based on the proposed rule.

III. Good Cause Finding

EPA determined that this document is not subject to the 30-day delay of effective date generally required by the Administrative Procedure Act (APA) (5 U.S.C. 553(d)) because of the time limitations for publication in the **Federal Register**. This document must publish on or before the effective date of the direct final rule containing the direct final SNURs being withdrawn.

IV. Statutory and Executive Order Reviews

This action withdraws regulatory requirements that have not gone into effect and which contain no new or amended requirements and reopens a comment period. As such, the Agency

has determined that this action will not have any adverse impacts, economic or otherwise. The statutory and Executive Order review requirements applicable to the direct final rules were discussed in the August 17, 2018 **Federal Register** (83 FR 40986). Those review requirements do not apply to this action because it is a withdrawal and does not contain any new or amended requirements.

V. Congressional Review Act (CRA)

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). Section 808 of the CRA allows the issuing agency to make a rule effective sooner than otherwise provided by CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. As required by 5 U.S.C. 808(2), this determination is supported by a brief statement in Unit III.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 2, 2018.

Lance Wormell,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

■ Accordingly, the amendments to 40 CFR parts 9 and 721 published on August 17, 2018 (83 FR 40986), are withdrawn effective October 11, 2018.

[FR Doc. 2018–22194 Filed 10–10–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0165; FRL–9985–13–Region 5]

Air Plan Approval; Ohio; Approval of Sulfur Dioxide Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Ohio's revisions to its State Implementation Plan (SIP) for sulfur dioxide (SO_2) under the Clean Air Act (CAA). These revisions update facility information statewide and add new emission limits for selected sources in Lake and Jefferson Counties. EPA proposed to approve Ohio's SIP revision request on August 16, 2018. The revised regulations do not impose additional emission restrictions except for certain site-specific provisions which have been included in response to Ohio's nonattainment area designations of August 5, 2013. EPA received no adverse comments and is finalizing the approval.

DATES: This final rule is effective on November 13, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2017–0165. 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 Mary Portanova, Environmental Engineer, at (312) 353–5954 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Mary Portanova, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5954, *portanova.mary@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background
II. Public Comment and EPA Response
III. What Action is EPA Taking?
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. Background

On March 13, 2017, Ohio submitted revisions to the Ohio Administrative Code Chapter 3745–18 (OAC 3745–18), effective on February 16, 2017, for incorporation by EPA into the Ohio SO_2 SIP. OAC 3745–18 contains Ohio's air emission regulations for SO_2, which include both generally applicable requirements and specific SO_2 emission limits for each Ohio county. The revisions update facility information statewide, remove obsolete emission limits, and add new emission limits for selected sources in Lake and Jefferson Counties. On August 16, 2018 (83 FR 40723), EPA proposed to approve the submitted revisions. EPA is taking no action on certain parts of OAC 3745–18–04. EPA received no adverse public comments on this proposal; see the discussion in section II below.

Ohio's March 13, 2017 submittal included rules which Ohio had developed to address CAA requirements for its 1-hour SO_2 nonattainment areas. EPA proposed to approve the revised rules applicable to Ohio's nonattainment areas because these revisions update and strengthen the state's SO_2 SIP. See section II C of the August 16, 2018 (83 FR 40723) notice of proposed rulemaking. The approval of these rules is not intended to address whether Ohio has fully satisfied EPA's nonattainment planning requirements for the nonattainment areas. EPA proposed to approve Ohio's nonattainment plan for the Lake County nonattainment area on August 21, 2018 (83 FR 42235), and intends to address nonattainment planning requirements for the remaining nonattainment areas in subsequent actions.

II. Public Comment and EPA Response

The comment period on EPA's August 16, 2018 (83 FR 40723) notice of proposed rulemaking closed on September 17, 2018. EPA received one public comment, which generally supported EPA's proposed action. This comment and EPA's response are described below.

Comment: The commenter stated that fewer emissions are better emissions, and advocated the use of silicon for harnessing energy in solar cells.

EPA Response: The revised rules do represent a reduction in total SO_2 emissions in Ohio. The remainder of this comment is beyond the scope of EPA's action on Ohio's submittal.

III. What action is EPA taking?

EPA is approving Ohio's March 13, 2017 submittal of OAC 3745–18–01; OAC 3745–18–03; and OAC 3745–18–04

[except OAC 3745–18–04(D)(2), (D)(3), (D)(5), (D)(6), and (D)(9)(c), and OAC 3745–18–04 (E)(2), (E)(3) and (E)(4)]. EPA is also approving OAC 3745–18–05 and OAC 3745–18–07 through OAC 3745–18–94. Ohio's adoption of these rules was effective on February 16, 2017. EPA is taking no action on OAC 3745–18–04(D)(2), (D)(3), (D)(5), (D)(6), and (D)(9)(c), and OAC 3745–18–04 (E)(2), (E)(3) and (E)(4). EPA is also removing OAC 3745–18–02 from the Ohio SO_2 SIP, pursuant to Ohio's request of September 10, 2009 [1]. In the codification of this rule, besides specifying the approved rules in 40 CFR 52.1870, EPA is also removing text in 40 CFR 52.1881 that provided a duplicated and outdated listing of approved and disapproved Ohio rules.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Ohio regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[2]

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 December 10, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 25, 2018.

James Payne,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1870, the table in paragraph (c) is amended by revising all the entries for ''Chapter 3745–18 Sulfur Dioxide Regulations'' to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

[1] *Correction:* The August 16, 2018 (83 FR 40723) notice of proposed rulemaking erroneously gave Ohio's 2009 SIP revision submittal date as September 17, 2009. Ohio's submittal requesting the removal of 3745–18–02 was dated September 10, 2009.

[2] 62 FR 27968 (May 22, 1997).

EPA-APPROVED OHIO REGULATIONS

Ohio citation	Title/subject	Ohio effective date	EPA approval date	Notes
*	*	*	*	*
Chapter 3745–18 Sulfur Dioxide Regulations				
3745–18–01	Definitions and Incorporation by Reference.	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–03	Compliance Time Schedules	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–04	Measurement Methods and Procedures.	3/21/2000	1/31/2002, 67 FR 4669	Only (D)(9)(c).
3745–18–04	Measurement Methods and Procedures.	2/16/2017	10/11/2018, [insert **Federal Register** citation].	Except (D)(2), (D)(3), (D)(5), (D)(6), (D)(9)(c), (E)(2), (E)(3), and (E)(4).
3745–18–05	Ambient and Meteorological Monitoring Requirements.	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–06	General Emission Limit Provisions	2/17/2011	11/19/2013, 78 FR 69299.	
3745–18–07	Adams County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–08	Allen County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–09	Ashland County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–10	Ashtabula County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–11	Athens County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–12	Auglaize County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–13	Belmont County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–14	Brown County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–15	Butler County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–16	Carroll County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–17	Champaign County Emission Limits.	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–18	Clark County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–19	Clermont County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–20	Clinton County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–21	Columbiana County Emission Limits.	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–22	Coshocton County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–23	Crawford County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–24	Cuyahoga County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–25	Darke County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–26	Defiance County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–27	Delaware County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–28	Erie County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–29	Fairfield County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–30	Fayette County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–31	Franklin County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–32	Fulton County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	

EPA-APPROVED OHIO REGULATIONS—Continued

Ohio citation	Title/subject	Ohio effective date	EPA approval date	Notes
3745–18–33	Gallia County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–34	Geauga County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–35	Greene County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–36	Guernsey County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–37	Hamilton County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–38	Hancock County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–39	Hardin County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–40	Harrison County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–41	Henry County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–42	Highland County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–43	Hocking County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–44	Holmes County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–45	Huron County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–46	Jackson County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–47	Jefferson County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–48	Knox County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–49	Lake County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–50	Lawrence County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–51	Licking County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–52	Logan County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–53	Lorain County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–54	Lucas County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–55	Madison County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–56	Mahoning County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–57	Marion County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–58	Medina County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–59	Meigs County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–60	Mercer County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–61	Miami County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–62	Monroe County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–63	Montgomery County Emission Limits.	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–64	Morgan County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–65	Morrow County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–66	Muskingum County Emission Limits.	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–67	Noble County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	

EPA-APPROVED OHIO REGULATIONS—Continued

Ohio citation	Title/subject	Ohio effective date	EPA approval date	Notes
3745–18–68	Ottawa County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–69	Paulding County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–70	Perry County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–71	Pickaway County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–72	Pike County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–73	Portage County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–74	Preble County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–75	Putnam County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–76	Richland County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–77	Ross County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–78	Sandusky County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–79	Scioto County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–80	Seneca County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–81	Shelby County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–82	Stark County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–83	Summit County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–84	Trumbull County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–85	Tuscarawas County Emission Limits.	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–86	Union County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–87	Van Wert County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–88	Vinton County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–89	Warren County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–90	Washington County Emission Limits.	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–91	Wayne County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–92	Williams County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–93	Wood County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	
3745–18–94	Wyandot County Emission Limits	2/16/2017	10/11/2018, [insert **Federal Register** citation].	

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■ 3. Section 52.1881 is amended by:

■ a. Revising paragraph (a) introductory text; and

■ b. Removing and reserving paragraphs (a)(1) through (6).

The revision reads as follows:

§ 52.1881 Control strategy: Sulfur oxides (sulfur dioxide).

(a) EPA is approving, disapproving or taking no action on various portions of the Ohio sulfur dioxide control plan as noticed below. The disapproved portions of the Ohio plan do not meet the requirements of § 51.13 of this chapter in that they do not provide for attainment and maintenance of the national standards for sulfur oxides (sulfur dioxide).

* * * * *

[FR Doc. 2018–22012 Filed 10–10–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2018–0507; FRL–9984–97–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Nitrogen Oxides (NO_X) Ozone Season Emissions Caps for Non-Trading Large NO_X Units and Associated Revisions to General Administrative Provisions and Kraft Pulp Mill Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Maryland. The revision (Maryland SIP Revision #18–03) pertains to a new Maryland regulation that establishes ozone season nitrogen oxides (NO_X) emissions caps and other requirements for large non-electric generating units (non-EGU) in Maryland and includes associated revisions to two other Maryland regulations. The revision will enable Maryland to meet NO_X reduction requirements related to interstate transport of pollution that contributes to other states' nonattainment or interferes with other states' maintenance of the ozone national ambient air quality standards (NAAQS). EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on November 13, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2018–0507. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by email at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On August 8, 2018 (83 FR 39014), EPA published a notice of proposed rulemaking (NPRM) for the State of Maryland. In the NPRM, EPA proposed approval of new Code of Maryland Regulation (COMAR) 26.11.40—*NO_X Ozone Season Emission Caps for Non-Trading Large NO_X Units* and revisions to two regulations presently included in the Maryland SIP, COMAR 26.11.01.01—*General Administrative Provisions* and COMAR 26.11.14—*Control of Emissions from Kraft Pulp Mills.* The formal SIP revision was submitted by Maryland on May 15, 2018. The SIP revision was submitted to address Maryland's requirements under the NO_X SIP Call. (63 FR 57356, October 27, 1998.)

The NO_X SIP Call, issued pursuant to Section 110 of the CAA and codified at 40 CFR 51.121 and 51.122, was designed to mitigate significant transport of NO_X, one of the precursors of ozone.[1] EPA developed the NO_X Budget Trading Program, an EPA-administered allowance trading program that states could adopt to meet their obligations under the NO_X SIP Call. The NO_X Budget Trading Program allowed electric generating units (EGUs) greater than 25 megawatts and industrial non-electric generating units, such as boilers and turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr), referred to as ''large non-EGUs,'' to participate in a regional NO_X cap and trade program. Maryland complied with the NO_X SIP call by participation of its large EGUs and large non-EGUs in the NO_X Budget Trading Program. EPA discontinued administration of the NO_X Budget Trading Program in 2009 upon the start of the Clean Air Interstate Rule (CAIR) trading programs (70 FR 25162, May 12, 2005). The NO_X SIP Call requirements continued to apply, however, and EGUs in most states (including Maryland) that formerly participated in the NO_X Budget Trading Program continued to meet their NO_X SIP Call requirements under the generally more stringent requirements of the CAIR NO_X Ozone Season trading program, either pursuant to CAIR Federal implementation plans (FIP) (71 FR 25328, April 28, 2006) or pursuant to approved CAIR SIP revisions.[2] For the large non-EGUs, states needed to take regulatory action to ensure that their obligations under the NO_X SIP Call continued to be met, either through an option to submit a CAIR SIP revision that allowed the large non-EGUs to participate in the CAIR NO_X Ozone Season trading program or through adoption of other replacement regulations.

In Maryland, Luke Paper Mill (formerly the Westvaco pulp and paper mill) was the only facility with large non-EGUs that participated in the NO_X Budget Trading Program. When the CAIR NO_X Ozone Season trading program replaced the NO_X Budget Trading Program, Maryland adopted the CAIR program as it applied to large EGUs, but chose not to include the non-EGUs at Luke as participants in the CAIR NO_X Ozone Season trading program.[3] Instead, in 2010, Maryland adopted COMAR 26.11.14.07—*Control of Emissions from Kraft Pulp Mills,* which, among other requirements, included provisions that address the NO_X SIP Call non-EGU requirements in Maryland through a NO_X ozone season tonnage cap of 947 tons for the Luke non-EGUs and monitoring, recordkeeping, and reporting in accordance with 40 CFR part 75.

Subsequent to adoption of COMAR 26.11.14.07, Maryland determined that additional applicable units have either started operation or were previously not subject but have become subject to the requirements for non-EGUs under the NO_X SIP Call as the units have heat input ratings greater than 250 MMBtu/hr. A review of the applicability of the NO_X SIP Call to large non-EGUs in the State showed that there are three additional facilities having non-EGUs that are covered under the NO_X SIP Call. Maryland adopted new regulation COMAR 26.11.40 to reallocate the statewide NO_X emissions cap among the affected sources, and concurrently revised COMAR 26.11.14.07 to reflect a reduced cap for Luke.

II. Summary of SIP Revision and EPA Analysis

New COMAR 26.11.40 establishes NO_X ozone season tonnage caps and

[1] In October 27, 1998 (63 FR 57356), EPA finalized the ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone''—commonly called the NO_X SIP Call.

[2] EPA approved a CAIR SIP revision replacing the CAIR FIP for Maryland on October 30, 2009 (74 FR 56118).

[3] EPA stopped administering the CAIR trading programs upon implementation of the Cross-State Air Pollution Rule (CSAPR) trading programs. Maryland subsequently took action rescinding its CAIR regulation (COMAR 26.11.28), and submitted a SIP revision to EPA which sought removal of the regulation in its entirety from the approved Maryland SIP. On July 17, 2017 (82 FR 32641), EPA approved the SIP revision removing the CAIR regulation from Maryland's SIP.

NO_X monitoring requirements for large non-EGUs in the State that are not covered under the CSAPR NO_X Ozone Season Group 2 Trading Program to meet requirements of the NO_X SIP Call. NO_X emissions caps are specified for non-EGUs located at four facilities (American Sugar Refining, Dominion Energy Cove Point LNG, Luke Paper Mill, and National Institutes of Health). A portion of the statewide cap is set aside for new units or modified existing units that may become subject to the NO_X SIP Call in the future. Title 40 CFR part 75, subpart H, monitoring of NO_X emissions at affected units is required in accordance with 40 CFR 51.121(i)(4).

COMAR 26.11.14 was revised to reflect the changed NO_X caps for Luke Paper Mill in COMAR 26.11.40. COMAR 26.11.14 was also revised to remove the provision for paper mills to acquire NO_X allowances if the facility's ozone season NO_X cap is exceeded. With the removal of the requirement to purchase NO_X allowances, a corresponding definition in COMAR 26.11.01 for NO_X allowances was also removed.

EPA finds that this May 2018 SIP submittal meets Maryland's NO_X SIP Call requirements (including requirements in CAA section 110 and 40 CFR 51.121) for non-EGUs through new regulation COMAR 24.11.40, including (1) the applicability provisions in COMAR 24.11.40.02, which update the State's requirements to include all currently applicable large non-EGUs and any new non-EGUs under the NO_X SIP Call; (2) the specified statewide ozone season NO_X emissions cap of 1,013 tons in COMAR 24.11.40.03, which is consistent with the portion of the overall Maryland NO_X emissions budget under the NO_X Budget Trading Program attributable to non-EGUs; and (3) the 40 CFR part 75 monitoring, recordkeeping and reporting requirements in COMAR 24.11.40.04, which apply for the affected non-EGUs. In addition, the revisions remove the ability of Kraft pulp mills that exceed their NO_X limits and caps to comply by purchasing or otherwise acquiring NO_X allowances from EPA's ozone season NO_X Trading Program by removing these provisions in COMAR 26.11.14 and 26.11.01. The removal of the provisions allowing purchase of additional allowances removes the potential for increased local NO_X emissions. Other specific requirements of Maryland's May 15, 2018 SIP submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. The SIP submittal does not result in increased NO_X emissions in the State, and therefore EPA finds it has no impact on any requirements related to attainment, reasonable further progress, or any other NAAQS requirements under the CAA. The submittal therefore meets section 110(l) of the CAA for SIP revisions.

III. Public Comments and EPA's Responses

EPA received three anonymous comments on the NPRM, all of which are in the docket for this rulemaking at *www.federalregister.gov.* Two of the comments did not concern any of the specific issues raised in the NPRM, nor did they address EPA's rationale for the proposed approval of MDE's submittal. Therefore, EPA is not responding to those comments. One comment was addressed as follows:

Comment: A comment was made about a term used in EPA's completeness determination for the Maryland SIP submittal. EPA's completeness determination is available in the docket for this rulemaking. The commenter states: ''The docket contains a document entitled [*sic*] ''MD 305 Completeness Checklist 2018–08–27–033843.'' In that document, EPA Requirement number 8 (Compliance/enforcement strategies, including how compliance will be determined in practice) says ''DITTO'' under the ''State Submittal'' column. What does ''DITTO'' mean here? I don't believe this is an environmental, regulatory, or technical term. I can't understand how you determined this submittal to be complete if you use such terms.''

Response: EPA used the word ''DITTO'' in EPA Requirement 8 on page 5 of the ''SIP Submittal Completeness Checklist'' (completeness checklist) as shorthand to indicate that EPA found the State SIP submittal is meeting the EPA requirements for item 8 with the same COMAR regulations as that listed and shown by EPA in the completeness checklist in response to item 7 in the ''State Submittal'' column directly above item 8. In effect, EPA's use of the word ''DITTO'' in the completeness checklist for item 8 means that the EPA found the requirements for ''Compliance/Enforcement strategies, including how compliance will be determined in practice.'' is met by the requirements in COMAR 26.11.40 and COMAR 26.11.14.07 for monitoring, recordkeeping, and reporting in accordance with 40 CFR part 75 as explained in EPA's response to item 7 which contains those regulatory citations. According to the Merriam-Webster dictionary, ''ditto'' means ''a thing mentioned previously or above—used to avoid repeating a word—often symbolized by inverted commas or apostrophe.'' Thus, EPA employed this commonly used word ''ditto'' in the completeness checklist in response to item 8 instead of repeating our answer from item 7 as our answers were intended to be identical to both. As this comment does not concern any of the specific issues raised in the NPRM nor EPA's rationale for approval of MDE's SIP submittal, EPA provides no further response.

IV. Final Action

EPA is approving Maryland's May 15, 2018 SIP revision submittal as a revision to the Maryland SIP in accordance with section 110 of the CAA as the SIP meets requirements in the CAA and in 40 CFR 51.121 related to the NO_X SIP Call requirements.

V. 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 new Maryland regulation COMAR 26.11.40 and revisions to COMAR 26.11.01 and 26.11.17 to meet the requirements for non-EGUs under the NO_X SIP Call. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region III 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 SIP, 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.[4]

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

[4] 62 FR 27968 (May 22, 1997).

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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 December 10, 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 approving new Maryland regulation COMAR 26.11.40 and revisions to COMAR 26.11.01 and COMAR 26.11.14 to address the requirements of the NO_X SIP Call 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.

Dated: September 24, 2018.

Cosmo Servidio,

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 V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by:

■ a. Revising the entries ''26.11.01.01'' and ''26.11.14.07''; and

■ b. Adding a heading and the entries ''26.11.40.01'' through ''26.11.40.04'' in numerical order.

The revisions and additions read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.01 General Administrative Provisions				
26.11.01.01	Definitions	04/23/18	10/11/18, [Insert **Federal Register** citation].	Section .01B is revised to remove definition 24–1 for ''NO_X ozone season allowance'' Previous approval 7/17/2017.
*	*	*	*	*
26.11.14 Control of Emissions From Kraft Pulp Mills				
*	*	*	*	*
26.11.14.07	Control of NO_X Emissions from Fuel Burning Equipment.	04/23/18	10/11/18, [Insert **Federal Register** citation].	Sections .07A and .07B are revised, Section .07C is removed, Section .07D is revised and recodified as Section .07C.

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP—Continued

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
*	*	*	*	*
26.11.40 NO_X Ozone Season Emission Caps for Non-trading Large NO_X Units				
26.11.40.01	Definitions	04/23/18	10/11/18, [Insert **Federal Register** citation].	
26.11.40.02	Applicability	04/23/18	10/11/18, [Insert **Federal Register** citation].	
26.11.40.03	NO_X Ozone Season Emission Caps.	04/23/18	10/11/18, [Insert **Federal Register** citation].	
26.11.40.04	Monitoring and Reporting Requirements.	04/23/18	10/11/18, [Insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2018–21653 Filed 10–10–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 102

RIN 0991–AC0

Annual Civil Monetary Penalties Inflation Adjustment

AGENCY: Office of the Assistant Secretary for Financial Resources, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services is updating its regulations to reflect required annual inflation-related increases to the civil monetary penalties in its regulations, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: This rule is effective October 11, 2018.

FOR FURTHER INFORMATION CONTACT: Shaunta Johnson, Office of Grants and Acquisition Policy and Accountability, Office of the Assistant Secretary for Financial Resources, Room 514–G, Hubert Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201; 202–690–6396; FAX 202–690–5405.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (the ''2015 Act''), which is intended to improve the effectiveness of civil monetary penalties (CMPs) and to maintain the deterrent effect of such penalties, requires agencies to adjust the civil monetary penalties for inflation annually.

The Department of Health and Human Services (HHS) lists the civil monetary penalty authorities and the penalty amounts administered by all of its agencies in tabular form in 45 CFR 102.3.

II. Calculation of Adjustment

The annual inflation adjustment for each applicable civil monetary penalty is determined using the percent increase in the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October of the year in which the amount of each civil penalty was most recently established or modified. In the December 15, 2017, Office of Management and Budget (OMB) Memorandum for the Heads of Executive Agencies and Departments, M–18–03, *Implementation of the Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,* OMB published the multiplier for the required annual adjustment. The cost-of-living adjustment multiplier for 2018, based on the CPI–U for the month of October 2017, not seasonally adjusted, is 1.02041.

Using the 2018 multiplier, HHS adjusted all its applicable monetary penalties in 45 CFR 102.3.

III. Statutory and Executive Order Reviews

The 2015 Act requires federal agencies to publish annual penalty inflation adjustments notwithstanding section 553 of the Administrative Procedure Act (APA).

Section 4(a) of the 2015 Act directs federal agencies to publish annual adjustments no later than January 15th of each year thereafter. In accordance with section 553 of the APA, most rules are subject to notice and comment and are effective no earlier than 30 days after publication in the **Federal Register**. However, section 4(b)(2) of the 2015 Act provides that each agency shall make the annual inflation adjustments ''notwithstanding section 553'' of the APA.

According to OMB's Memorandum M–18–03, the phrase ''notwithstanding section 553'' means that ''the public procedure the APA generally requires—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment.'' Consistent with the language of the 2015 Act and OMB's implementation guidance, this rule is not subject to notice and an opportunity for public comment and will be effective immediately upon publication.

Pursuant to OMB Memorandum M–18–03, HHS has determined that the annual inflation adjustment to the civil monetary penalties in its regulations does not trigger any requirements under procedural statutes and Executive Orders that govern rulemaking procedures.

IV. Effective Date

This rule is effective October 11 2018. The adjusted civil monetary penalty amounts apply to penalties assessed on or after October 11, 2018, if the violation occurred on or after November 2, 2015. If the violation occurred prior to November 2, 2015, or a penalty was assessed prior to September 6, 2016, the pre-adjustment civil penalty amounts in

effect prior to September 6, 2016, will apply.

List of Subjects in 45 CFR Part 102

Administrative practice and procedure, Penalties.

For reasons discussed in the preamble, the Department of Health and Human Services amends subtitle A, title 45 of the Code of Federal Regulations as follows:

PART 102—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 1. The authority citation for part 102 continues to read as follows:

Authority: Public Law 101–410, Sec. 701 of Public Law 114–74, 31 U.S.C. 3801–3812.

■ 2. Amend § 102.3 by revising the table to read as follows:

§ 102.3 Penalty adjustment and table.

* * * * *

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS

[Effective October 11, 2018]

Citation		HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2016 Maximum adjusted penalty ($)	2017 Maximum adjusted penalty ($) [4]	2018 Maximum adjusted penalty ($)
U.S.C.	CFR [1]						
			21 U.S.C.				
333(b)(2)(A)		FDA	Penalty for violations related to drug samples resulting in a conviction of any representative of manufacturer or distributor in any 10-year period.	2016	98,935	100,554	102,606
333(b)(2)(B)		FDA	Penalty for violation related to drug samples resulting in a conviction of any representative of manufacturer or distributor after the second conviction in any 10-yr period.	2016	1,978,690	2,011,061	2,052,107
333(b)(3)		FDA	Penalty for failure to make a report required by 21 U.S.C. 353(d)(3)(E) relating to drug samples.	2016	197,869	201,106	205,211
333(f)(1)(A)		FDA	Penalty for any person who violates a requirement related to devices for each such violation.	2016	26,723	27,160	27,714
			Penalty for aggregate of all violations related to devices in a single proceeding.	2016	1,781,560	1,810,706	1,847,663
333(f)(2)(A)		FDA	Penalty for any individual who introduces or delivers for introduction into interstate commerce food that is adulterated per 21 U.S.C. 342(a)(2)(B) or any individual who does not comply with a recall order under 21 U.S.C. 350l.	2016	75,123	76,352	77,910
			Penalty in the case of any other person other than an individual) for such introduction or delivery of adulterated food.	2016	375,613	381,758	389,550
			Penalty for aggregate of all such violations related to adulterated food adjudicated in a single proceeding.	2016	751,225	763,515	779,098
333(f)(3)(A)		FDA	Penalty for all violations adjudicated in a single proceeding for any person who violates 21 U.S.C. 331(jj)(1) by failing to submit the certification required by 42 U.S.C. 282(j)(5)(B) or knowingly submitting a false certification; by failing to submit clinical trial information under 42 U.S.C 282(j); or by submitting clinical trial information under 42 U.S.C. 282(j) that is false or misleading in any particular under 42 U.S.C. 282(j)(5)(D).	2016	11,383	11,569	11,805
333(f)(3)(B)		FDA	Penalty for each day any above violation is not corrected after a 30-day period following notification until the violation is corrected.	2016	11,383	11,569	11,805
333(f)(4)(A)(i)		FDA	Penalty for any responsible person that violates a requirement of 21 U.S.C. 355(o) (post-marketing studies, clinical trials, labeling), 21 U.S.C. 355(p) (risk evaluation and mitigation (REMS)), or 21 U.S.C. 355–1 (REMS).	2016	284,583	289,239	295,142

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective October 11, 2018]

Citation		HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2016 Maximum adjusted penalty ($)	2017 Maximum adjusted penalty ($) [4]	2018 Maximum adjusted penalty ($)
U.S.C.	CFR [1]						
			Penalty for aggregate of all such above violations in a single proceeding.	2016	1,138,330	1,156,953	1,180,566
333(f)(4)(A)(ii)		FDA	Penalty for REMS violation that continues after written notice to the responsible person for the first 30-day period (or any portion thereof) the responsible person continues to be in violation.	2016	284,583	289,239	295,142
			Penalty for REMS violation that continues after written notice to responsible person doubles for every 30-day period thereafter the violation continues, but may not exceed penalty amount for any 30-day period.	2016	1,138,330	1,156,953	1,180,566
			Penalty for aggregate of all such above violations adjudicated in a single proceeding.	2016	11,383,300	11,569,531	11,805,665
333(f)(9)(A)		FDA	Penalty for any person who violates a requirement which relates to tobacco products for each such violation.	2016	16,503	16,773	17,115
			Penalty for aggregate of all such violations of tobacco product requirement adjudicated in a single proceeding.	2016	1,100,200	1,118,199	1,141,021
333(f)(9)(B)(i)(I)		FDA	Penalty per violation related to violations of tobacco requirements.	2016	275,050	279,550	285,256
			Penalty for aggregate of all such violations of tobacco product requirements adjudicated in a single proceeding.	2016	1,100,200	1,118,199	1,141,021
333(f)(9)(B)(i)(II)		FDA	Penalty in the case of a violation of tobacco product requirements that continues after written notice to such person, for the first 30-day period (or any portion thereof) the person continues to be in violation.	2016	275,050	279,550	285,256
			Penalty for violation of tobacco product requirements that continues after written notice to such person shall double for every 30-day period thereafter the violation continues, but may not exceed penalty amount for any 30-day period.	2016	1,100,200	1,118,199	1,141,021
			Penalty for aggregate of all such violations related to tobacco product requirements adjudicated in a single proceeding.	2016	11,002,000	11,181,993	11,410,218
333(f)(9)(B)(ii)(I)		FDA	Penalty for any person who either does not conduct post-market surveillance and studies to determine impact of a modified risk tobacco product for which the HHS Secretary has provided them an order to sell, or who does not submit a protocol to the HHS Secretary after being notified of a requirement to conduct post-market surveillance of such tobacco products.	2016	275,050	279,550	285,256
			Penalty for aggregate of for all such above violations adjudicated in a single proceeding.	2016	1,100,200	1,118,199	1,141,021
333(f)(9)(B)(ii)(II)		FDA	Penalty for violation of modified risk tobacco product post-market surveillance that continues after written notice to such person for the first 30-day period (or any portion thereof) that the person continues to be in violation.	2016	275,050	279,550	285,256

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective October 11, 2018]

Citation		HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2016 Maximum adjusted penalty ($)	2017 Maximum adjusted penalty ($) [4]	2018 Maximum adjusted penalty ($)
U.S.C.	CFR [1]						
			Penalty for post-notice violation of modified risk tobacco product post-market surveillance shall double for every 30-day period thereafter that the tobacco product requirement violation continues for any 30-day period, but may not exceed penalty amount for any 30-day period.	2016	1,100,200	1,118,199	1,141,021
			Penalty for aggregate above tobacco product requirement violations adjudicated in a single proceeding.	2016	11,002,000	11,181,993	11,410,218
333(g)(1)		FDA	Penalty for any person who disseminates or causes another party to disseminate a direct-to-consumer advertisement that is false or misleading for the first such violation in any 3-year period.	2016	284,583	289,239	295,142
			Penalty for each subsequent above violation in any 3-year period.	2016	569,165	578,477	590,284
333 note		FDA	Penalty to be applied for violations of restrictions on the sale or distribution of tobacco products promulgated under 21 U.S.C. 387f(d) (*e.g.,* violations of regulations in 21 CFR Part 1140) with respect to a retailer with an approved training program in the case of a second regulation violation within a 12-month period.	2016	275	279	285
			Penalty in the case of a third tobacco product regulation violation within a 24-month period.	2016	550	559	570
			Penalty in the case of a fourth tobacco product regulation violation within a 24-month period.	2016	2,200	2,236	2,282
			Penalty in the case of a fifth tobacco product regulation violation within a 36-month period.	2016	5,501	5,591	5,705
			Penalty in the case of a sixth or subsequent tobacco product regulation violation within a 48-month period as determined on a case-by-case basis.	2016	11,002	11,182	11,410
			Penalty to be applied for violations of restrictions on the sale or distribution of tobacco products promulgated under 21 U.S.C. 387f(d) (e.g., violations of regulations in 21 CFR Part 1140) with respect to a retailer that does not have an approved training program in the case of the first regulation violation.	2016	275	279	285
			Penalty in the case of a second tobacco product regulation violation within a 12-month period.	2016	550	559	570
			Penalty in the case of a third tobacco product regulation violation within a 24-month period.	2016	1,100	1,118	1,141
			Penalty in the case of a fourth tobacco product regulation violation within a 24-month period.	2016	2,200	2,236	2,282
			Penalty in the case of a fifth tobacco product regulation violation within a 36-month period.	2016	5,501	5,591	5,705
			Penalty in the case of a sixth or subsequent tobacco product regulation violation within a 48-month period as determined on a case-by-case basis.	2016	11,002	11,182	11,410

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective October 11, 2018]

Citation		HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2016 Maximum adjusted penalty ($)	2017 Maximum adjusted penalty ($) [4]	2018 Maximum adjusted penalty ($)
U.S.C.	CFR [1]						
335b(a)		FDA	Penalty for each violation for any individual who made a false statement or misrepresentation of a material fact, bribed, destroyed, altered, removed, or secreted, or procured the destruction, alteration, removal, or secretion of, any material document, failed to disclose a material fact, obstructed an investigation, employed a consultant who was debarred, debarred individual provided consultant services.	2016	419,320	426,180	434,878
			Penalty in the case of any other person (other than an individual) per above violation.	2016	1,677,280	1,704,720	1,739,513
360pp(b)(1)		FDA	Penalty for any person who violates any such requirements for electronic products, with each unlawful act or omission constituting a separate violation.	2016	2,750	2,795	2,852
			Penalty imposed for any related series of violations of requirements relating to electronic products.	2016	937,500	952,838	972,285
42 U.S.C.							
262(d)		FDA	Penalty per day for violation of order of recall of biological product presenting imminent or substantial hazard.	2016	215,628	219,156	223,629
263b(h)(3)		FDA	Penalty for failure to obtain a mammography certificate as required.	2016	16,773	17,047	17,395
300aa–28(b)(1)		FDA	Penalty per occurrence for any vaccine manufacturer that intentionally destroys, alters, falsifies, or conceals any record or report required.	2016	215,628	219,156	223,629
256b(d)(1)(B)(vi)		HRSA	Penalty for each instance of overcharging a 340B covered entity.	2016	5,437	5,526	5,639
299c–3(d)		AHRQ	Penalty for an establishment or person supplying information obtained in the course of activities for any purpose other than the purpose for which it was supplied.	2016	14,140	14,371	14,664
653(l)(2)	45 CFR 303.21(f)	ACF	Penalty for Misuse of Information in the National Directory of New Hires.	2016	1,450	1,474	1,504
262a(i)(1)	42 CFR 1003.910	OIG	Penalty for each individual who violates safety and security procedures related to handling dangerous biological agents and toxins.	2016	327,962	333,327	340,130
			Penalty for any other person who violates safety and security procedures related to handling dangerous biological agents and toxins.	2016	655,925	666,656	680,262
300jj–51		OIG	Penalty per violation for committing information blocking.	2016	1,000,000	1,016,360	1,037,104
1320a–7a(a) [5]	42 CFR 1003.210(a)(1)	OIG	Penalty for knowingly presenting or causing to be presented to an officer, employee, or agent of the United States a false claim.	2018	15,024	15,270	20,000
			Penalty for knowingly presenting or causing to be presented a request for payment which violates the terms of an assignment, agreement, or PPS agreement.	2018	15,024	15,270	20,000
	42 CFR 1003.210(a)(2)		Penalty for knowingly giving or causing to be presented to a participating provider or supplier false or misleading information that could reasonably be expected to influence a discharge decision.	2018	22,537	22,906	30,000

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective October 11, 2018]

Citation		HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2016 Maximum adjusted penalty ($)	2017 Maximum adjusted penalty ($) [4]	2018 Maximum adjusted penalty ($)
U.S.C.	CFR [1]						
	42 CFR 1003.210(a)(3)		Penalty for an excluded party retaining ownership or control interest in a participating entity.	2018	15,024	15,270	20,000
	42 CFR 1003.1010		Penalty for remuneration offered to induce program beneficiaries to use particular providers, practitioners, or suppliers.	2018	15,024	15,270	20,000
	42 CFR 1003.210(a)(4)		Penalty for employing or contracting with an excluded individual.	2018	14,718	14,959	20,000
	42 CFR 1003.310(a)(3)		Penalty for knowing and willful solicitation, receipt, offer, or payment of remuneration for referring an individual for a service or for purchasing, leasing, or ordering an item to be paid for by a Federal health care program.	2018	73,588	74,792	100,000
	42 CFR 1003.210(a)(1)		Penalty for ordering or prescribing medical or other item or service during a period in which the person was excluded.	2018	10,874	11,052	20,000
	42 CFR 1003.210(a)(6)		Penalty for knowingly making or causing to be made a false statement, omission or misrepresentation of a material fact in any application, bid, or contract to participate or enroll as a provider or supplier.	2018	54,372	55,262	100,000
	42 CFR 1003.210(a)(8)		Penalty for knowing of an overpayment and failing to report and return.	2018	10,874	11,052	20,000
	42 CFR 1003.210(a)(7)		Penalty for making or using a false record or statement that is material to a false or fraudulent claim.	2018	54,372	55,262	100,000
	42 CFR 1003.210(a)(9)		Penalty for failure to grant timely access to HHS OIG for audits, investigations, evaluations, and other statutory functions of HHS OIG.	2018	16,312	16,579	30,000
1320a–7a(b) [5]		OIG	Penalty for payments by a hospital or critical access hospital to induce a physician to reduce or limit services to individuals under direct care of physician or who are entitled to certain medical assistance benefits.	2018	4,313	4,384	5,000
			Penalty for physicians who knowingly receive payments from a hospital or critical access hospital to induce such physician to reduce or limit services to individuals under direct care of physician or who are entitled to certain medical assistance benefits.	2018	4,313	4,384	5,000
	42 CFR 1003.210(a)(10)		Penalty for a physician who executes a document that falsely certifies home health needs for Medicare beneficiaries.	2018	7,512	7,635	10,000
1320a–7e(b)(6)(A)	42 CFR 1003.810	OIG	Penalty for failure to report any final adverse action taken against a health care provider, supplier, or practitioner.	2016	36,794	37,396	38,159
1320b–10(b)(1)	42 CFR 1003.610(a)	OIG	Penalty for the misuse of words, symbols, or emblems in communications in a manner in which a person could falsely construe that such item is approved, endorsed, or authorized by HHS.	2016	9,893	10,055	10,260
1320b–10(b)(2)	42 CFR 1003.610(a)	OIG	Penalty for the misuse of words, symbols, or emblems in a broadcast or telecast in a manner in which a person could falsely construe that such item is approved, endorsed, or authorized by HHS.	2016	49,467	50,276	51,302

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective October 11, 2018]

Citation		HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2016 Maximum adjusted penalty ($)	2017 Maximum adjusted penalty ($) [4]	2018 Maximum adjusted penalty ($)
U.S.C.	CFR [1]						
1395i–3(b)(3)(B)(ii)(1)	42 CFR 1003.210(a)(11)	OIG	Penalty for certification of a false statement in assessment of functional capacity of a Skilled Nursing Facility resident assessment.	2016	2,063	2,097	2,140
1395i–3(b)(3)(B)(ii)(2)	42 CFR 1003.210(a)(11)	OIG	Penalty for causing another to certify or make a false statement in assessment of functional capacity of a Skilled Nursing Facility resident assessment.	2016	10,314	10,483	10,697
1395i–3(g)(2)(A)	42 CFR 1003.1310	OIG	Penalty for any individual who notifies or causes to be notified a Skilled Nursing Facility of the time or date on which a survey is to be conducted.	2016	4,126	4,194	4,280
1395w–27(g)(2)(A)	42 CFR 1003.410	OIG	Penalty for a Medicare Advantage organization that substantially fails to provide medically necessary, required items and services.	2016	37,561	38,175	38,954
			Penalty for a Medicare Advantage organization that charges excessive premiums.	2016	36,794	37,396	38,159
			Penalty for a Medicare Advantage organization that improperly expels or refuses to reenroll a beneficiary.	2016	36,794	37,396	38,159
			Penalty for a Medicare Advantage organization that engages in practice that would reasonably be expected to have the effect of denying or discouraging enrollment.	2016	147,177	149,585	152,638
			Penalty per individual who does not enroll as a result of a Medicare Advantage organization's practice that would reasonably be expected to have the effect of denying or discouraging enrollment.	2016	22,077	22,438	22,896
			Penalty for a Medicare Advantage organization misrepresenting or falsifying information to Secretary.	2016	147,177	149,585	152,638
			Penalty for a Medicare Advantage organization misrepresenting or falsifying information to individual or other entity.	2016	36,794	37,396	38,159
			Penalty for Medicare Advantage organization interfering with provider's advice to enrollee and non-MCO affiliated providers that balance bill enrollees.	2016	36,794	37,396	38,159
			Penalty for a Medicare Advantage organization that employs or contracts with excluded individual or entity.	2016	36,794	37,396	38,159
			Penalty for a Medicare Advantage organization enrolling an individual in without prior written consent.	2016	36,794	37,396	38,159
			Penalty for a Medicare Advantage organization transferring an enrollee to another plan without consent or solely for the purpose of earning a commission.	2016	36,794	37,396	38,159
			Penalty for a Medicare Advantage organization failing to comply with marketing restrictions or applicable implementing regulations or guidance.	2016	36,794	37,396	38,159
			Penalty for a Medicare Advantage organization employing or contracting with an individual or entity who violates 1395w–27(g)(1)(A)–(J).	2016	36,794	37,396	38,159

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective October 11, 2018]

Citation		HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2016 Maximum adjusted penalty ($)	2017 Maximum adjusted penalty ($) [4]	2018 Maximum adjusted penalty ($)
U.S.C.	CFR [1]						
1395w–141(i)(3)		OIG	Penalty for a prescription drug card sponsor that falsifies or misrepresents marketing materials, overcharges program enrollees, or misuse transitional assistance funds.	2016	12,856	13,066	13,333
1395cc(g)		OIG	Penalty for improper billing by Hospitals, Critical Access Hospitals, or Skilled Nursing Facilities.	2016	5,000	5,082	5,186
1395dd(d)(1)	42 CFR 1003.510	OIG	Penalty for a hospital or responsible physician dumping patients needing emergency medical care, if the hospital has 100 beds or more.	2016	103,139	104,826	106,965
			Penalty for a hospital or responsible physician dumping patients needing emergency medical care, if the hospital has less than 100 beds.	2016	51,570	52,414	53,484
1395mm(i)(6)(B)(i)	42 CFR 1003.410	OIG	Penalty for a HMO or competitive plan is such plan substantially fails to provide medically necessary, required items or services.	2016	51,570	52,414	53,484
			Penalty for HMOs/competitive medical plans that charge premiums in excess of permitted amounts.	2016	51,570	52,414	53,484
			Penalty for a HMO or competitive medical plan that expels or refuses to reenroll an individual per prescribed conditions.	2016	51,570	52,414	53,484
			Penalty for a HMO or competitive medical plan that implements practices to discourage enrollment of individuals needing services in future.	2016	206,278	209,653	213,932
			Penalty per individual not enrolled in a plan as a result of a HMO or competitive medical plan that implements practices to discourage enrollment of individuals needing services in the future.	2016	29,680	30,166	30,782
			Penalty for a HMO or competitive medical plan that misrepresents or falsifies information to the Secretary.	2016	206,278	209,653	213,932
			Penalty for a HMO or competitive medical plan that misrepresents or falsifies information to an individual or any other entity.	2016	51,570	52,414	53,484
			Penalty for failure by HMO or competitive medical plan to assure prompt payment of Medicare risk sharing contracts or incentive plan provisions.	2016	51,570	52,414	53,484
			Penalty for HMO that employs or contracts with excluded individual or entity.	2016	47,340	48,114	49,096
1395nn(g)(3)	42 CFR 1003.310	OIG	Penalty for submitting or causing to be submitted claims in violation of the Stark Law's restrictions on physician self-referrals.	2016	23,863	24,253	24,748
1395nn(g)(4)	42 CFR 1003.310	OIG	Penalty for circumventing Stark Law's restrictions on physician self-referrals.	2016	159,089	161,692	164,992
1395ss(d)(1)	42 CFR 1003.1110	OIG	Penalty for a material misrepresentation regarding Medigap compliance policies.	2016	9,893	10,055	10,260
1395ss(d)(2)	42 CFR 1003.1110	OIG	Penalty for selling Medigap policy under false pretense.	2016	9,893	10,055	10,260
1395ss(d)(3)(A)(ii)	42 CFR 1003.1110	OIG	Penalty for an issuer that sells health insurance policy that duplicates benefits.	2016	44,539	45,268	46,192
			Penalty for someone other than issuer that sells health insurance that duplicates benefits.	2016	26,723	27,160	27,714

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective October 11, 2018]

Citation		HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2016 Maximum adjusted penalty ($)	2017 Maximum adjusted penalty ($) [4]	2018 Maximum adjusted penalty ($)
U.S.C.	CFR [1]						
1395ss(d)(4)(A)	42 CFR 1003.1110	OIG	Penalty for using mail to sell a non-approved Medigap insurance policy.	2016	9,893	10,055	10,260
1396b(m)(5)(B)(i)	42 CFR 1003.410	OIG	Penalty for a Medicaid MCO that substantially fails to provide medically necessary, required items or services.	2016	49,467	50,276	51,302
			Penalty for a Medicaid MCO that charges excessive premiums.	2016	49,467	50,276	51,302
			Penalty for a Medicaid MCO that improperly expels or refuses to reenroll a beneficiary.	2016	197,869	201,106	205,211
			Penalty per individual who does not enroll as a result of a Medicaid MCO's practice that would reasonably be expected to have the effect of denying or discouraging enrollment.	2016	29,680	30,166	30,782
			Penalty for a Medicaid MCO misrepresenting or falsifying information to the Secretary.	2016	197,869	201,106	205,211
			Penalty for a Medicaid MCO misrepresenting or falsifying information to an individual or another entity.	2016	49,467	50,276	51,302
			Penalty for a Medicaid MCO that fails to comply with contract requirements with respect to physician incentive plans.	2016	44,539	45,268	46,192
1396r(b)(3)(B)(ii)(I)	42 CFR 1003.210(a)(11)	OIG	Penalty for willfully and knowingly certifying a material and false statement in a Skilled Nursing Facility resident assessment.	2016	2,063	2,097	2,140
1396r(b)(3)(B)(ii)(II)	42 CFR 1003.210(a)(11)	OIG	Penalty for willfully and knowingly causing another individual to certify a material and false statement in a Skilled Nursing Facility resident assessment.	2016	10,314	10,483	10,697
1396r(g)(2)(A)(i)	42 CFR 1003.1310	OIG	Penalty for notifying or causing to be notified a Skilled Nursing Facility of the time or date on which a survey is to be conducted.	2016	4,126	4,194	4,280
1396r–8(b)(3)(B)	42 CFR 1003.1210	OIG	Penalty for the knowing provision of false information or refusing to provide information about charges or prices of a covered outpatient drug.	2016	178,156	181,071	184,767
1396r–8(b)(3)(C)(i)	42 CFR 1003.1210	OIG	Penalty per day for failure to timely provide information by drug manufacturer with rebate agreement.	2016	17,816	18,107	18,477
1396r–8(b)(3)(C)(ii)	42 CFR 1003.1210	OIG	Penalty for knowing provision of false information by drug manufacturer with rebate agreement.	2016	178,156	181,071	184,767
1396t(i)(3)(A)	42 CFR 1003.1310	OIG	Penalty for notifying home and community-based providers or settings of survey.	2016	3,563	3,621	3,695
11131(c)	42 CFR 1003.810	OIG	Penalty for failing to report a medical malpractice claim to National Practitioner Data Bank.	2016	21,563	21,916	22,363
11137(b)(2)	42 CFR 1003.810	OIG	Penalty for breaching confidentiality of information reported to National Practitioner Data Bank.	2016	21,563	21,916	22,363
299b–22(f)(1)	42 CFR 3.404	OCR	Penalty for violation of confidentiality provision of the Patient Safety and Quality Improvement Act.	2016	11,940	12,135	12,383
1320(d)–5(a)	45 CFR 160.404(b)(1)(i), (ii).	OCR	Penalty for each pre-February 18, 2009 violation of the HIPAA administrative simplification provisions.	2016	150	152	155
			Calendar Year Cap	2016	37,561	38,175	38,954

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

[Effective October 11, 2018]

Citation		HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2016 Maximum adjusted penalty ($)	2017 Maximum adjusted penalty ($) [4]	2018 Maximum adjusted penalty ($)
U.S.C.	CFR [1]						
	45 CFR 160.404(b)(2)(i)(A), (B).	OCR	Penalty for each February 18, 2009 or later violation of a HIPAA administrative simplification provision in which it is established that the covered entity or business associate did not know and by exercising reasonable diligence, would not have known that the covered entity or business associate violated such a provision.	.....	.....	.....	.....
			Minimum	2016	110	112	114
			Maximum	2016	55,010	55,910	57,051
			Calendar Year Cap	2016	1,650,300	1,677,299	1,711,533
	45 CFR 160.404(b)(2)(ii)(A), (B).	OCR	Penalty for each February 18, 2009 or later violation of a HIPAA administrative simplification provision in which it is established that the violation was due to reasonable cause and not to willful neglect.	.....	.....	.....	.....
			Minimum	2016	1,100	1,118	1,141
			Maximum	2016	55,010	55,910	57,051
			Calendar Year Cap	2016	1,650,300	1,677,299	1,711,533
	45 CFR 160.404(b)(2)(iii)(A), (B).	OCR	Penalty for each February 18, 2009 or later violation of a HIPAA administrative simplification provision in which it is established that the violation was due to willful neglect and was corrected during the 30-day period beginning on the first date the covered entity or business associate knew, or, by exercising reasonable diligence, would have known that the violation occurred.	.....	.....	.....	.....
			Minimum	2016	11,002	11,182	11,410
			Maximum	2016	55,010	55,910	57,051
			Calendar Year Cap	2016	1,650,300	1,677,299	1,711,533
	45 CFR 160.404(b)(2)(iv)(A), (B).	OCR	Penalty for each February 18, 2009 or later violation of a HIPAA administrative simplification provision in which it is established that the violation was due to willful neglect and was not corrected during the 30-day period beginning on the first date the covered entity or business associate knew, or by exercising reasonable diligence, would have known that the violation occurred.	.....	.....	.....	.....
			Minimum	2016	55,010	55,910	57,051
			Maximum	2016	1,650,300	1,677,299	1,711,533
			Calendar Year Cap	2016	1,650,300	1,677,299	1,711,533
263a(h)(2)(B) & 1395w–2(b)(2)(A)(ii).	42 CFR 493.1834(d)(2)(i).	CMS	Penalty for a clinical laboratory's failure to meet participation and certification requirements and poses immediate jeopardy.	.....	.....	.....	.....
			Minimum	2016	6,035	6,134	6,259
			Maximum	2016	19,787	20,111	20,521
	42 CFR 493.1834(d)(2)(ii).	CMS	Penalty for a clinical laboratory's failure to meet participation and certification requirements and the failure does not pose immediate jeopardy.	.....	.....	.....	-
			Minimum	2016	99	101	103
			Maximum	2016	5,936	6,033	6,156
300gg–15(f)	45 CFR 147.200(e)	CMS	Failure to provide the Summary of Benefits and Coverage.	2016	1,087	1,105	1,128
300gg–18	45 CFR 158.606	CMS	Penalty for violations of regulations related to the medical loss ratio reporting and rebating.	2016	109	111	113

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

[Effective October 11, 2018]

Citation		HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2016 Maximum adjusted penalty ($)	2017 Maximum adjusted penalty ($) [4]	2018 Maximum adjusted penalty ($)
U.S.C.	CFR [1]						
1320a–7h(b)(1)	42 CFR 402.105(d)(5), 42 CFR 403.912(a) & (c).	CMS	Penalty for manufacturer or group purchasing organization failing to report information required under 42 U.S.C. 1320a–7h(a), relating to physician ownership or investment interests.				
			Minimum	2016	1,087	1,105	1,128
			Maximum	2016	10,874	11,052	11,278
			Calendar Year Cap	2016	163,117	165,786	169,170
1320a–7h(b)(2)	42 CFR 402.105(h), 42 CFR 403 912(b) & (c).	CMS	Penalty for manufacturer or group purchasing organization knowingly failing to report information required under 42 U.S.C. 1320a–7h(a) , relating to physician ownership or investment interests.				
			Minimum	2016	10,874	11,052	11,278
			Maximum	2016	108,745	110,524	112,780
			Calendar Year Cap	2016	1,087,450	1,105,241	1,127,799
1320a–7j(h)(3)(A)		CMS	Penalty for an administrator of a facility that fails to comply with notice requirements for the closure of a facility.	2016	108,745	110,524	112,780
	42 CFR 488.446(a)(1),(2), & (3).	CMS	Minimum penalty for the first offense of an administrator who fails to provide notice of facility closure.	2016	544	553	564
			Minimum penalty for the second offense of an administrator who fails to provide notice of facility closure.	2016	1,631	1,658	1,692
			Minimum penalty for the third and subsequent offenses of an administrator who fails to provide notice of facility closure.	2016	3,262	3,315	3,383
1320a–8(a)(1)		CMS	Penalty for an entity knowingly making a false statement or representation of material fact in the determination of the amount of benefits or payments related to old-age, survivors, and disability insurance benefits, special benefits for certain World War II veterans, or supplemental security income for the aged, blind, and disabled.	2016	7,954	8,084	8,249
			Penalty for violation of 42 U.S.C. 1320a–8(a)(1) if the violator is a person who receives a fee or other income for services performed in connection with determination of the benefit amount or the person is a physician or other health care provider who submits evidence in connection with such a determination.	2016	7,500	7,623	7,779
1320a–8(a)(3)		CMS	Penalty for a representative payee (under 42 U.S.C. 405(j), 1007, or 1383(a)(2)) converting any part of a received payment from the benefit programs described in the previous civil monetary penalty to a use other than for the benefit of the beneficiary.	2016	6,229	6,331	6,460
1320b–25(c)(1)(A)		CMS	Penalty for failure of covered individuals to report to the Secretary and 1 or more law enforcement officials any reasonable suspicion of a crime against a resident, or individual receiving care, from a long-term care facility.	2016	217,490	221,048	225,560

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective October 11, 2018]

Citation		HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2016 Maximum adjusted penalty ($)	2017 Maximum adjusted penalty ($) [4]	2018 Maximum adjusted penalty ($)
U.S.C.	CFR [1]						
1320b–25(c)(2)(A)		CMS	Penalty for failure of covered individuals to report to the Secretary and 1 or more law enforcement officials any reasonable suspicion of a crime against a resident, or individual receiving care, from a long-term care facility if such failure exacerbates the harm to the victim of the crime or results in the harm to another individual.	2016	326,235	331,572	338,339
1320b–25(d)(2)		CMS	Penalty for a long-term care facility that retaliates against any employee because of lawful acts done by the employee, or files a complaint or report with the State professional disciplinary agency against an employee or nurse for lawful acts done by the employee or nurse.	2016	217,490	221,048	225,560
1395b–7(b)(2)(B)	42 CFR 402.105(g)	CMS	Penalty for any person who knowingly and willfully fails to furnish a beneficiary with an itemized statement of items or services within 30 days of the beneficiary's request.	2016	147	149	152
1395i–3(h)(2)(B)(ii)(I)	42 CFR 488.408(d)(1)(iii)	CMS	Penalty per day for a Skilled Nursing Facility that has a Category 2 violation of certification requirements.				
			Minimum	2016	103	105	107
			Maximum	2016	6,188	6,289	6,417
	42 CFR 488.408(d)(1)(iv).	CMS	Penalty per instance of Category 2 noncompliance by a Skilled Nursing Facility.				
			Minimum	2016	2,063	2,097	2,140
			Maximum	2016	20,628	20,965	21,393
	42 CFR 488.408(e)(1)(iii)	CMS	Penalty per day for a Skilled Nursing Facility that has a Category 3 violation of certification requirements.				
			Minimum	2016	6,291	6,394	6,525
			Maximum	2016	20,628	20,965	21,393
	42 CFR 488.408(e)(1)(iv).	CMS	Penalty per instance of Category 3 noncompliance by a Skilled Nursing Facility.				
			Minimum	2016	2,063	2,097	2,140
			Maximum	2016	20,628	20,965	21,393
	42 CFR 488.408 (e)(2)(ii).	CMS	Penalty per day and per instance for a Skilled Nursing Facility that has Category 3 noncompliance with Immediate Jeopardy.				
			Per Day (Minimum)	2016	6,291	6,394	6,525
			Per Day (Maximum)	2016	20,628	20,965	21,393
			Per Instance (Minimum)	2016	2,063	2,097	2,140
			Per Instance (Maximum)	2016	20,628	20,965	21,393
	42 CFR 488.438(a)(1)(i)	CMS	Penalty per day of a Skilled Nursing Facility that fails to meet certification requirements. These amounts represent the upper range per day.				
			Minimum	2016	6,291	6,394	6,524
			Maximum	2016	20,628	20,965	21,393
	42 CFR 488.438(a)(1)(ii)	CMS	Penalty per day of a Skilled Nursing Facility that fails to meet certification requirements. These amounts represent the lower range per day.				
			Minimum	2016	103	105	107
			Maximum	2016	6,188	6,289	6,418
	42 CFR 488.438(a)(2)	CMS	Penalty per instance of a Skilled Nursing Facility that fails to meet certification requirements.				
			Minimum	2016	2,063	2,097	2,140
			Maximum	2016	20,628	20,965	21,393

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

[Effective October 11, 2018]

Citation		HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2016 Maximum adjusted penalty ($)	2017 Maximum adjusted penalty ($) [4]	2018 Maximum adjusted penalty ($)
U.S.C.	CFR [1]						
1395l(h)(5)(D) [5]	42 CFR 402.105(d)(2)(i)	CMS	Penalty for knowingly, willfully, and repeatedly billing for a clinical diagnostic laboratory test other than on an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,024	15,270	30,000
1395l(i)(6)		CMS	Penalty for knowingly and willfully presenting or causing to be presented a bill or request for payment for an intraocular lens inserted during or after cataract surgery for which the Medicare payment rate includes the cost of acquiring the class of lens involved.	2016	3,957	4,022	4,104
1395l(q)(2)(B)(i)	42 CFR 402.105(a)	CMS	Penalty for knowingly and willfully failing to provide information about a referring physician when seeking payment on an unassigned basis.	2016	3,787	3,849	3,928
1395m(a)(11)(A) [5]	42 CFR 402.1(c)(4), 402.105(d)(2)(ii).	CMS	Penalty for any durable medical equipment supplier that knowingly and willfully charges for a covered service that is furnished on a rental basis after the rental payments may no longer be made. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,024	15,270	30,000
1395m(a)(18)(B) [5]	42 CFR 402.1(c)(5), 402.105(d)(2)(iii).	CMS	Penalty for any nonparticipating durable medical equipment supplier that knowingly and willfully fails to make a refund to Medicare beneficiaries for a covered service for which payment is precluded due to an unsolicited telephone contact from the supplier. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,024	15,270	30,000
1395m(b)(5)(C) [5]	42 CFR 402.1(c)(6), 402.105(d)(2)(iv).	CMS	Penalty for any nonparticipating physician or supplier that knowingly and willfully charges a Medicare beneficiary more than the limiting charge for radiologist services. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,024	15,270	30,000
1395m(h)(3) [5]	42 CFR 402.1(c)(8), 402.105(d)(2)(vi).	CMS	Penalty for any supplier of prosthetic devices, orthotics, and prosthetics that knowing and willfully charges for a covered prosthetic device, orthotic, or prosthetic that is furnished on a rental basis after the rental payment may no longer be made. (Penalties are assessed in the same manner as 42 U.S.C. 1395m(a)(11)(A), that is in the same manner as 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,024	15,270	30,000

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

[Effective October 11, 2018]

Citation		HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2016 Maximum adjusted penalty ($)	2017 Maximum adjusted penalty ($) [4]	2018 Maximum adjusted penalty ($)
U.S.C.	CFR [1]						
1395m(j)(2)(A)(iii)		CMS	Penalty for any supplier of durable medical equipment including a supplier of prosthetic devices, prosthetics, orthotics, or supplies that knowingly and willfully distributes a certificate of medical necessity in violation of Section 1834(j)(2)(A)(i) of the Act or fails to provide the information required under Section 1834(j)(2)(A)(ii) of the Act.	2016	1,591	1,617	1,650
1395m(j)(4) [5]	42 CFR 402.1(c)(10), 402.105(d)(2)(vii).	CMS	Penalty for any supplier of durable medical equipment, including a supplier of prosthetic devices, prosthetics, orthotics, or supplies that knowingly and willfully fails to make refunds in a timely manner to Medicare beneficiaries for series billed other than on as assignment-related basis under certain conditions. (Penalties are assessed in the same manner as 42 U.S.C. 1395m(j)(4) and 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,024	15,270	30,000
1395m(k)(6) [5]	42 CFR 402.1(c)(31), 402.105(d)(3).	CMS	Penalty for any person or entity who knowingly and willfully bills or collects for any outpatient therapy services or comprehensive outpatient rehabilitation services on other than an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395m(k)(6) and 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,024	15,270	30,000
1395m(l)(6) [5]	42 CFR 402.1(c)(32), 402.105(d)(4).	CMS	Penalty for any supplier of ambulance services who knowingly and willfully fills or collects for any services on other than an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(b)(18)(B), which is assessed according to 1320a–7a(a)).	2018	15,024	15,270	30,000
1395u(b)(18)(B) [5]	42 CFR 402.1(c)(11), 402.105(d)(2)(viii).	CMS	Penalty for any practitioner specified in Section 1842(b)(18)(C) of the Act or other person that knowingly and willfully bills or collects for any services by the practitioners on other than an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,024	15,270	30,000
1395u(j)(2)(B) [5]	42 CFR 402.1(c)	CMS	Penalty for any physician who charges more than 125% for a non-participating referral. (Penalties are assessed in the same manner as 42 U.S.C. 1320a–7a(a)).	2018	15,024	15,270	30,000
1395u(k) [5]	42 CFR 402.1(c)(12), 402.105(d)(2)(ix).	CMS	Penalty for any physician who knowingly and willfully presents or causes to be presented a claim for bill for an assistant at a cataract surgery performed on or after March 1, 1987, for which payment may not be made because of section 1862(a)(15). (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,024	15,270	30,000

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective October 11, 2018]

Citation		HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2016 Maximum adjusted penalty ($)	2017 Maximum adjusted penalty ($) [4]	2018 Maximum adjusted penalty ($)
U.S.C.	CFR [1]						
1395u(l)(3) [5]	42 CFR 402.1(c)(13), 402.105(d)(2)(x).	CMS	Penalty for any nonparticipating physician who does not accept payment on an assignment-related basis and who knowingly and willfully fails to refund on a timely basis any amounts collected for services that are not reasonable or medically necessary or are of poor quality under 1842(l)(1)(A). (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,024	15,270	30,000
1395u(m)(3) [5]	42 CFR 402.1(c)(14), 402.105(d)(2)(xi).	CMS	Penalty for any nonparticipating physician charging more than $500 who does not accept payment for an elective surgical procedure on an assignment related basis and who knowingly and willfully fails to disclose the required information regarding charges and coinsurance amounts and fails to refund on a timely basis any amount collected for the procedure in excess of the charges recognized and approved by the Medicare program. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,024	15,270	30,000
1395u(n)(3) [5]	42 CFR 402.1(c)(15), 402.105(d)(2)(xii).	CMS	Penalty for any physician who knowingly, willfully, and repeatedly bills one or more beneficiaries for purchased diagnostic tests any amount other than the payment amount specified by the Act. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,024	15,270	30,000
1395u(o)(3)(B) [5]	42 CFR 414.707(b)	CMS	Penalty for any practitioner specified in Section 1842(b)(18)(C) of the Act or other person that knowingly and willfully bills or collects for any services pertaining to drugs or biologics by the practitioners on other than an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(b)(18)(B) and 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,024	15,270	30,000
1395u(p)(3)(A)		CMS	Penalty for any physician or practitioner who knowingly and willfully fails promptly to provide the appropriate diagnosis codes upon CMS or Medicare administrative contractor request for payment or bill not submitted on an assignment-related basis.	2016	3,957	4,022	4,104
1395w–3a(d)(4)(A)	42 CFR 414.806	CMS	Penalty for a pharmaceutical manufacturer's misrepresentation of average sales price of a drug, or biologic.	2016	12,856	13,066	13,333

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

[Effective October 11, 2018]

Citation		HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2016 Maximum adjusted penalty ($)	2017 Maximum adjusted penalty ($) [4]	2018 Maximum adjusted penalty ($)
U.S.C.	CFR [1]						
1395w–4(g)(1)(B) [5]	42 CFR 402.1(c)(17), 402.105(d)(2)(xiii).	CMS	Penalty for any nonparticipating physician, supplier, or other person that furnishes physician services not on an assignment-related basis who either knowingly and willfully bills or collects in excess of the statutorily-defined limiting charge or fails to make a timely refund or adjustment. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,024	15,270	30,000
1395w–4(g)(3)(B) [5]	42 CFR 402.1(c)(18), 402.105(d)(2)(xiv).	CMS	Penalty for any person that knowingly and willfully bills for statutorily defined State-plan approved physicians' services on any other basis than an assignment-related basis for a Medicare/Medicaid dual eligible beneficiary. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)).	2018	15,024	15,270	30,000
1395w–27(g)(3)(A); 1857(g)(3).	42 CFR 422.760(b); 42 CFR 423.760(b).	CMS	Penalty for each termination determination the Secretary makes that is the result of actions by a Medicare Advantage organization or Part D sponsor that has adversely affected an individual covered under the organization's contract.	2016	36,794	37,396	38,159
1395w–27(g)(3)(B); 1857(g)(3).	.....	CMS	Penalty for each week beginning after the initiation of civil money penalty procedures by the Secretary because a Medicare Advantage organization or Part D sponsor has failed to carry out a contract, or has carried out a contract inconsistently with regulations.	2016	14,718	14,959	15,264
1395w–27(g)(3)(D); 1857(g)(3).	.....	CMS	Penalty for a Medicare Advantage organization's or Part D sponsor's early termination of its contract.	2016	136,689	138,925	141,760
1395y(b)(3)(C)	42 CFR 411.103(b)	CMS	Penalty for an employer or other entity to offer any financial or other incentive for an individual entitled to benefits not to enroll under a group health plan or large group health plan which would be a primary plan.	2016	8,908	9,054	9,239
1395y(b)(5)(C)(ii)	42 CFR 402.1(c)(20), 42 CFR 402.105(b)(2).	CMS	Penalty for any non-governmental employer that, before October 1, 1998, willfully or repeatedly failed to provide timely and accurate information requested relating to an employee's group health insurance coverage.	2016	1,450	1,474	1,504
1395y(b)(6)(B)	42 CFR 402.1(c)(21), 402.105(a).	CMS	Penalty for any entity that knowingly, willfully, and repeatedly fails to complete a claim form relating to the availability of other health benefits in accordance with statute or provides inaccurate information relating to such on the claim form.	2016	3,182	3,234	3,300
1395y(b)(7)(B)(i)	.....	CMS	Penalty for any entity serving as insurer, third party administrator, or fiduciary for a group health plan that fails to provide information that identifies situations where the group health plan is or was a primary plan to Medicare to the HHS Secretary.	2016	1,138	1,157	1,181

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

[Effective October 11, 2018]

Citation		HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2016 Maximum adjusted penalty ($)	2017 Maximum adjusted penalty ($) [4]	2018 Maximum adjusted penalty ($)
U.S.C.	CFR [1]						
1395pp(h) [5]	42 CFR 402.1(c)(23), 402.105(d)(2)(xv).	CMS	Penalty for any durable medical equipment supplier, including a supplier of prosthetic devices, prosthetics, orthotics, or supplies, that knowingly and willfully fails to make refunds in a timely manner to Medicare beneficiaries under certain conditions. (42 U.S.C. 1395(m)(18) sanctions apply here in the same manner, which is under 1395u(j)(2) and 1320a–7a(a)).	2018	15,024	15,270	30,000
1395nn(g)(5)	42 CFR 411.361	CMS	Penalty for any person that fails to report information required by HHS under Section 1877(f) concerning ownership, investment, and compensation arrangements.	2016	18,936	19,246	19,639
1395pp(h)	42 CFR 402.1(c)(23), 402.105(d)(2)(xv).	CMS	Penalty for any durable medical equipment supplier, including a supplier of prosthetic devices, prosthetics, orthotics, or supplies, that knowingly and willfully fails to make refunds in a timely manner to Medicare beneficiaries under certain conditions. (42 U.S.C. 1395(m)(18) sanctions apply here in the same manner, which is under 1395u(j)(2) and 1320a–7a(a)).	2016	15,024	15,270	15,582
1395ss(a)(2)	42 CFR 402.1(c)(24), 405.105(f)(1).	CMS	Penalty for any person that issues a Medicare supplemental policy that has not been approved by the State regulatory program or does not meet Federal standards after a statutorily defined effective date.	2016	51,569	52,413	53,483
1395ss(d)(3)(A)(vi)(II)		CMS	Penalty for someone other than issuer that sells or issues a Medicare supplemental policy to beneficiary without a disclosure statement.	2016	26,723	27,160	27,714
			Penalty for an issuer that sells or issues a Medicare supplemental policy without disclosure statement.	2016	44,539	45,268	46,192
1395ss(d)(3)(B)(iv)		CMS	Penalty for someone other than issuer that sells or issues a Medicare supplemental policy without acknowledgement form..	2016	26,723	27,160	27,714
			Penalty for issuer that sells or issues a Medicare supplemental policy without an acknowledgement form.	2016	44,539	45,268	46,192
1395ss(p)(8)	42 CFR 402.1(c)(25), 402.105(e).	CMS	Penalty for any person that sells or issues Medicare supplemental polices after a given date that fail to conform to the NAIC or Federal standards established by statute.	2016	26,723	27,160	27,714
	42 CFR 402.1(c)(25), 405.105(f)(2).	CMS	Penalty for any person that sells or issues Medicare supplemental polices after a given date that fail to conform to the NAIC or Federal standards established by statute.	2016	44,539	45,268	46,192
1395ss(p)(9)(C)	42 CFR 402.1(c)(26), 402.105(e).	CMS	Penalty for any person that sells a Medicare supplemental policy and fails to make available for sale the core group of basic benefits when selling other Medicare supplemental policies with additional benefits or fails to provide the individual, before selling the policy, an outline of coverage describing benefits.	2016	26,723	27,160	27,714

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

[Effective October 11, 2018]

Citation		HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2016 Maximum adjusted penalty ($)	2017 Maximum adjusted penalty ($) [4]	2018 Maximum adjusted penalty ($)
U.S.C.	CFR [1]						
	42 CFR 402.1(c)(26), 405.105(f)(3), (4).		Penalty for any person that sells a Medicare supplemental policy and fails to make available for sale the core group of basic benefits when selling other Medicare supplemental policies with additional benefits or fails to provide the individual, before selling the policy, an outline of coverage describing benefits.	2016	44,539	45,268	46,192
1395ss(q)(5)(C)	42 CFR 402.1(c)(27), 405.105(f)(5).	CMS	Penalty for any person that fails to suspend the policy of a policyholder made eligible for medical assistance or automatically reinstates the policy of a policyholder who has lost eligibility for medical assistance, under certain circumstances.	2016	44,539	45,268	46,192
1395ss(r)(6)(A)	42 CFR 402.1(c)(28), 405.105(f)(6).	CMS	Penalty for any person that fails to provide refunds or credits as required by section 1882(r)(1)(B).	2016	44,539	45,268	46,192
1395ss(s)(4)	42 CFR 402.1(c)(29), 405.105(c).	CMS	Penalty for any issuer of a Medicare supplemental policy that does not waive listed time periods if they were already satisfied under a proceeding Medicare supplemental policy, or denies a policy, or conditions the issuances or effectiveness of the policy, or discriminates in the pricing of the policy base on health status or other specified criteria.	2016	18,908	19,217	19,609
1395ss(t)(2)	42 CFR 402.1(c)(30), 405.105(f)(7).	CMS	Penalty for any issuer of a Medicare supplemental policy that fails to fulfill listed responsibilities.	2016	44,539	45,268	46,192
1395ss(v)(4)(A)	.....	CMS	Penalty someone other than issuer who sells, issues, or renews a Medigap Rx policy to an individual who is a Part D enrollee.	2016	19,284	19,599	19,999
			Penalty for an issuer who sells, issues, or renews a Medigap Rx policy who is a Part D enrollee.	2016	32,140	32,666	33,333
1395bbb(c)(1)	42 CFR 488.725(c)	CMS	Penalty for any individual who notifies or causes to be notified a home health agency of the time or date on which a survey of such agency is to be conducted.	2016	4,126	4,194	4,280
1395bbb(f)(2)(A)(i)	42 CFR 488.845(b)(2)(iii); 42 CFR 488.845(b)(3)–(6); and 42 CFR 488.845(d)(1)(ii).	CMS	Maximum daily penalty amount for each day a home health agency is not in compliance with statutory requirements.	2016	19,787	20,111	20,521
	42 CFR 488.845(b)(3)		Penalty per day for home health agency's noncompliance (Upper Range).	.....	.....	.....	.....
			Minimum	2016	16,819	17,094	17,443
			Maximum	2016	19,787	20,111	20,521
	42 CFR 488.845(b)(3)(i)		Penalty for a home health agency's deficiency or deficiencies that cause immediate jeopardy and result in actual harm.	2016	19,787	20,111	20,521
	42 CFR 488.845(b)(3)(ii)		Penalty for a home health agency's deficiency or deficiencies that cause immediate jeopardy and result in potential for harm.	2016	17,808	18,099	18,468
	42 CFR 488.845(b)(3)(iii)		Penalty for an isolated incident of noncompliance in violation of established HHA policy.	2016	16,819	17,094	17,443
	42 CFR 488.845(b)(4)		Penalty for a repeat and/or condition-level deficiency that does not constitute immediate jeopardy, but is directly related to poor quality patient care outcomes (Lower Range).	.....	.....	.....	.....
			Minimum	2016	2,968	3,017	3,079

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

[Effective October 11, 2018]

Citation		HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2016 Maximum adjusted penalty ($)	2017 Maximum adjusted penalty ($) [4]	2018 Maximum adjusted penalty ($)
U.S.C.	CFR [1]						
			Maximum	2016	16,819	17,094	17,443
	42 CFR 488.845(b)(5)		Penalty for a repeat and/or condition-level deficiency that does not constitute immediate jeopardy and that is related predominately to structure or process-oriented conditions (Lower Range).				
			Minimum	2016	989	1,005	1,026
			Maximum	2016	7,915	8,044	8,208
	42 CFR 488.845(b)(6)		Penalty imposed for instance of noncompliance that may be assessed for one or more singular events of condition-level noncompliance that are identified and where the noncompliance was corrected during the onsite survey.				
			Minimum	2016	1,979	2,011	2,052
			Maximum	2016	19,787	20,111	20,521
			Penalty for each day of noncompliance (Maximum).	2016	19,787	20,111	20,521
	42 CFR 488.845(d)(1)(ii)		Penalty for each day of noncompliance (Maximum).	2016	19,787	20,111	20,521
1396b(m)(5)(B)	42 CFR 460.46	CMS	Penalty for PACE organization's practice that would reasonably be expected to have the effect of denying or discouraging enrollment.				
			Minimum	2016	22,077	22,438	22,896
			Maximum	2016	147,177	149,585	152,638
			Penalty for a PACE organization that charges excessive premiums.	2016	36,794	37,396	38,159
			Penalty for a PACE organization misrepresenting or falsifying information to CMS, the State, or an individual or other entity.	2016	147,177	149,585	152,638
			Penalty for each determination the CMS makes that the PACE organization has failed to provide medically necessary items and services of the failure has adversely affected (or has the substantial likelihood of adversely affecting) a PACE participant.	2016	36,794	37,396	38,159
			Penalty for involuntarily disenrolling a participant.	2016	36,794	37,396	38,159
			Penalty for discriminating or discouraging enrollment or disenrollment of participants on the basis of an individual's health status or need for health care services.	2016	36,794	37,396	38,159
1396r(h)(3)(C)(ii)(I)	42 CFR 488.408(d)(1)(iii)	CMS	Penalty per day for a nursing facility's failure to meet a Category 2 Certification.				
			Minimum	2016	103	105	107
			Maximum	2016	6,188	6,289	6,417
	42 CFR 488.408(d)(1)(iv).	CMS	Penalty per instance for a nursing facility's failure to meet Category 2 certification.				
			Minimum	2016	2,063	2,097	2,140
			Maximum	2016	20,628	20,965	21,393
	42 CFR 488.408(e)(1)(iii)	CMS	Penalty per day for a nursing facility's failure to meet Category 3 certification.				
			Minimum	2016	6,291	6,394	6,525
			Maximum	2016	20,628	20,965	21,393
	42 CFR 488.408(e)(1)(iv).	CMS	Penalty per instance for a nursing facility's failure to meet Category 3 certification.				
			Minimum	2016	2,063	2,097	2,140
			Maximum	2016	20,628	20,965	21,393
	42 CFR 488.408(e)(2)(ii)	CMS	Penalty per instance for a nursing facility's failure to meet Category 3 certification, which results in immediate jeopardy.				

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

[Effective October 11, 2018]

Citation		HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2016 Maximum adjusted penalty ($)	2017 Maximum adjusted penalty ($) [4]	2018 Maximum adjusted penalty ($)
U.S.C.	CFR [1]						
			Minimum	2016	2,063	2,097	2,140
			Maximum	2016	20,628	20,965	21,393
	42 CFR 488.438(a)(1)(i)	CMS	Penalty per day for nursing facility's failure to meet certification (Upper Range).				
			Minimum	2016	6,291	6,394	6,525
			Maximum	2016	20,628	20,965	21,393
	42 CFR 488.438(a)(1)(ii)	CMS	Penalty per day for nursing facility's failure to meet certification (Lower Range).				
			Minimum	2016	103	105	107
			Maximum	2016	6,188	6,289	6,417
	42 CFR 488.438(a)(2)	CMS	Penalty per instance for nursing facility's failure to meet certification.				
			Minimum	2016	2,063	2,097	2,140
			Maximum	2016	20,628	20,965	21,393
1396r(f)(2)(B)(iii)(I)(c)	42 CFR 483.151(b)(2)(iv) and (b)(3)(iii).	CMS	Grounds to prohibit approval of Nurse Aide Training Program—if assessed a penalty in 1819(h)(2)(B)(i) or 1919(h)(2)(A)(ii) of "not less than $5,000" [Not CMP authority, but a specific CMP amount (CMP at this level) that is the triggering condition for disapproval].	2016	10,314	10,483	10,697
1396r(h)(3)(C)(ii)(I)	42 CFR 483.151(c)(2)	CMS	Grounds to waive disapproval of nurse aide training program—reference to disapproval based on imposition of CMP "not less than $5,000" [Not CMP authority but CMP imposition at this level determines eligibility to seek waiver of disapproval of nurse aide training program].	2016	10,314	10,483	10,697
1396t(j)(2)(C)		CMS	Penalty for each day of noncompliance for a home or community care provider that no longer meets the minimum requirements for home and community care.				
			Minimum	2016	2	2	2
			Maximum	2016	17,816	18,107	18,477
1396u–2(e)(2)(A)(i)	42 CFR 438.704	CMS	Penalty for a Medicaid managed care organization that fails substantially to provide medically necessary items and services.	2016	36,794	37,396	38,159
			Penalty for Medicaid managed care organization that imposes premiums or charges on enrollees in excess of the premiums or charges permitted.	2016	36,794	37,396	38,159
			Penalty for a Medicaid managed care organization that misrepresents or falsifies information to another individual or entity.	2016	36,794	37,396	38,159
			Penalty for a Medicaid managed care organization that fails to comply with the applicable statutory requirements for such organizations.	2016	36,794	37,396	38,159
1396u–2(e)(2)(A)(ii)	42 CFR 438.704	CMS	Penalty for a Medicaid managed care organization that misrepresents or falsifies information to the HHS Secretary.	2016	147,177	149,585	152,638
			Penalty for Medicaid managed care organization that acts to discriminate among enrollees on the basis of their health status.	2016	147,177	149,585	152,638
1396u–2(e)(2)(A)(iv)	42 CFR 438.704	CMS	Penalty for each individual that does not enroll as a result of a Medicaid managed care organization that acts to discriminate among enrollees on the basis of their health status.	2016	22,077	22,438	22,896

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued

[Effective October 11, 2018]

Citation		HHS agency	Description [2]	Date of last statutorily established penalty figure [3]	2016 Maximum adjusted penalty ($)	2017 Maximum adjusted penalty ($) [4]	2018 Maximum adjusted penalty ($)
U.S.C.	CFR [1]						
1396u(h)(2)	42 CFR Part 441, Subpart I.	CMS	Penalty for a provider not meeting one of the requirements relating to the protection of the health, safety, and welfare of individuals receiving community supported living arrangements services.	2016	20,628	20,965	21,393
1396w–2(c)(1)		CMS	Penalty for disclosing information related to eligibility determinations for medical assistance programs.	2016	11,002	11,182	11,410
18041(c)(2)	45 CFR 150.315; 45 CFR 156.805(c).	CMS	Failure to comply with requirements of the Public Health Services Act; Penalty for violations of rules or standards of behavior associated with issuer participation in the Federally-facilitated Exchange. (42 U.S.C. 300gg–22(b)(2)(C)).	2016	150	152	155
18081(h)(1)(A)(i)(II)	42 CFR 155.285	CMS	Penalty for providing false information on Exchange application.	2016	27,186	27,631	28,195
18081(h)(1)(B)	42 CFR 155.285	CMS	Penalty for knowingly or willfully providing false information on Exchange application.	2016	271,862	276,310	281,949
18081(h)(2)	42 CFR 155.260	CMS	Penalty for knowingly or willfully disclosing protected information from Exchange.	2016	27,186	27,631	28,195
			31 U.S.C.				
1352	45 CFR 93.400(e)	HHS	Penalty for the first time an individual makes an expenditure prohibited by regulations regarding lobbying disclosure, absent aggravating circumstances.	2016	18,936	19,246	19,639
			Penalty for second and subsequent offenses by individuals who make an expenditure prohibited by regulations regarding lobbying disclosure.				
			Minimum	2016	18,936	19,246	19,639
			Maximum	2016	189,361	192,459	196,387
			Penalty for the first time an individual fails to file or amend a lobbying disclosure form, absent aggravating circumstances.	2016	18,936	19,246	19,639
			Penalty for second and subsequent offenses by individuals who fail to file or amend a lobbying disclosure form, absent aggravating circumstances.				
			Minimum	2016	18,936	19,246	19,639
			Maximum	2016	189,361	192,459	196,387
	45 CFR Part 93, Appendix A.	HHS	Penalty for failure to provide certification regarding lobbying in the award documents for all subawards of all tiers.				
			Minimum	2016	18,936	19,246	19,639
			Maximum	2016	189,361	192,459	196,387
			Penalty for failure to provide statement regarding lobbying for loan guarantee and loan insurance transactions.				
			Minimum	2016	18,936	19,246	19,639
			Maximum	2016	189,361	192,459	196,387
3801–3812	45 CFR 79.3(a)(1)(iv)	HHS	Penalty against any individual who—with knowledge or reason to know—makes, presents or submits a false, fictitious or fraudulent claim to the Department.	2016	9,894	10,056	10,261
	45 CFR 79.3(b)(1(ii)	HHS	Penalty against any individual who—with knowledge or reason to know—makes, presents or submits a false, fictitious or fraudulent claim to the Department.	2016	9,894	10,056	10,261

[1] Some HHS components have not promulgated regulations regarding their civil monetary penalty-specific statutory authorities.

[2] The description is not intended to be a comprehensive explanation of the underlying violation; the statute and corresponding regulation, if applicable, should be consulted.
[3] Statutory or Inflation Act Adjustment.
[4] The cost of living multiplier for 2018, based on the CPI–U for the month of October 2017, not seasonally adjusted, is 1.02041, as indicated in OMB Memorandum M–18–03, ''Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Adjustment Act Improvements Act of 2015'' (December 15, 2017).
[5] 2018 Maximum Adjusted Penalty column adjusted based on changes to the Bipartisan Budget Act of 2018 for 42 U.S.C.1320a–7a(a),1320a–7a(b), 1395l(h)(5)(D),1395m(a)(11)(A),1395m(a)(18)(B), 1395m(b)(5)(C), 1395m(h)(3), 1395m(j)(4), 1395m(k)(6), 1395m(l)(6), 1395u(b)(18)(B), 1395u(j)(2)(B), 1395u(k), 1395u(l)(3), 1395u(m)(3), 1395u(n)(3), 1395u(o)(3)(B), 1395w–4(g)(1)(B), 1395w–4(g)(3)(B),1395pp(h).

Dated: October 3, 2018.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2018–22005 Filed 10–10–18; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 121004518–3398–01]

RIN 0648–XG524

Reef Fish Fishery of the Gulf of Mexico; 2018 Commercial Accountability Measure and Closure for Gulf of Mexico Gray Triggerfish

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for the gray triggerfish commercial sector in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) through this temporary rule. NMFS projects that 2018 commercial landings for gray triggerfish will reach the commercial annual catch target (ACT) (commercial quota) by October 7, 2018. Therefore, NMFS is closing the commercial sector for Gulf gray triggerfish on October 7, 2018, and it will remain closed through the end of the fishing year on December 31, 2018. This closure is necessary to protect the Gulf gray triggerfish resource.

DATES: This temporary rule is effective at 12:01 a.m., local time, on October 7, 2018, until 12:01 a.m., local time, on January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Lauren Waters, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *lauren.waters@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the Gulf reef fish fishery, which includes gray triggerfish, under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The Gulf of Mexico Fishery Management Council (Council) prepared the FMP and NMFS implements the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All gray triggerfish weights discussed in this temporary rule are in round weight.

On August 4, 2008, NMFS established gray triggerfish AMs as well as commercial quotas for gray triggerfish through Amendment 30A to the FMP (73 FR 38139). On May 9, 2013, NMFS issued a final rule to implement Amendment 37 to the FMP (78 FR 27084). In part, Amendment 37 revised gray triggerfish commercial ACLs and ACTs. The 2018 commercial quota (*i.e.,* the commercial ACT) for Gulf gray triggerfish specified in 50 CFR 622.39(a)(1)(vi) is 60,900 lb (27,624 kg).

As specified by 50 CFR 622.41(b)(1), NMFS is required to close the commercial sector for gray triggerfish when the commercial quota is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined the 2018 commercial quota for Gulf gray triggerfish will be reached by October 7, 2018. Accordingly, this temporary rule closes the commercial sector for Gulf gray triggerfish effective at 12:01 a.m., local time, October 7, 2018, and it will remain closed until the start of the next commercial fishing season on January 1, 2019.

During the commercial closure, the operator of a vessel with a valid commercial vessel permit for Gulf reef fish having gray triggerfish onboard must have landed and bartered, traded, or sold such gray triggerfish prior to 12:01 a.m., local time, October 7, 2018. During the closure, the sale or purchase of gray triggerfish taken from the Gulf EEZ is prohibited. The prohibition on the sale or purchase does not apply to gray triggerfish that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, October 7, 2018, and were held in cold storage by a dealer or processor.

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of Gulf gray triggerfish and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.41(b)(1) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately implement this action to close the commercial sector for gray triggerfish constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because Amendment 37 to the FMP (78 FR 27084; May 9, 2013), which established the closure provisions, was subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect gray triggerfish since the capacity of the fishing fleet allows for rapid harvest of the commercial quota. Prior notice and opportunity for public comment would require time and could potentially result in a harvest well in excess of the established commercial quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Margo B. Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–22142 Filed 10–5–18; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042–8884–02]

RIN 0648–BH54

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna and Northern Albacore Tuna Quotas; Atlantic Bigeye and Yellowfin Tuna Size Limit Regulations

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

ACTION: Final rule; notification of adjustment and recalculation of quotas.

SUMMARY: In this final rule, NMFS modifies the baseline annual U.S. quota and subquotas for Atlantic bluefin tuna (BFT) and the baseline annual U.S. North Atlantic albacore (northern albacore or NALB) quota to reflect quotas adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). NMFS also updates regulatory language on school BFT to reflect current ICCAT requirements. NMFS also makes a minor change to the Atlantic tunas size limit regulations to address retention, possession, and landing of bigeye and yellowfin tuna damaged through predation by sharks and other marine species. This action is necessary to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS also provides notice of adjustment of the 2018 BFT Reserve category quota and the 2018 NALB baseline quota to account for the available underharvest from 2017, consistent with the Atlantic tunas quota regulations. NMFS further recalculates the BFT Purse Seine and Reserve category quotas that were announced earlier this year, in accordance with the quotas in this final rule.

DATES: Effective October 10, 2018.

ADDRESSES: Supporting documents, including the Environmental Assessment (EA), Regulatory Impact Review, and Final Regulatory Flexibility Analysis, may be downloaded from the HMS website at *www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species/*. These documents also are available by contacting Sarah McLaughlin, Highly Migratory Species (HMS) Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic bluefin tuna (BFT), bigeye tuna, albacore tuna (NALB), yellowfin tuna, and skipjack tuna (hereafter referred to as ''Atlantic tunas'') are managed under the dual authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and ATCA (16 U.S.C. 971 *et seq.*). As a member of ICCAT, the United States implements binding ICCAT recommendations pursuant to ATCA, which authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate to carry out ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NMFS. Regulations implemented under the authority of ATCA and the Magnuson-Stevens Act governing the harvest of BFT and NALB by persons and vessels subject to U.S, jurisdiction are found at 50 CFR part 635.

Background

Background information about the need to modify the U.S. BFT baseline quota and subquotas and the U.S. NALB baseline quota, as well as detailed descriptions of changes to the existing regulations regarding school BFT and size requirements for retention, possession, and landing of bigeye and yellowfin tuna damaged by predation, were provided in the preamble to the proposed rule (83 FR 31517, July 6, 2018) and most of that background information is not repeated here. The 30-day comment period ended August 6, 2018. All Total Allowable Catch (TAC), quota, and weight information in this action are whole weight amounts.

Consistent with the regulations regarding annual BFT quota adjustment, NMFS annually announces the addition of available underharvest, if any, to the BFT Reserve category in a **Federal Register** notice once complete catch (landings and dead discards) information is available and finalized. Such data became available to NMFS since publication of the proposed rule, and notice of the quota adjustment for 2017 underharvest is included with this final rule to provide the regulated community with the most up-to-date quota balances.

BFT Annual Quota and Subquotas

At its November 2017 meeting, after considering the advice of ICCAT's Standing Committee on Research and Statistics (SCRS), ICCAT adopted Recommendation 17–06 (Recommendation by ICCAT for an Interim Conservation and Management Plan for western Atlantic BFT) for 2018 through 2020. An interim approach was selected in light of the SCRS' new stock assessment approach and ICCAT's anticipated development of management procedures for the stock by 2020. Management procedures are a way to manage stocks in light of stock assessment and other scientific uncertainties and include use of stock monitoring, pre-agreed actions based on triggers (*i.e.,* harvest control rules), and evaluation to help ensure identified management objectives are achieved. See EA for more details. The Recommendation included a TAC of 2,350 mt annually (*i.e.,* an increase of approximately 17.5 percent) for 2018, 2019, and 2020. This TAC is within the SCRS-recommended range and provides a buffer from the top end of the range to help further account for identified stock assessment uncertainties. Relevant provisions of the *Recommendation by ICCAT Amending the Supplemental Recommendation by ICCAT Concerning the Western Atlantic Bluefin Tuna Rebuilding Program* (Recommendation 16–08) were also maintained in Recommendation 17–06, such as those involving effort and capacity limits, the 10-percent limit on the amount of unused quota Contracting Parties may carry forward, minimum fish size requirements and protection of small fish (including the 10-percent tolerance limit on the harvest of BFT measuring less than 115 cm and the procedures for addressing overharvest of the tolerance limit), area and time restrictions, transshipment, scientific research, and data and reporting requirements.

Quotas and Domestic Allocations

Recommendation 17–06 maintained the quota allocations to individual Contracting Parties (*i.e.,* the percentages to each Contracting Party) of previous recommendations. Under the ICCAT recommendation, the annual U.S. quota is 1,247.86 mt, plus 25 mt to account for bycatch related to pelagic longline fisheries in the Northeast Distant gear restricted area (NED), resulting in a total of 1,272.86 mt.

This action implements the ICCAT-recommended quota of 1,272.86 mt. The table below shows the final baseline

quotas and subquotas that result from applying the process codified in the quota regulations at 50 CFR 635.27(a) to the ICCAT-recommended U.S. BFT quota. These quotas (in mt) are codified at § 635.27(a) and will remain in effect until changed. Because ICCAT adopted annual TACs for 2018 through 2020, NMFS currently anticipates that the annual U.S. baseline quota and subquotas in this rule will be in effect through 2020; they will remain in place unless and until a new U.S. quota is adopted by ICCAT.

Table 1. Final annual Atlantic bluefin tuna quotas (in metric tons)

Category	**Annual Baseline Quotas and Subquotas**			
	Quota	Subquotas		
General	555.7			
		January-March[1]	29.5	
		June-August	277.9	
		September	147.3	
		October-November	72.2	
		December	28.9	
Harpoon	46.0			
Longline	163.6			
Trap	1.2			
Purse Seine	219.5[2]			
Angling	232.4			
		School	127.3	
		Reserve		23.5
		North of 39°18′ N. lat.		49.0
		South of 39°18′ N. lat.		54.8
		Large School/Small Medium	99.8	
		North of 39°18′ N. lat.		47.1
		South of 39°18′ N. lat.		52.7
		Trophy	5.3	
		North of 39°18′ N. lat.		1.8
		South of 39°18′ N. lat.		1.8
		Gulf of Mexico		1.8
Reserve	29.5[2]			
U.S. Baseline Quota	**1,247.86**[3]			
Total U.S. Quota, including 25 mt for NED (Longline)	**1,272.86**[3]			

[1] This subquota is referred to as the "January" subquota in the regulations but is in effect from January 1 through the effective date of a closure notice filed by NMFS in the **Federal Register** announcing that the subquota is reached or projected to be reached, or through March 31, whichever comes first.
[2] Baseline amount shown. Does not reflect the annual quota reallocation process (for the Purse Seine and Reserve category quotas) adopted in Amendment 7 (79 FR 71510, December 2, 2014) and codified in the regulations.
[3] Totals subject to rounding error.

Within the BFT quota proposed in this action and consistent with the ICCAT-recommended limit on the harvest of school BFT (measuring 27 to less than 47 inches curved fork length (CFL)), the school BFT subquota is 127.3 mt. This final action also amends the regulations regarding annual quota adjustments to specify that NMFS may adjust the annual school BFT subquota to ensure compliance with the ICCAT-recommended procedures for addressing overharvest of school BFT. This amendment is needed because the current regulatory text refers to outdated language (regarding multi-year ''balancing periods'') from a previous ICCAT recommendation.

Adjustment of the 2018 BFT Quota for 2017 Underharvest

This final rule also provides notice that, consistent with the BFT quota regulations at § 635.27(a)(10), NMFS augments the BFT Reserve category quota with allowable underharvest, if any, from the previous year. NMFS makes such adjustments consistent with ICCAT limits and when complete catch information for the prior year is available and finalized. The maximum underharvest that a Contracting Party may carry forward from one year to the next is 10 percent of its initial catch quota, which for 2017 equals 108.38 mt for the United States.

For 2017, the adjusted BFT quota was 1,192.17 mt (1,083.79 mt + 108.38 mt of 2016 underharvest carried forward to 2017). The total 2017 BFT catch, which includes landings and dead discards, was 997.86 mt, which is 194.31 mt less than the 2017 adjusted quota. Thus, the 2018 adjusted BFT quota is 1,381.24 mt (baseline quota of 1,272.86 mt + underharvest carryover of 108.38 mt).

Recalculation of Quota Available to Atlantic Tunas Purse Seine Category and Reserve Category

Pursuant to § 635.27(a)(4), NMFS annually determines the amount of quota available to the Atlantic Tunas Purse Seine category participants, based on their BFT catch (landings and dead discards) in the prior year and reallocates the remainder to the Reserve category. Because the U.S. baseline quota and subquotas are increasing via this action, NMFS in this rule is also recalculating the 2018 Purse Seine and Reserve category quotas that were announced earlier this year. NMFS previously announced that 46.1 mt were available to the Purse Seine category for 2018, and the amount of Purse Seine category quota to be reallocated to the Reserve category was 138.2 mt (184.3 mt − 46.1 mt) (83 FR 17110, April 18, 2018). To account for the ICCAT quota increase addressed in this rule, NMFS is first adjusting the 2018 Purse Seine category quota to reflect the ICCAT quota increase. As a result, the baseline Purse Seine category quota initially increases by 35.2 mt to 219.5 mt. NMFS then recalculates the amounts of quota available to individual Purse Seine category participants for 2018 using the final baseline Purse Seine category quota (219.5 mt). Adjusted for the quota increase, 55 mt are available for Purse Seine category participants in 2018. Consistent with § 635.27(a)(4)(v)(C), NMFS will notify Atlantic Tunas Purse Seine fishery participants of the adjusted amount of quota available for their use in 2018 through the Individual Bluefin Quota (IBQ) electronic system and in writing.

The remaining 164.5 mt (219.5 mt − 55 mt = 164.5 mt) is added to the 2018 Reserve category quota. This final rule also increases the baseline annual Reserve category quota by 4.7 mt from 24.8 mt to 29.5 mt. NMFS made four inseason quota transfers totaling 84.5 mt from the Reserve category in 2018 to date: 10 mt from the Reserve category to the General category effective February 28, 2018, through March 2, 2018 (83 FR 9232, March 5, 2018), 44.5 mt to the Longline category effective April 13, 2018, through December 31, 2018 (83 FR 17110, April 18, 2018), 30 mt from the Reserve category to the Harpoon category effective August 2, 2018, through November 15, 2018 (83 FR 38664, August 7, 2018), and 60 mt from the Reserve category to the General category effective September 18, 2018, through September 30, 2018 (83 FR 47843, September 21, 2018). Thus, the adjusted 2018 Reserve category quota as of publication of this action is: 24.8 mt (baseline) + 4.7 mt (ICCAT quota increase to baseline) − 144.5 (quota transfers) + 164.5 mt (Purse Seine adjustment) + 108.38 mt (underharvest carryover) = 157.9 mt.

NALB Annual Quota

In 2017, following consideration of SCRS' work to test a set of harvest control rules through management strategy evaluation simulations, ICCAT adopted an interim harvest control rule for NALB, the first for any ICCAT stock, with the goal of adopting a long-term harvest control rule following further management strategy evaluation testing over the next few years. In ICCAT Recommendation 17–04 (Recommendation by ICCAT on a Harvest Control Rule for North Atlantic Albacore Supplementing the Multiannual Conservation and Management Programme, Recommendation 16–06), ICCAT adopted a 3-year constant annual TAC of 33,600 t for 2018 through 2020; this 20-percent increase from the current 28,000-t TAC is consistent with the Commission's chosen stability clause, which limits the TAC increase to 20 percent. The recommendation calls on the SCRS to continue to develop the management strategy evaluation framework over the 2018–2020 period and calls on ICCAT to review the interim harvest control rule in 2020 with a view to adopting a long-term management procedure at that point.

Domestic Quotas

This action implements the annual U.S. NALB quota of 632.4 mt adopted in ICCAT Recommendation 17–04. Because ICCAT adopted annual TACs for 2018 through 2020, NMFS currently anticipates that the annual baseline quota would be in effect through 2020; it will remain in place unless and until a new TAC is adopted by ICCAT.

Adjustment of the 2018 NALB Quota

Consistent with the NALB quota regulations at § 635.27(e), NMFS adjusts the U.S. annual northern albacore quota for allowable underharvest, if any, in the previous year. NMFS makes such adjustments consistent with ICCAT limits and when complete catch information for the prior year is available and finalized. The maximum underharvest that a Contracting Party may carry forward from one year to the next is 25 percent of its initial catch quota, which, relevant to 2017, equals 131.75 mt for the United States.

For 2017, the adjusted NALB quota was 658.75 mt (527 mt + 131.75 mt of 2016 underharvest carried forward to 2017). The total 2017 NALB catch was 236.79 mt and this is 421.96 mt less than the 2017 adjusted quota. Thus, the underharvest for 2017 is 421.96 mt, 131.75 mt of which may be carried forward to the 2018 fishing year. As a result, the 2018 adjusted northern albacore quota is 632.4 mt + 131.75 mt, totaling 764.15 mt.

Modification of the Size Limit Regulations To Address Bigeye and Yellowfin Tuna Damaged Through Predation by Sharks and Other Marine Species

Minimum fish size regulations have applied for Atlantic bluefin tuna, bigeye tuna, and yellowfin tuna since 1996, when NMFS implemented the 27-inch minimum size for BFT consistent with ICCAT requirements, and also implemented a 27-inch minimum size for bigeye and yellowfin tuna for identification and enforcement purposes. Under existing regulations, these fish may be landed round with fins intact, or eviscerated with the head and fins removed as long as one pectoral fin and the tail remain attached. They cannot be filleted or cut into pieces at sea. The upper and lower lobes of the tail may be removed from tunas for storage purposes, but the fork of the tail must remain intact.

To facilitate enforcement, total curved fork length (CFL) is the sole criterion for determining the size class of whole (with head) Atlantic tunas. CFL is measured by tracing the contour of the body from the tip of the upper jaw to the fork of the tail in a line that runs along the top of the pectoral fin and the top of the caudal keel. Pectoral fin curved fork length (PFCFL) is the sole criterion for determining the size class of a *bluefin tuna with the head removed* and is multiplied by 1.35 to obtain total CFL. For detailed diagrams and measuring instructions, see the HMS Compliance Guides at *www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-highly-migratory-species-fishery-compliance-guides*. Currently, the size limit regulations prohibit a person from taking, retaining, or possessing a BFT, bigeye tuna, or yellowfin tuna in the Atlantic Ocean that is less than 27 inches CFL. The regulations also prohibit removing the head of a bigeye tuna or yellowfin tuna if the remaining portion would be less than 27 inches from the fork of the tail to the forward edge of the cut.

Fishermen have reported that they, at times, catch bigeye and yellowfin tuna that have been damaged by predation by sharks or other marine species. In those cases, a CFL measurement may not be possible if the fork of the tail has been removed by predation. Although the

fish may otherwise meet the minimum size requirements, fishermen have had to discard the fish. To address this situation, NMFS makes minor modifications to the applicable Atlantic tunas size limit regulations to address retention, possession, and landing of bigeye and yellowfin damaged through predation by sharks and other marine species. In this action, NMFS adds text to the size limit regulations applicable to bigeye and yellowfin tuna to indicate that a ''bigeye or yellowfin tuna that is damaged through predation by sharks and other marine species may be retained, possessed, or landed only if the length of the remainder of the fish is equal to or greater than 27 inches (69 cm).'' These changes allow retention, possession, and landing of yellowfin and bigeye tuna for which a measurement to the fork of the tail may not be possible, provided that the remainder of the fish meets the current minimum size (*e.g.,* 27 inches for yellowfin and bigeye tuna). To preserve evidence, for enforcement purposes, that the carcass was damaged through predation by sharks or other marine species, the regulatory text specifies that, aboard a vessel, no tissue may be cut away from or other alterations made to the predation-damaged area of the fish. The effects of this change are primarily economic and administrative, and no environmental effects are anticipated because the change only allows for retention of a very limited number of fish that would otherwise be caught but need to be discarded. NMFS implemented measures to address shark-damaged swordfish in 1996 (61 FR 27304, May 31, 1996), and intends to consider extending the scope of those measures to include damage through predation by other marine species in a future swordfish action.

Response to Comments

NMFS received three written comments on the proposed rule. Below, NMFS summarizes and responds to all comments made specifically on the proposed rule during the comment period.

Comment 1: One commenter suggested that, for conservation reasons, NMFS should reduce rather than increase the quota.

Response: The western Atlantic BFT TAC adopted by ICCAT on an interim basis is within the range recommended by ICCAT's Standing Committee on Research and Statistics (SCRS) and provides a buffer from the top end of the range (2,500 mt). NMFS has determined that implementing the U.S. baseline quota is consistent with the ICCAT recommendation and our conservation and management obligations under the Magnuson-Stevens Act and ATCA to provide the opportunity to harvest the ICCAT-recommended quota. NMFS is committed to the sustainable, science-based management of BFT, and is supportive of ICCAT's work toward adopting stock management recommendations using management procedures, which ICCAT has recommended for BFT and other priority stocks, to manage fisheries more effectively in the face of identified uncertainties.

Comment 2: One commenter, representing a fishing industry organization, supported finalizing the BFT and NALB quotas as proposed, further commented on HMS regulations that affect pelagic longline participants, including the Individual Bluefin Quota Program and time/area closures, and supported access to closed areas through a research fishery.

Response: This rulemaking does not address issues beyond the modification of the baseline annual U.S. quota and subquotas for BFT, the baseline annual U.S. NALB quota, and the size limit regulations pertaining to bigeye and yellowfin tuna.

NMFS is currently preparing a draft Three-Year Review of the Individual Bluefin Quota Program. NMFS plans to conduct scoping in the future to respond to that review, as well as consider other potential changes to the regulations applicable to the pelagic longline fishery and the directed bluefin fisheries. NMFS also initiated a separate scoping process in the spring of 2018 to consider a range of issues and options regarding possible area-based and weak hook management changes. The subject time/area closures, gear restricted areas, and weak hook requirement were originally implemented to reduce incidental BFT catch that occurs during pelagic longline operations. Depending on the outcome of NMFS' review, NMFS anticipates publishing a proposed rule on these other potential changes to the regulations in spring 2019.

Comment 3: The comment from the fishing industry group also provided specific suggestions regarding the proposed change regarding bigeye and yellowfin tuna damaged by shark bites. Specifically, the comment suggested that NMFS broaden the regulatory provision to address predation by other marine species that predate on hooked tuna and that may cause damage similar to damage caused by sharks. The comment also requested that NMFS allow trimming of the damaged (*i.e.,* bitten) area of the fish for quality purposes, and noted that fishermen routinely trim the damaged area of predated fish to avoid possible spoiling of the remaining carcass.

Response: NMFS agrees that predation by marine species other than sharks, such as pilot whales or Risso's dolphins, may result in damage to caught Atlantic bigeye and yellowfin tuna similar to damage caused by shark bites. It would also be difficult for fishermen or law enforcement to distinguish whether a tuna was bitten by a shark or another marine species. NMFS has determined that expanding the scope of the regulatory text to specify ''predation by sharks and other marine species'' is an appropriate modification of the originally-proposed text, and that the change could be enforced effectively. Thus, in this final rule, NMFS modifies the language being added to the size limit regulations applicable to bigeye and yellowfin tuna so that it refers to predation by sharks and other marine species. With this modification, the relevant language of § 635.20(c)(3) indicates that a bigeye or yellowfin tuna that is damaged through predation by sharks and other marine species may be retained, possessed, or landed only if the length of the remainder of the fish is equal to or greater than 27 inches (69 cm). No person shall cut or otherwise alter the predation-damaged area in any manner.

NMFS cannot affirm the comment that trimming of the damaged area by fishermen prior to landing is a common or routine practice. Furthermore, for Atlantic tunas this practice is illegal. For enforcement purposes, curved fork length is the sole criterion for determining the size of Atlantic tunas, and this measurement is taken either from the tip of the upper jaw to the fork of the tail (total curved fork length) or, for BFT with the head removed, from the dorsal insertion of the pectoral fin to the fork of the tail (pectoral fin curved fork length). Regulations require that Atlantic tunas be maintained through offloading either in round form or eviscerated with the head and fins removed, provided one pectoral fin and the tail remain attached. The upper and lower lobes of the tuna tail may be removed for storage purposes as long as the fork of the tail remains intact. See § 635.30(a). It is NMFS' understanding that some Atlantic tunas dealers trim away predation-damaged area of the tuna after landing and offloading to help preserve the fish. Legally, trimming may only occur after landing and offloading.

The proposed rule specified that no person shall cut or otherwise alter the damaged area of the fish. This prohibition is necessary, for enforcement purposes, to preserve evidence that the carcass was bitten.

NMFS is concerned that allowing trimming of the damaged area prior to offloading could complicate effective enforcement of the Atlantic tunas regulations and species identification, particularly if it results in the tail being removed from the fish, and that this could become a common occurrence. Therefore, this provision prohibiting cutting or altering the damaged area is finalized as proposed.

Changes From the Proposed Rule (83 FR 31517, July 6, 2018)

As described in the response to Comment 3 above, NMFS made changes to the regulatory text of the proposed rule in response to the comment that other marine predators may cause damage similar to that caused by shark bites. Specifically, the final rule adds language to the size limit regulations applicable to bigeye and yellowfin tuna at § 635.20(c)(3), providing that a bigeye or yellowfin tuna that is damaged through predation by sharks and other marine species may be retained, possessed, or landed only if the length of the remainder of the fish is equal to or greater than 27 inches (69 cm). No person shall cut or otherwise alter the predation-damaged area in any manner.

Classification

The NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, ATCA, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

There is good cause under U.S.C. 553(d)(3) to waive the 30-day delay in effective date and to make the rule effective upon filing in the **Federal Register.** The purpose of the delay in effective date is to afford affected persons a reasonable time to prepare for the effective date of the rule. The fisheries for northern albacore and bluefin tuna began on January 1, 2018. NMFS monitors northern albacore and bluefin tuna catch and measures the data against the applicable available quotas. This rule effectively increases the quota for both of these fisheries and, consequently, for the subquotas within the bluefin tuna fishery. Delaying the effective date of these changes would mean that some fisheries might have to close while operating under the old quota, and then re-open when the new quota is implemented soon thereafter. This would unnecessarily complicate the management of the northern albacore and bluefin tuna fisheries for the remainder of the year, confuse the regulated community, and create additional administrative burden, because it would require NMFS to publish closures and openings that would otherwise be unnecessary. To prevent confusion and potential overharvests, these quota increases and adjustments should be in place as soon as possible, thus allowing the impacted sectors to benefit from any subsequent quota adjustments to the fishing categories, giving them a reasonable opportunity to catch available quota, and providing them the opportunity for planning operations accordingly.

For example, under the northern albacore regulations, NMFS must close the fishery when the annual fishery quota is reached. Closure of the fishery based only on the currently codified baseline quota, rather than accounting for the higher quota in this rule, would result in an unnecessary closure and could preclude the fishery from harvesting northern albacore that are legally available, consistent with the ICCAT recommendations and the 2006 Consolidated HMS FMP, as amended. Furthermore, NMFS relies upon management flexibility to respond quickly to current fishery conditions and to ensure that fishermen have a reasonable opportunity to catch the available quotas. Implementing the higher bluefin tuna category quotas and adjusting the Reserve category quota as soon as possible provides NMFS the flexibility to transfer quota from the Reserve to other fishing categories inseason after considering the regulatory determination criteria, including fishery conditions at the time of the transfer. The amount of quota currently in the Reserve category for 2018 is relatively low, and NMFS may need to transfer quota as soon as possible in order to reduce the likelihood of fishery closure during the remaining subquota time periods. NMFS could not appropriately adjust the annual quotas for 2018 sooner because the data needed to make the determination (*i.e.,* 2017 underharvest) did not become available until August, and additional time was needed for agency analysis and consideration of the data.

Implementation of the change to the size limit regulations to address damaged tunas, provided that the remainder of the fish meets the current minimum size (*e.g.,* 27 inches for yellowfin and bigeye tuna), will allow retention, possession, and landing of yellowfin and bigeye tuna for which a measurement to the fork of the tail may not be possible because the tail has been partially or entirely bitten off. Because this change could convert dead discards to landings, implementation of the measure as soon as possible could reduce waste. For all of these reasons, there is good cause to waive the 30-day delay in the date of effectiveness.

NMFS has prepared a Regulatory Impact Review (RIR) and a Final Regulatory Flexibility Analysis (FRFA), which present and analyze anticipated social and economic impacts of the alternatives contained in this final rule. The list of alternatives and their analyses are provided in the RIR and are not repeated here in their entirety. A copy of the RIR prepared for this final rule is available from NMFS (see **ADDRESSES**).

The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS' responses to those comments, and a summary of the analyses completed to support the action. The full FRFA and analysis of economic and ecological impacts are available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

Section 604(a)(1) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires a succinct statement of the need for and objectives of the rule. The purpose of this action is to implement the 2017 ICCAT recommendations regarding western Atlantic BFT and NALB, as necessary and appropriate pursuant to the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The objectives of this action are to implement the 2017 ICCAT recommendations and distribute the U.S. BFT quota among domestic fishing categories using the existing regulatory formula for quota distribution established and analyzed in Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014). This action is needed because BFT and NALB quotas, as well as BFT allocations and resulting subquotas, are codified in the HMS regulations at 50 CFR 635.27, and rulemaking is necessary to modify them.

Section 604(a)(2) of the RFA requires a summary of significant issues raised by the public in response to the IRFA, a summary of the agency's assessment of such issues, and a statement of any changes made as a result of the comments. NMFS received three comments on the proposed rule (83 FR 31517, July 6, 2018) during the comment period. A summary of these comments and the agency's responses are included above. However, NMFS did not receive comments specifically

on the IRFA or on the economic impacts of the rule.

Section 604(a)(3) of the RFA requires the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the SBA comments. NMFS did not receive comments from the Chief Counsel for Advocacy of the SBA in response to the proposed rule.

Section 604(a)(4) of the RFA requires agencies to provide descriptions of, and where feasible, an estimate of the number of small entities to which the rule would apply. The SBA has established size criteria for all major industry sectors in the United States, including fish harvesters. This provision is made under SBA's regulations for an agency to develop its own industry-specific size standards after consultation with Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS published a December 29, 2015, final rule (80 FR 81194), which became effective on July 1, 2016. The implementing regulations for that rule at 50 CFR 200.2 established a small business size standard of $11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. NMFS considers all commercial HMS permit holders to be small entities because they had average annual receipts of less than $11 million for commercial fishing.

As described in the recently published final rule to implement quarterly Individual Bluefin Quota (IBQ) accounting (82 FR 61489, December 28, 2017), the average annual gross revenue per active pelagic longline vessel was estimated to be $308,050 for 2013 through 2016. NMFS considers all HMS Atlantic Tunas Longline permit holders (280 as of October 2017) to be small entities because these vessels have reported annual gross receipts of less than $11 million for commercial fishing. NMFS is unaware of any other Atlantic Tunas category permit holders that potentially could earn more than $11 million in revenue annually. HMS Angling category permits, which are recreational fishing permits, are typically obtained by individuals who are not considered small entities for purposes of the RFA. Therefore, NMFS considers all Atlantic Tunas permit holders and HMS Charter/Headboat permit holders subject to this action to be small entities. The following section provides a description of how NMFS calculated the average revenues and then provides a description of and, where feasible, provides an estimate of the number of small entities to which the rule would apply as required by RFA.

This action would apply to all participants in the Atlantic tunas fisheries, *i.e.,* to the over 27,000 vessels that held an Atlantic HMS Charter/Headboat, Atlantic HMS Angling, or an Atlantic Tunas permit as of October 2017. This final rule is expected to directly affect commercial and for-hire fishing vessels that possess an Atlantic Tunas permit or Atlantic HMS Charter/Headboat permit. It is unknown what portion of HMS Charter/Headboat permit holders actively participate in the BFT and NALB fisheries or fishing services for recreational anglers. As summarized in the 2017 SAFE Report for Atlantic HMS, there were 6,855 commercial Atlantic tunas or Atlantic HMS permits in 2017, as follows: 2,940 in the Atlantic Tunas General category; 11 in the Atlantic Tunas Harpoon category; 5 in the Atlantic Tunas Purse Seine category; 280 in the Atlantic Tunas Longline category; 1 in the Atlantic Tunas Trap category; and 3,618 in the HMS Charter/Headboat category. In the process of developing the IBQ regulations implemented in the final rule for Amendment 7, NMFS deemed 136 Longline category vessels as eligible for IBQ shares (*i.e.,* 136 vessels reported a set in the HMS logbook between 2006 and 2012 and had valid Atlantic Tunas Longline category permits on a vessel as of August 21, 2013, the publication date of the Amendment 7 proposed rule). This constitutes the best available information regarding the universe of permits and permit holders recently analyzed. It is unknown what portion of fishery participants would be affected by the minor change in the regulations to allow retention, possession, and landing of bigeye and yellowfin tuna, damaged through predation by sharks and other marine species, for which a measurement to the fork of the tail may not be possible, provided that the remainder of the fish meets the current minimum sizes (*e.g.,* 27 inches for yellowfin, and bigeye tunas). NMFS has determined that this action would not likely directly affect any small government jurisdictions defined under the RFA.

Under section 604(a)(5) of the RFA, agencies are required to describe any new reporting, record-keeping, and other compliance requirements. The action does not contain any new collection of information, reporting, or record-keeping requirements.

Under section 604(a)(6) of the RFA, agencies are required to describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

In this rulemaking, NMFS analyzed two quota implementation alternatives for BFT and NALB: first, the status quo U.S. baseline quota(s) established in 2015, and second, the preferred alternative to implement the U.S. quota in accordance with the 2017 ICCAT Recommendation and regulations regarding the distribution of the quota within U.S. fishing categories. The final rule implements the recently adopted ICCAT-recommended U.S. BFT and NALB quotas and, for BFT, applies the allocations for each quota category per the codified quota regulations. This action is consistent with ATCA, under which the Secretary promulgates regulations as necessary and appropriate to implement binding ICCAT recommendations.

NMFS has estimated the average impact that establishing the increased annual U.S. baseline BFT quota for all domestic fishing categories would have on individual categories and the vessels within those categories. As mentioned above, a 2017 ICCAT recommendation increased the annual U.S. baseline BFT quota for 2018, 2019, and 2020 to 1,247.86 mt and provides 25 mt annually for incidental catch of BFT related to directed longline fisheries in the NED. The annual U.S. baseline BFT subquotas would be adjusted consistent with the process (*i.e.,* the formulas) established in Amendment 7 and as codified in the quota regulations, and these amounts (in mt) would be codified.

To calculate the average ex-vessel BFT revenues under this action, NMFS first estimated potential category-wide revenues. The most recent ex-vessel average price per pound information for each commercial quota category is used to estimate potential ex-vessel gross revenues under the subquotas (*i.e.,* 2017 prices for the General, Harpoon, and

Longline/Trap categories, and 2015 prices for the Purse Seine category). For comparison, in 2017, gross revenues were approximately $9.2 million, broken out by category as follows: General—$7.8 million, Harpoon—$496,968, Purse Seine—$0, Longline—$878,824, and Trap—$0. The baseline subquotas could result in estimated gross revenues of $10 million annually, if finalized and fully utilized, broken out by category as follows: General category: $6.5 million (555.7 mt * $5.30/lb); Harpoon category: $526,326 (46 mt * $5.19/lb); Purse Seine category: $1.5 million (219.5 mt * $3.21/lb); Longline category: $1.4 million (163.6 mt * $3.99/lb); and Trap category: $10,556 (1.2 mt * $3.99/lb).

No affected entities would be expected to experience negative, direct economic impacts as a result of this action. On the contrary, each of the BFT quota categories would increase relative to the baseline quotas that applied in 2015 through 2017. To the extent that Purse Seine fishery participants and IBQ participants could receive additional quota as a result of the Amendment 7-implemented allocation formulas being applied to increases in available Purse Seine and Longline category quota, those participants would receive varying amounts of an increase, which would result in direct benefits from either increased fishing opportunities or quota leasing.

The FRFA assumes that each vessel will have similar catch and gross revenues to show the relative impact of the final action on vessels. To estimate potential average ex-vessel revenues that could result from this action for BFT, NMFS divided the potential annual gross revenues for the General, Harpoon, Purse Seine, and Trap category by the number of permit holders. For the Longline category, NMFS divided the potential annual gross revenues by the number of IBQ share recipients. This is an appropriate approach for BFT fisheries, in particular, because available landings data (weight and ex-vessel value of the fish in price-per-pound) allow NMFS to calculate the gross revenue earned by a fishery participant on a successful trip. The available data (particularly from non-Longline participants) do not, however, allow NMFS to calculate the effort and cost associated with each successful trip (*e.g.,* the cost of gas, bait, ice, etc.), so net revenue for each participant cannot be calculated. As a result, NMFS analyzed the average impact of the alternatives among all participants in each category.

Success rates vary widely across participants in each category (due to the extent of vessel effort and availability of commercial-sized BFT to participants where they fish), but for the sake of estimating potential revenues per vessel, category-wide revenues can be divided by the number of permitted vessels in each category. For the Longline fishery, actual revenues would depend, in part, on each vessel's IBQ in 2018. It is unknown what portion of HMS Charter/Headboat permit holders actively participate in the BFT fishery. HMS Charter/Headboat vessels may fish commercially under the General category quota and retention limits. Therefore, NMFS is estimating potential General category ex-vessel revenue changes using the number of General category vessels only.

Estimated potential 2018 revenues on a per vessel basis, considering the number of permit holders listed above and the subquotas, could be $2,409 for the General category; $47,848 for the Harpoon category; $310,670 for the Purse Seine category; $10,582 for the Longline category, using the 136 IBQ share recipients; and $10,556 for the Trap category. Thus, all of the entities affected by this rule are considered to be small entities for the purposes of the RFA.

Consistent with the codified BFT quota regulations at § 635.27(a)(4)(v), NMFS will continue to annually calculate the quota available to historical Purse Seine fishery participants and reallocate the remaining Purse Seine category quota to the Reserve category. NMFS is further adjusting those amounts consistent with the annual U.S. baseline BFT quota in this final rule. The analyses in this FRFA are limited to the final baseline subquotas.

Because the directed commercial categories have underharvested their subquotas in recent years, the potential increases in ex-vessel revenues above may overestimate the probable economic impacts to those categories relative to recent conditions. Additionally, there has been substantial interannual variability in ex-vessel revenues in each category in recent years, due to recent changes in BFT availability and other factors.

The 2017 NALB ICCAT recommendation increased the annual U.S. baseline NALB quota for 2018, 2019, and 2020 to 632.4 mt. Based on knowledge of current participants in the fishery and estimated gross revenues, NMFS considers all of the entities affected by the NALB quota action be small entities for the purposes of the RFA.

NMFS does not subdivide the U.S. NALB quota into category subquotas. The most recent ex-vessel average price per pound information is used to estimate potential ex-vessel gross revenues. The baseline subquotas could result in estimated gross revenues of $1.8 million annually, if finalized and fully utilized ((632.4 mt/1.25) * $1.63/lb dw). No affected entities would be expected to experience negative, direct economic impacts as a result of this action.

The change to the regulatory text concerning Atlantic bigeye and yellowfin tuna size limits applies to all fishery participants but is not expected to have significant economic impacts. This is because damage to caught bigeye and yellowfin tuna through predation by sharks and other marine species is rare, and the change to the regulatory text is not expected to result in significant changes to Atlantic tunas fishery operations.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a statement published online serves as the small entity compliance guide, and a listserv notice containing the web address will be sent to HMS News subscribers. Copies of this final rule and the guide are available upon request (see **ADDRESSES**).

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: October 3, 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 635 is amended as follows:

PART 635–ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.20, revise paragraph (c)(3) to read as follows:

§ 635.20 Size limits.

* * * * *

(c) * * *

(3) No person aboard a vessel shall remove the head of a bigeye tuna or yellowfin tuna if the remaining portion would be less than 27 inches (69 cm) from the fork of the tail to the forward edge of the cut. A bigeye or yellowfin tuna that is damaged through predation by sharks or other marine species may be retained, possessed, or landed only if the length of the remainder of the fish is equal to or greater than 27 inches (69 cm). No person shall cut or otherwise alter the predation-damaged area in any manner.

* * * * *

■ 3. In § 635.27, revise paragraphs (a) introductory text, (a)(1)(i), (a)(2) and (3), (a)(4)(i), (a)(5) and (6), (a)(7)(i) and (ii), (a)(10)(iii), and (e)(1) to read as follows:

§ 635.27 Quotas.

(a) *Bluefin tuna.* Consistent with ICCAT recommendations, and with paragraph (a)(10)(iv) of this section, NMFS may subtract the most recent, complete, and available estimate of dead discards from the annual U.S. bluefin tuna quota, and make the remainder available to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The remaining baseline annual U.S. bluefin tuna quota will be allocated among the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories, as described in this section. Bluefin tuna quotas are specified in whole weight. The baseline annual U.S. bluefin tuna quota is 1,247.86 mt, not including an additional annual 25-mt allocation provided in paragraph (a)(3) of this section. The bluefin quota for the quota categories is calculated through the following process. First, 68 mt is subtracted from the baseline annual U.S. bluefin tuna quota and allocated to the Longline category quota. Second, the remaining quota is divided among the categories according to the following percentages: General—47.1 percent (555.7 mt); Angling—19.7 percent (232.4 mt), which includes the school bluefin tuna held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon—3.9 percent (46 mt); Purse Seine—18.6 percent (219.5 mt); Longline—8.1 percent (95.6) plus the 68-mt allocation (*i.e.,* 163.6 mt total not including the 25-mt allocation from paragraph (a)(3)); Trap—0.1 percent (1.2 mt); and Reserve—2.5 percent (29.5 mt). NMFS may make inseason and annual adjustments to quotas as specified in paragraphs (a)(9) and (10) of this section, including quota adjustments as a result of the annual reallocation of Purse Seine quota described under paragraph (a)(4)(v) of this section.

(1) * * *

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category quota in accordance with § 635.23(c)(3). Pursuant to paragraph (a) of this section, the amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold under the General category quota is 555.7 mt, and is apportioned as follows, unless modified as described under paragraph (a)(1)(ii) of this section:

(A) January 1 through the effective date of a closure notice filed by NMFS announcing that the January subquota is reached, or projected to be reached under § 635.28(a)(1), or through March 31, whichever comes first—5.3 percent (29.5 mt);

(B) June 1 through August 31—50 percent (277.9 mt);

(C) September 1 through September 30—26.5 percent (147.3 mt);

(D) October 1 through November 30—13 percent (72.2 mt); and

(E) December 1 through December 31—5.2 percent (28.9 mt).

* * * * *

(2) *Angling category quota.* In accordance with the framework procedures of the Consolidated HMS FMP, prior to each fishing year, or as early as feasible, NMFS will establish the Angling category daily retention limits. In accordance with paragraph (a) of this section, the total amount of bluefin tuna that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 232.4 mt. No more than 2.3 percent (5.3 mt) of the annual Angling category quota may be large medium or giant bluefin tuna. In addition, no more than 10 percent of the annual U.S. bluefin tuna quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school bluefin tuna (*i.e.,* 127.3 mt). The Angling category quota includes the amount of school bluefin tuna held in reserve under paragraph (a)(7)(ii) of this section. The size class subquotas for bluefin tuna are further subdivided as follows:

(i) After adjustment for the school bluefin tuna quota held in reserve (under paragraph (a)(7)(ii) of this section), 52.8 percent (54.8 mt) of the school bluefin tuna Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N lat. The remaining school bluefin tuna Angling category quota (49 mt) may be caught, retained, possessed or landed north of 39°18′ N lat.

(ii) An amount equal to 52.8 percent (52.7 mt) of the large school/small medium bluefin tuna Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N lat. The remaining large school/small medium bluefin tuna Angling category quota (47.1 mt) may be caught, retained, possessed or landed north of 39°18′ N lat.

(iii) One third (1.8 mt) of the large medium and giant bluefin tuna Angling category quota may be caught retained, possessed, or landed, in each of the three following geographic areas: North of 39°18′ N lat.; south of 39°18′ N lat., and outside of the Gulf of Mexico; and in the Gulf of Mexico. For the purposes of this section, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c).

(3) *Longline category quota.* Pursuant to paragraph (a) of this section, the total amount of large medium and giant bluefin tuna that may be caught, discarded dead, or retained, possessed, or landed by vessels that possess Atlantic Tunas Longline category permits is 163.6 mt. In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant gear restricted area, and subject to the restrictions under § 635.15(b)(8).

(4) * * *

(i) *Baseline Purse Seine quota.* Pursuant to paragraph (a) of this section, the baseline amount of large medium and giant bluefin tuna that may be caught, retained, possessed, or landed by vessels that possess Atlantic Tunas Purse Seine category permits is 219.5 mt, unless adjusted as a result of inseason and/or annual adjustments to quotas as specified in paragraphs (a)(9) and (10) of this section; or adjusted (prior to allocation to individual participants) based on the previous year's catch as described under paragraph (a)(4)(v) of this section. Annually, NMFS will make a determination when the Purse Seine fishery will start, based on variations in seasonal distribution, abundance or migration patterns of bluefin tuna, cumulative and projected landings in other commercial fishing categories, the potential for gear conflicts on the fishing grounds, or market impacts due to oversupply. NMFS will start the bluefin tuna purse seine season between June 1 and August 15, by filing an action with the Office of the Federal Register, and

notifying the public. The Purse Seine category fishery closes on December 31 of each year.

* * * * *

(5) *Harpoon category quota.* The total amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold by vessels that possess Harpoon category Atlantic Tunas permits is 46 mt. The Harpoon category fishery commences on June 1 of each year, and closes on November 15 of each year.

(6) *Trap category quota.* The total amount of large medium and giant bluefin tuna that may be caught, retained, possessed, or landed by vessels that possess Trap category Atlantic Tunas permits is 1.2 mt.

(7) * * *

(i) The total amount of bluefin tuna that is held in reserve for inseason or annual adjustments and research using quota or subquotas is 29.5 mt, which may be augmented by allowable underharvest from the previous year, or annual reallocation of Purse Seine category quota as described under paragraph (a)(4)(v) of this section. Consistent with paragraphs (a)(8) through (10) of this section, NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any fishing category quota.

(ii) The total amount of school bluefin tuna that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent (23.5 mt) of the total school bluefin tuna Angling category quota as described under paragraph (a)(2) of this section. This amount is in addition to the amounts specified in paragraph (a)(7)(i) of this section. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of the school bluefin tuna Angling category quota held in reserve for inseason or annual adjustments to the Angling category.

* * * * *

(10) * * *

(iii) Regardless of the estimated landings in any year, NMFS may adjust the annual school bluefin tuna quota to ensure compliance with the ICCAT-recommended procedures for addressing overharvest of school bluefin tuna.

* * * * *

(e) * * *

(1) *Annual quota.* Consistent with ICCAT recommendations and domestic management objectives, the total baseline annual fishery quota is 632.4 mt ww. The total quota, after any adjustments made per paragraph (e)(2) of this section, is the fishing year's total amount of northern albacore tuna that may be landed by persons and vessels subject to U.S. jurisdiction.

* * * * *

[FR Doc. 2018–22034 Filed 10–10–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170816769–8162–02]

RIN 0648–XG529

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2018 total allowable catch of pollock for Statistical Area 620 in the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), October 6, 2018, through 2400 hours, A.l.t., December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2018 total allowable catch (TAC) of pollock in Statistical Area 620 of the GOA is 79,938 metric tons (mt) as established by the final 2018 and 2019 harvest specifications for groundfish in the GOA (83 FR 8768, March 1, 2018) and one in-season adjustment (83 FR 42609, August 23, 2018).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the 2018 TAC of pollock in Statistical Area 620 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 79,838 mt and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 620 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 4, 2018.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Margo B. Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–22141 Filed 10–5–18; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 83, No. 197

Thursday, October 11, 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.

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 408 and 416

[Docket No. SSA–2015–0006]

RIN 0960–AH78

Prohibiting Persons With Certain Criminal Convictions From Serving as Representative Payees

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to amend our regulations to prohibit persons convicted of certain crimes from serving as representative payees under the Social Security Act (Act). We are proposing these revisions because of changes to the Act made by the Strengthening Protections for Social Security Beneficiaries Act of 2018.

DATES: Send comments on or before November 13, 2018.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2015–0006, so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the Search function to find docket number SSA–2015–0006. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. Fax: *Fax* comments to (410) 966–2830.

3. *Mail:* Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Kevin Salamone, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–0854. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

Social Security's Representative Payment Program provides benefit payment management for our beneficiaries who are incapable of managing their Social Security or Supplemental Security Income (SSI) payments or directing another person to manage those payments due to a mental or physical impairment. Generally, if a beneficiary or recipient is under age 18, we will pay benefits to a representative payee; in certain situations, we make direct payments to a beneficiary under age 18 who shows the ability to manage the benefits. In cases where the beneficiary or recipient is 18 years or older, we select a representative payee if we believe that payment of benefits through a representative payee, rather than direct payment to the beneficiary, will better serve the beneficiary's interest. A representative payee may be an organization, such as a social service agency, or a person, such as a parent, relative, or friend of the beneficiary. We require a representative payee to use benefits in the beneficiary's best interest and, with certain exceptions, to report expenditures to us to ensure the representative payee is using funds appropriately.[1]

When a person or an organization requests to serve as a representative payee, we investigate the potential representative payee to help ensure that the person or organization will perform the duties of a representative payee responsibly. We look at factors such as the potential representative payee's relationship to the beneficiary, any past performance as a representative payee for other beneficiaries, and any criminal history.

On April 13, 2018, the President signed into law the Strengthening Protections for Social Security Beneficiaries Act of 2018.[2] Section 202 of this law codifies our current policy, implemented in February 2014, to conduct criminal background checks on representative payee applicants and prohibit the selection of certain representative payee applicants who have a felony conviction of committing, attempting, or conspiring to commit certain crimes. In addition, the legislation requires that we conduct criminal background checks on all currently serving representative payees who do not meet one of the exceptions set out in the law, and continue to do so at least once every five years.[3]

In order to conform our regulations to the new law, we propose, in §§ 404.2020(f) and 416.620(f), to consider the potential representative payee's criminal history when we

[1] Payees may receive an annual Representative Payee Report to account for the benefit payments received. Due to Public Law 115–165, 132 Stat. 1257, we no longer require the following payees to complete an annual Representative Payee Report: (1) Natural or adoptive parents of a minor child beneficiary who primarily reside in the same household as the child; (2) Legal guardians of a minor child beneficiary who primarily reside in the same household as the child; (3) Natural or adoptive parents of a disabled adult beneficiary who primarily reside in the same household with the beneficiary; and (4) Spouse of a beneficiary.

[2] Public Law 115–165, 132 Stat. 1257.

[3] We may not apply these prohibitions as an absolute bar to serving as a representative payee if the representative payee applicant is the custodial parent of the minor child beneficiary, custodial parent of a beneficiary who is under a disability which began before the beneficiary attained age 22, custodial spouse of the beneficiary, custodial grandparent of the minor child beneficiary, custodial court-appointed guardian of the beneficiary, parent who was previously the representative payee for his or her minor child who since turned age 18 and continued to be eligible for benefits; or if the representative payee applicant received a Presidential or gubernatorial pardon for the conviction.

determine if we should select the individual to serve as a representative payee. As part of our consideration, we will conduct a criminal background check on the representative payee applicant, and if we select the applicant as representative payee, we will conduct a criminal background check at least once every five years as provided in proposed §§ 404.2026, 408.626 (by cross reference), and 416.626.

We also propose to add a new paragraph to current §§ 404.2022 and 416.622 of our regulations to reflect the felony prohibitions in the legislation. This new paragraph will explain that we are prohibited from selecting representative payee applicants with a felony conviction of: (1) Human trafficking, (2) false imprisonment, (3) kidnapping, (4) rape and sexual assault, (5) first-degree homicide, (6) robbery, (7) fraud to obtain access to government assistance, (8) fraud by scheme, (9) theft of government funds or property, (10) abuse or neglect, (11) forgery, or (12) identity theft.[4] As further provided in proposed §§ 404.2022(f) and 416.622(f), we will also prohibit the selection of a representative payee applicant with a felony conviction of an attempt to commit any of these crimes or conspiracy to commit any of these crimes.

We will also apply the background check and prohibitions to representative payee applicants under the Special Veterans Benefits program established by title VIII of the Act and part 408 of our rules. When we consider who may serve as a representative payee under the rules in part 408, we apply the title II rules that we propose to amend here, so those revisions will also apply to representative payee applicants under the Special Veterans Benefits program.[5]

Consistent with our current policy, we are not proposing to apply these prohibitions as an absolute bar to selection for certain representative payee applicants. Instead, we will consider the criminal history of the applicant along with our other evaluation criteria[6] to decide whether to appoint the applicant as a representative payee.

Consistent with the new law, we will not apply the criminal prohibitions as an absolute bar if the representative payee applicant is: The custodial parent of the minor child beneficiary the representative payee applicant seeks to serve; the custodial parent of the disabled beneficiary the representative payee applicant seeks to serve if the beneficiary's disability began before the beneficiary attained age 22; the custodial spouse, custodial grandparent of a minor child, or custodial court-appointed legal guardian of the beneficiary the representative payee applicant seeks to serve (§§ 404.2022(f) and 416.622(f)). We also will not apply the prohibitions as an absolute bar if the representative payee applicant is the parent who was previously the representative payee for his or her minor child who since turned age 18 and continued to be eligible for benefits. (§§ 404.2022(f)(1) and 416.622(f)(1)). Finally, we will not apply the prohibitions as an absolute bar if the representative payee applicant received a Presidential or gubernatorial pardon for the conviction. (§§ 404.2022(f)(3) and 416.622(f)(3)). Instead, we will include the criminal information in our consideration of the best interests of the recipient or beneficiary when we determine whether to select an applicant to serve as a representative payee.

We are also correcting an incorrect cross reference in §§ 404.2024(a)(9) and 416.624(a)(9) to §§ 404.2022(e) and 416.622(e) respectively.

Regulatory Procedures

Executive Order 12866 as Supplemented by Executive Order 13563

We consulted with OMB and determined that this proposed rule meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Thus, OMB reviewed the proposed rule.

Executive Order 13771

This proposed rule is not subject to the requirements of Executive Order 13771 because it is administrative in nature and results in no more than de minimis costs.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

What is our authority to make rules and set procedures for determining whether a person is disabled under the statutory definition?

The Act authorizes us to make rules and regulations and to establish necessary and appropriate procedures to implement them.[7]

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income; and 96.020—Special Benefits for Certain World War II Veterans)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Aged, Blind, Disability benefits, Disability insurance, Old-age, Survivors, Reporting and recordkeeping requirements, Social security.

20 CFR Part 408

Administrative practice and procedure, Aged, Reporting and recordkeeping requirements, Social security, Supplemental Security Income (SSI), Veterans.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Nancy A. Berryhill,

Acting Commissioner of Social Security.

For the reasons stated in the preamble, we propose to amend 20 CFR chapter III, parts 404, 408, and 416 as set forth below:

[4] We recognize that under the laws of the various States, there may be slight differences in the terminology each State uses to identify and define each of the specified crimes. When we finalize these rules, we will provide our adjudicators with State-specific lists of what constitutes the specified crimes.

[5] *See* 20 CFR 408.620 (applying the rules in 20 CFR 404.2020 to the title VIII program); 20 CFR 408.622 (applying the rules in 20 CFR 404.2022 to the title VIII program); 20 CFR 408.624 (applying the rules in 20 CFR 404.2024 to the title VIII program); and 20 CFR 408.625 (applying the rules in 20 CFR 404.2025 to the title VIII program).

[6] We consider the following information when selecting an applicant to be a representative payee: (a) The relationship of the applicant to the beneficiary; (b) the amount of interest that the applicant shows in the beneficiary, (c) any legal authority the applicant has to act on behalf of the beneficiary; (d) whether the applicant has custody of the beneficiary; and (e) whether the applicant is in a position to know of and look after the needs of the beneficiary. 20 CFR 404.2020 and 416.620.

[7] Sections 205(a), 702(a)(5), and 1631(d)(1).

PART 404—FEDERAL OLD–AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart U—Representative Payment

■ 1. The authority citation for subpart U of part 404 continues to read as follows:

Authority: Secs. 205(a), (j), and (k), and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), (j), and (k), and 902(a)(5)).

■ 2. Amend § 404.2020 by revising paragraphs (d) and (e) and adding paragraph (f) to read as follows:

§ 404.2020 Information considered in selecting a representative payee.

* * * * *

(d) Whether the potential payee has custody of the beneficiary;

(e) Whether the potential payee is in a position to know of and look after the needs of the beneficiary; and

(f) The potential payee's criminal history.

■ 3. Amend § 404.2022 by adding paragraph (f) to read as follows:

§ 404.2022 Who may not serve as a representative payee?

* * * * *

(f) Was convicted under Federal or State law of a felony for: Human trafficking, false imprisonment, kidnapping, rape or sexual assault, first-degree homicide, robbery, fraud to obtain access to government assistance, fraud by scheme, theft of government funds or property, abuse or neglect, forgery, or identity theft or identity fraud. We will also apply this provision to a representative payee applicant with a felony conviction of an attempt to commit any of these crimes or conspiracy to commit any of these crimes.

(1) If the representative payee applicant is the custodial parent of a minor child beneficiary, custodial parent of a beneficiary who is under a disability which began before the beneficiary attained the age of 22, custodial spouse of a beneficiary, custodial court-appointed guardian of a beneficiary, or custodial grandparent of the minor child beneficiary for whom the applicant is applying to serve as representative payee, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph, by itself, to prohibit the applicant from serving as a representative payee. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

(2) If the representative payee applicant is the parent who was previously the representative payee for his or her minor child who has since turned age 18 and continues to be eligible for benefits, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph, by itself, to prohibit the applicant from serving as a representative payee for that beneficiary. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

(3) If the representative payee applicant received a Presidential or gubernatorial pardon for the relevant conviction, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph, by itself, to prohibit the applicant from serving as a representative payee. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

■ 4. Amend § 404.2024 by revising paragraph (a)(9) and adding paragraph (a)(10) to read as follows:

§ 404.2024 How do we investigate a representative payee applicant?

* * * * *

(a) * * *

(9) Determine whether the payee applicant is a creditor of the beneficiary (see § 404.2022(e)).

(10) Conduct a criminal background check on the payee applicant.

* * * * *

■ 5. Add § 404.2026 to read as follows:

§ 404.2026 How do we investigate an appointed representative payee?

After we select an individual or organization to act as your representative payee, we will conduct a criminal background check on the appointed representative payee at least once every 5 years.

PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

Subpart F—Representative Payment

■ 6. The authority citation for subpart F of part 408 continues to read as follows:

Authority: Secs. 702(a)(5), 807, and 810 of the Social Security Act (42 U.S.C. 902(a)(5), 1007, and 1010).

■ 7. Add § 408.626 to read as follows:

§ 408.626 How do we investigate an appointed representative payee?

After we select an individual or organization as your representative payee, we investigate him or her following the rules in § 404.2026 of this chapter.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart F—Representative Payment

■ 8. The authority citation for subpart F of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631(a)(2) and (d)(1) of the Social Security Act (42 U.S.C. 902(a)(5) and 1383(a)(2) and (d)(1)).

■ 9. Amend § 416.620 by revising paragraphs (d) and (e) and adding paragraph (f) to read as follows:

§ 416.620 Information considered in selecting a representative payee.

* * * * *

(d) Whether the potential payee has custody of the beneficiary;

(e) Whether the potential payee is in a position to know of and look after the needs of the beneficiary; and

(f) The potential payee's criminal history.

■ 10. Amend § 416.622 by adding paragraph (f) to read as follows:

§ 416.622 Who may not serve as a representative payee?

* * * * *

(f) Was convicted under Federal or State law of a felony for: Human trafficking, false imprisonment, kidnapping, rape or sexual assault, first-degree homicide, robbery, fraud to obtain access to government assistance, fraud by scheme, theft of government funds or property, abuse or neglect, forgery, or identity theft or identity fraud. We will also apply this provision to a representative payee applicant with a felony conviction of an attempt to commit any of these crimes or conspiracy to commit any of these crimes.

(1) If the representative payee applicant is the custodial parent of a minor child beneficiary, custodial parent of a beneficiary who is under a disability which began before the beneficiary attained the age of 22, custodial spouse of a beneficiary, custodial court-appointed guardian of a beneficiary, or custodial grandparent of the minor child beneficiary for whom the applicant is applying to serve as

representative payee, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph, by itself, to prohibit the applicant from serving as a representative payee. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

(2) If the representative payee applicant is the parent who was previously the representative payee for his or her minor child who has since turned age 18 and continues to be eligible for benefits, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph, by itself, to prohibit the applicant from serving as a representative payee for that beneficiary. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

(3) If the representative payee applicant received a Presidential or gubernatorial pardon for the relevant conviction, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph (f), by itself, to prohibit the applicant from serving as a representative payee. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

■ 11. Amend § 416.624 by revising paragraph (a)(9) and adding paragraph (a)(10) to read as follows:

§ 416.624 How do we investigate a representative payee applicant?

* * * * *

(a) * * *

(9) Determine whether the payee applicant is a creditor of the beneficiary (see § 404.2022(e)) of this chapter.

(10) Conduct a criminal background check on the payee applicant.

* * * * *

■ 12. Add § 416.626 to read as follows:

§ 416.626 How do we investigate an appointed representative payee?

After we select an individual or organization to act as your representative payee, we will conduct a criminal background check on the appointed representative payee at least once every 5 years.

[FR Doc. 2018–22168 Filed 10–10–18; 8:45 am]

BILLING CODE 4191–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2018–0606; FRL–9984–85–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Wyoming; Revisions to Regional Haze State Implementation Plan; Revisions to Regional Haze Federal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Wyoming on April 5, 2018, addressing regional haze. The revisions modify the sulfur dioxide (SO_2) emissions reporting requirements for Laramie River Station Units 1 and 2. We are also proposing to revise the nitrogen oxides (NO_X) best available retrofit technology (BART) emission limits for Laramie River Units 1–3 in the Federal Implementation Plan (FIP) for regional haze in Wyoming. The proposed revisions to the Wyoming regional haze FIP would also establish a SO_2 emission limit averaged annually across both Laramie River Station Units 1 and 2. The EPA is proposing this action pursuant to section 110 of the Clean Air Act (CAA).

DATES:

Comments: Written comments must be received on or before November 13, 2018.

Public Hearing: If anyone contacts us requesting a public hearing on or before October 26, 2018, we will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent **Federal Register** document. Contact Jaslyn Dobrahner at (303) 312–6252, or at *dobrahner.jaslyn@epa.gov,* to request a hearing or to determine if a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2018–0606, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that, if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6252, *dobrahner.jaslyn@epa.gov.*

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

I. What action is the EPA proposing?
II. Background
A. Requirements of the Clean Air Act and the EPA's Regional Haze Rule

B. Best Available Retrofit Technology (BART)
C. BART Alternatives
D. Reasonable Progress Requirements
E. Consultation With Federal Land Managers (FLMs)
F. Requirements for Regional Haze SIPs Submitted Under 40 CFR 51.309
G. Regulatory and Legal History of the 2014 Wyoming SIP and FIP
III. Proposed FIP Revisions
A. Background
B. The BART Alternative
C. The NO_X Emission Limit for Laramie River Unit 1
IV. Proposed Action on Submitted SIP Revisions
A. Background
B. April 5, 2018 Submittal
C. The EPA's Evaluation of the SO_2 Emissions Reporting Amendments
V. Clean Air Act Section 110(*l*)
VI. Consultation With FLMs
VII. The EPA's Proposed Action
VIII. Incorporation by Reference
IX. Statutory and Executive Order Reviews

I. What action is the EPA proposing?

On January 30, 2014, the EPA promulgated a final rule titled ''Approval, Disapproval and Promulgation of Implementation Plans; State of Wyoming; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze'' approving, in part, a regional haze SIP revision submitted by the State of Wyoming on January 12, 2011.[1] In the final rule, the EPA also disapproved, in part, the Wyoming regional haze SIP, including the NO_X BART emission limit of 0.21 lb/MMBtu (30-day rolling average) for Laramie River Units 1–3, and promulgated a FIP that imposed a NO_X BART emission limit of 0.07 lb/MMBtu (30-day rolling average) for each of the three Laramie River Units, among other actions.

The EPA is proposing to revise the FIP per the terms of the settlement agreement and amendment described in Section II.G. to amend the NO_X and SO_2 emission limits for Laramie River. Specifically, the EPA is proposing to: (1) Revise the NO_X emission limit and associated compliance date for Unit 1; (2) through the incorporation of a BART alternative, revise the NO_X emission limits for Units 2 and 3, and the SO_2 emission limit averaged annually across Units 1 and 2 along with the associated compliance dates; and (3) require selective catalytic reduction (SCR) on Unit 1 and selective non-catalytic reduction (SNCR) on Units 2 and 3. Although we are proposing to revise the Wyoming regional haze FIP, Wyoming may always submit a new regional haze SIP to the EPA for review and we would welcome such a submission. The CAA requires the EPA to act within 12 months on a SIP submittal that it determines to be complete. If Wyoming were to submit a SIP revision meeting the requirements of the CAA and the regional haze regulations, we would propose approval of the State's plan as expeditiously as practicable.

The EPA is also proposing to approve SIP revisions submitted by the State of Wyoming on April 5, 2018, to amend the SO_2 emissions reporting requirements for Laramie River Units 1 and 2. Specifically, the EPA is proposing to approve the SO_2 emissions reporting requirements for Laramie River Units 1 and 2, which address how Basin Electric is required to calculate reportable SO_2 emissions, when Basin Electric is required to use the revised SO_2 emissions calculation method, and how the reported SO_2 emissions will be used within the context of the SO_2 emissions milestone inventory.

II. Background

A. Requirements of the Clean Air Act and the EPA's Regional Haze Rule

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes ''as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.''[2]

The EPA promulgated a rule to address regional haze on July 1, 1999.[3] The Regional Haze Rule (RHR) revised the existing visibility regulations[4] to integrate provisions addressing regional haze and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 40 CFR 51.309, are included in the EPA's visibility protection regulations at 40 CFR 51.300 through 40 CFR 51.309. The EPA revised the RHR on January 10, 2017.[5]

The CAA requires each state to develop a SIP to meet various air quality requirements, including protection of visibility.[6] Regional haze SIPs must assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. A state must submit its SIP and SIP revisions to the EPA for approval. Once approved, a SIP is enforceable by the EPA and citizens under the CAA; that is, the SIP is federally enforceable. If a state elects not to make a required SIP submittal, fails to make a required SIP submittal or if we find that a state's required submittal is incomplete or not approvable, then we must promulgate a FIP to fill this regulatory gap.[7]

B. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs states as part of their SIPs, or the EPA when developing a FIP in the absence of an approved regional haze SIP, to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states' implementation plans to contain such measures as may be necessary to make reasonable progress toward the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the states through their SIPs, or as determined by the EPA when it promulgated a FIP. Under the RHR, states (or the EPA) are directed to conduct BART determinations for such ''BART-eligible'' sources that may reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area.[8]

[1] 79 FR 5032 (January 30, 2014).

[2] 42 U.S.C. 7491(a). Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas whose visibility they consider to be an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this section, we mean a ''mandatory Class I Federal area.''

[3] 64 FR 35714, 35714 (July 1, 1999) (codified at 40 CFR part 51, subpart P).

[4] The EPA had previously promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* reasonably attributable visibility impairment (RAVI). 45 FR 80084, 80084 (December 2, 1980).

[5] 82 FR 3078 (January 10, 2017).

[6] 42 U.S.C. 7410(a), 7491, and 7492(a); CAA sections 110(a), 169A, and 169B.

[7] 42 U.S.C. 7410(c)(1).

[8] 40 CFR 51.308(e). The EPA designed the Guidelines for BART Determinations Under the Regional Haze Rule (Guidelines) 40 CFR appendix Y to part 51 ''to help States and others (1) identify those sources that must comply with the BART

Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.[9]

C. BART Alternatives

An alternative program to BART must meet requirements under 40 CFR 51.308(e)(2) and (e)(3). These requirements for alternative programs relate to the ''better-than-BART'' test and fundamental elements of any alternative program.

In order to demonstrate that the alternative program achieves greater reasonable progress than source-specific BART, a state, or the EPA if developing a FIP, must demonstrate that its SIP meets the requirements in 40 CFR 51.308(e)(2)(i) through (v). The state or the EPA must conduct an analysis of the best system of continuous emission control technology available and the associated reductions for each source subject to BART covered by the alternative program, termed a ''BART benchmark.'' Where the alternative program has been designed to meet requirements other than BART, simplifying assumptions may be used to establish a BART benchmark.

Pursuant to 40 CFR 51.308(e)(2)(i)(E), the state or the EPA, must also provide a determination that the alternative program achieves greater reasonable progress than BART under 40 CFR 51.308(e)(3) or otherwise based on the clear weight of evidence. 40 CFR 51.308(e)(3), in turn, provides specific tests applicable under specific circumstances for determining whether the alternative achieves greater reasonable progress than BART. If the distribution of emissions for the alternative program is not substantially different than for BART, and the alternative program results in greater emissions reductions, then the alternative program may be deemed to achieve greater reasonable progress. If the distribution of emissions is significantly different, the differences in visibility between BART and the alternative program, must be determined by conducting dispersion modeling for each impacted Class I area for the best and worst 20 percent of days. This modeling demonstrates ''greater reasonable progress'' if both of the two following criteria are met: (1) Visibility does not decline in any Class I area; and (2) there is overall improvement in visibility when comparing the average differences between BART and the alternative program across all the affected Class I areas. Alternatively, pursuant to 40 CFR 51.308(e)(2), states may show that the alternative achieves greater reasonable progress than the BART benchmark ''based on the clear weight of evidence'' determinations. Specific RHR requirements for alternative programs are discussed in more detail in Section III.[10]

Generally, a SIP or FIP addressing regional haze must include emission limits and compliance schedules for each source subject to BART. In addition to the RHR's requirements, general SIP requirements mandate that the SIP or FIP include all regulatory requirements related to monitoring, recordkeeping, and reporting for the alternative's enforceable requirements. See CAA section 110(a); 40 CFR part 51, subpart K.

D. Reasonable Progress Requirements

In addition to BART requirements, as mentioned previously, each regional haze SIP or FIP must contain measures as necessary to make reasonable progress towards the national visibility goal. Finally, the SIP or FIP must establish reasonable progress goals (RPGs) for each Class I area within the state for the plan implementation period (or ''planning period''), based on the measures included in the long-term strategy.[11] If an RPG provides for a slower rate of improvement in visibility than the rate under which the national goal of no anthropogenic visibility impact would be attained by 2064, the SIP or FIP must demonstrate, based on the four reasonable progress factors, why that faster rate is not reasonable and the slower rate provided for by the SIP or FIP's state-specific RPG is reasonable.[12]

E. Consultation With Federal Land Managers (FLMs)

The RHR requires that a state, or the EPA if promulgating a FIP that fills a gap in the SIP with respect to this requirement, consult with FLMs before adopting and submitting a required SIP or SIP revision, or a required FIP or FIP revision.[13] Further, the EPA, or state when considering a SIP revision, must include in its proposal a description of how it addressed any comments provided by the FLMs.

F. Requirements for Regional Haze SIPs Submitted Under 40 CFR 51.309

The EPA's RHR provides two paths to address regional haze. One is 40 CFR 51.308, requiring states to perform individual point source BART determinations and evaluate the need for other control strategies. The other method for addressing regional haze is through 40 CFR 51.309, and is an option for nine states termed the ''Transport Region States,'' which include: Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah and Wyoming. By meeting the requirements under 40 CFR 51.309, a Transport Region State can be deemed to be making reasonable progress toward the national goal of achieving natural visibility conditions for the 16 Class I areas on the Colorado Plateau.[14]

Section 309 requires those Transport Region States that choose to participate to adopt regional haze strategies that are based on recommendations from the Grand Canyon Visibility Transport Commission (GCVTC) for protecting the 16 Class I areas on the Colorado Plateau. The purpose of the GCVTC was to assess information about the adverse impacts on visibility in and around the 16 Class I areas on the Colorado Plateau and to provide policy recommendations to the EPA to address such impacts. The GCVTC determined that all Transport Region States could potentially impact the Class I areas on the Colorado Plateau. The GCVTC submitted a report to the EPA in 1996 for protecting visibility for the Class I areas on the Colorado Plateau, and the EPA codified these recommendations as an option available to states as part of the RHR.[15]

The EPA determined that the GCVTC strategies would provide for reasonable progress in mitigating regional haze if supplemented by an annex containing quantitative emission reduction milestones and provisions for a trading program or other alternative measure.[16] In September 2000, the Western

requirement, and (2) determine the level of control technology that represents BART for each source.'' Guidelines, Section I.A. Section II of the Guidelines describes the four steps to identify BART sources, and Section III explains how to identify BART sources (*i.e.,* sources that are ''subject to BART'').

[9] 40 CFR 51.308(e)(2). *WildEarth Guardians* v. *EPA,* 770 F.3d 919 (10th Cir. 2014).

[10] 40 CFR 51.308(e)(2).

[11] 40 CFR 51.308(d).

[12] 40 CFR 51.308(d)(1)(ii).

[13] 40 CFR 51.308(i).

[14] The Colorado Plateau is a high, semi-arid tableland in southeast Utah, northern Arizona, northwest New Mexico, and western Colorado. The 16 mandatory Class I areas are: Grand Canyon National Park, Mount Baldy Wilderness, Petrified Forest National Park, Sycamore Canyon Wilderness, Black Canyon of the Gunnison National Park Wilderness, Flat Tops Wilderness, Maroon Bells Wilderness, Mesa Verde National Park, Weminuche Wilderness, West Elk Wilderness, San Pedro Park Wilderness, Arches National Park, Bryce Canyon National Park, Canyonlands National Park, Capital Reef National Park and Zion National Park.

[15] 64 FR 35714, 35749 (July 1, 1999).

[16] 64 FR 35714, 35749, 35756 (July 1, 1999).

Regional Air Partnership (WRAP), which is the successor organization to the GCVTC, submitted an annex to EPA. The annex contained SO_2 emissions reduction milestones and detailed provisions of a backstop trading program to be implemented automatically if voluntary measures failed to achieve the SO_2 milestones. The EPA codified the annex on June 5, 2003 at 40 CFR 51.309(h).[17]

Five western states, including Wyoming, submitted implementation plans under section 309 in 2003.[18] The EPA was challenged by the Center for Energy and Economic Development (CEED) on the validity of the annex provisions. In *CEED* v. *EPA,* the D.C. Circuit Court of Appeals vacated the EPA approval of the WRAP annex.[19] In response to the court's decision, the EPA vacated the annex requirements adopted under 40 CFR 51.309(h), but left in place the stationary source requirements in 40 CFR 51.309(d)(4).[20] The requirements under 40 CFR 51.309(d)(4) contain general requirements pertaining to stationary sources and market trading, and allow states to adopt alternatives to the point source application of BART.

Thus, rather than requiring source-specific BART controls as explained previously in Section II.B., states have the flexibility to adopt an emissions trading program or other alternative program if the alternative provides greater reasonable progress than would be achieved by the application of BART pursuant to 40 CFR 51.308(e)(2). Under 40 CFR 51.309, states can satisfy the SO_2 BART requirements by adopting SO_2 emissions milestones and a backstop trading program. Under this approach, states must establish declining SO_2 emissions milestones for each year of the program through 2018. The milestones must be consistent with the GCVTC's goal of 50 to 70 percent reduction in SO_2 emissions by 2040. The backstop trading program would be implemented if a milestone is exceeded and the program is triggered.[21]

G. Regulatory and Legal History of the 2014 Wyoming SIP and FIP

On January 30, 2014, the EPA promulgated a final rule titled ''Approval, Disapproval and Promulgation of Implementation Plans; State of Wyoming; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze'' approving, in part, a regional haze SIP revision submitted by the State of Wyoming on January 12, 2011.[22] In the final rule, the EPA also disapproved, in part, the Wyoming regional haze SIP, including the SIP NO_X BART emission limit of 0.21 lb/MMBtu (30-day rolling average) for each of the three Laramie River Units, and promulgated a FIP that imposed a NO_X BART emission limit of 0.07 lb/MMBtu (30-day rolling average) at each of the three Laramie River Units, among other actions. The Laramie River Station is in Platte County, Wyoming, and is comprised of three 550 megawatt (MW) dry-bottom, wall-fired boilers (Units 1, 2, and 3) burning subbituminous coal for a total net generating capacity of 1,650 MW. All three units are within the statutory definition of BART-eligible units, were determined to be subject to BART by WY, approved in the SIP and are operated by, and owned in part by, Basin Electric Power Cooperative (Basin Electric).

Basin Electric, the State of Wyoming, and others challenged the final rule. Basin Electric challenged our action as it pertained to the NO_X BART emission limits for Laramie River Units 1–3.[23] After mediated discussions through the U.S. Court of Appeals for the Tenth Circuit's Mediation Office, Basin Electric, Wyoming and the EPA reached a settlement in 2017 that if fully implemented, would address all of Basin Electric's challenges to the 2014 final rule and Wyoming's challenges to the portion of the 2014 final rule establishing NO_X BART emission limits for Laramie River Units 1–3.[24] [25]

The settlement agreement requires the EPA to propose a FIP revision to include three major items:

- First, an alternative (BART alternative) to the NO_X BART emission limits in the EPA's 2014 FIP that includes:
  - NO_X emission limits for Laramie River Units 2 and 3 of 0.15 lb/MMBtu (30-day rolling average) commencing December 31, 2018, with an interim limit of 0.18 lb/MMBtu (30-day rolling average) commencing the date that the EPA's final revised FIP becomes effective and ending December 31, 2018; and
  - a SO_2 emission limit for Laramie River Units 1 and 2 of 0.12 lb/MMBtu (annual) averaged annually across the two units commencing December 31, 2018.
- Second, a NO_X BART emission limit for Laramie River Unit 1 of 0.06 lb/MMBtu on a 30-day rolling average commencing July 1, 2019, with an interim limit of 0.18 lb/MMBtu on a 30-day rolling average commencing the date that the EPA's final revised FIP becomes effective and ending June 30, 2019. These limits are voluntarily requested by Basin Electric.
- Third, installation of SCR on Laramie River Unit 1 by July 1, 2019, (thereby revising the compliance date of the existing SIP) and installation of SNCR on Units 2 and 3 by December 30, 2018.

In accordance with other terms of the 2017 settlement, Wyoming also submitted a SIP revision to the EPA on April 5, 2018, to revise the SO_2 annual reporting requirements for Laramie River Units 1 and 2 as they pertain to the backstop trading program under 40 CFR 51.309. Specifically, Wyoming determined that Basin Electric must use SO_2 emission rates of 0.159 lb/MMBtu for Laramie River Unit 1 and 0.162 lb/MMBtu for Laramie River Unit 2, and multiply those rates by the actual annual heat input during the year for each unit to calculate and report emissions under the SO_2 backstop trading program. The revisions, as described in Section III., ensure that SO_2 emissions reductions proposed under the 2017 settlement agreement are no longer counted as reductions under the backstop trading program.

The EPA is required, per the 2017 settlement agreement, to sign a proposed rule no later than 6 months after receipt of Wyoming's SIP submittal.

III. Proposed FIP Revisions

A. Background

In the 2011 submittal, Wyoming determined that emission limits for

[17] 68 FR 33764, 33767 (June 5, 2003).

[18] Five states—Arizona, New Mexico, Oregon, Utah and Wyoming—and Albuquerque-Bernalillo County, New Mexico, initially exercised this option by submitting plans to the EPA in December 2003. Oregon elected to cease participation in 2006, and Arizona elected to cease participation in 2010.

[19] *Ctr. for Energy & Econ. Dev.* v. *EPA,* 398 F.3d 653, 654 (D.C. Cir. 2005).

[20] 71 FR 60612 (October 13, 2006).

[21] 40 CFR 51.309(d)(4)(v).

[22] 79 FR 5032 (January 30, 2014).

[23] *Basin Electric Cooperative* v. *EPA,* No. 14–9533 (10th Cir. March 31, 2014) and *Wyoming* v. *EPA,* No. 14–9529 (10th Cir. March 28, 2014).

[24] 81 FR 96450 (December 30, 2016).

[25] Letter from Eileen T. McDonough, U.S. Department of Justice, to Elizabeth Morrisseau, Wyoming Attorney General's Office, and Christina F. Gomez, Denise W. Kennedy, and Patrick R, Day, Holland & Hart LLC (notification that both EPA and the Department of Justice (DOJ) determined not to withdraw their consent to the Settlement Agreement) (April 24, 2017); Settlement Agreement between Basin Electric Power Cooperative, the State of Wyoming, and the EPA (April 24, 2017); First Amendment to Settlement Agreement (pursuant to Paragraph 15 of the Agreement, extended the deadline for EPA to determine whether to withdraw or consent to the Settlement Agreement in Paragraph 1 to May 3, 2017); Second Amendment to Settlement Agreement (pursuant to Paragraph 15 of the Agreement, amended the date in Paragraph 5.b.ii. for the SO_2 emission limits for Laramie River Units 1 and 2 to commence December 31, 2018) (September 14, 2018).

Laramie River Units 1–3 of 0.23 lb/MMBtu (30-day rolling average) each, reflecting installation of operation of new low NO_X burners (LNB) with overfire air (OFA), were reasonable measures to satisfy the units NO_X BART obligations. We disagreed with Wyoming that LNB with OFA was reasonable for NO_X BART and subsequently finalized a FIP on January 30, 2014, with NO_X BART emission limits of 0.07 lb/MMBtu (30-day rolling average) for each unit based on the installation and operation of new LNBs with OFA and SCR. The 2017 settlement agreement, described previously in Section II.G, established a deadline for the EPA to take specific actions related to the NO_X emission limits established in the 2014 FIP for Laramie River Units 1–3 as well as new SO_2 emission limits and emission control technologies requirements.

B. The BART Alternative

We are proposing to amend the 2014 FIP to replace the NO_X BART requirements with a NO_X BART alternative. Specifically, we are proposing to revise the NO_X emission limits for Laramie River Units 2 and 3 and establish a SO_2 emission limit for Units 1 and 2. We evaluate the NO_X BART alternative against the regulatory BART alternative requirements found in 40 CFR 51.308(e)(2) of the regional haze regulations.

The RHR establishes requirements for BART alternatives. Three of the requirements are of relevance to our evaluation of the BART alternative. We evaluate the proposed BART alternative to the NO_X BART requirements in the EPA's 2014 FIP with respect to each of these following elements:

- A demonstration that the emissions trading program or other BART alternative measure will achieve greater reasonable progress than would have resulted from the installation and operation of BART at all sources subject to BART in the state and covered by the BART alternative program.[26]
- A requirement that all necessary emissions reductions take place during the period of the first long-term strategy for regional haze.[27]
- A demonstration that the emissions reductions resulting from the BART alternative measure will be surplus to those reductions resulting from the measures adopted to meet requirements of the CAA as of the baseline date of the SIP.[28]

1. Demonstration that the BART alternative measure will achieve greater reasonable progress.

Pursuant to 40 CFR 51.308(e)(2)(i), we must demonstrate that the BART alternative measure will achieve greater reasonable progress than would have resulted from the installation and operation of BART at all sources subject to BART in the state and covered by the BART alternative program. For a source-specific BART alternative, the critical elements of this demonstration are:

- A list of all BART-eligible sources within the state;
- A list of all BART-eligible sources and all BART source categories covered by the BART alternative program;
- An analysis of BART and associated emission reductions;
- An analysis of projected emissions reductions achievable through the BART alternative; and
- A determination that the BART alternative achieves greater reasonable progress than would be achieved through the installation and operation of BART.

We summarize the proposed revisions to the 2014 FIP with respect to each of these elements and provide our evaluation in the proceeding sections.

a. A list of all BART-eligible sources within the state.

Table 1 shows a list of all the BART-eligible sources in the State of Wyoming.[29]

TABLE 1—WYOMING BART-ELIGIBLE SOURCES

Company	Facility
PacifiCorp	Jim Bridger.
Basin Electric	Laramie River.
PacifiCorp	Dave Johnston.
PacifiCorp	Naughton.
PacifiCorp	Wyodak.
FMC	Westvaco.
General Chemical	Green River.
Black Hills	Neil Simpson 1.
Sinclair	Sinclair Refinery.
Sinclair	Casper Refinery.
FMC	Granger.
Dyno Nobel	Dyno Nobel.
OCI Wyoming	OCI Wyoming.
P4 Production	P4 Production.

b. A list of all BART-eligible sources and all BART source categories covered by the BART alternative program.

Table 2 shows a list of all the BART-eligible sources covered by the BART alternative program along with the BART source category.

TABLE 2—WYOMING SUBJECT-TO-BART SOURCES COVERED BY THE BART ALTERNATIVE

Company	Facility	Subject-to-BART units	Source category
Basin Electric	Laramie River	Units 1–3	Electrical generating units.

c. Analysis of BART and associated emission reductions

Pursuant to 40 CFR 51.308(e)(2)(i)(C), the BART alternative must include an analysis of BART and associated emission reductions at Laramie River Units 1–3. As noted previously, the SIP and 2014 FIP each included BART analyses and determinations for Units 1–3. Since we disapproved Wyoming's BART NO_X determinations for Laramie River Units 1–3, we conducted our own BART analysis and determination for NO_X BART in the 2014 FIP.[30] For the purposes of this evaluation, we consider NO_X BART for Laramie River Units 1–3 to be the 2014 FIP BART determination summarized in Table 3.

TABLE 3—SUMMARY OF THE EPA'S LARAMIE RIVER UNITS 1–3 NO_X BART ANALYSIS

Unit	Technology *	Emission limit (lb/MMBtu) (30-day rolling average)	Emission reduction (tpy)
Unit 1	New LNBs with OFA and SCR	0.07	4,880
Unit 2	New LNBs with OFA and SCR	0.07	5,129

[26] 40 CFR 51.308(e)(2)(i).
[27] 40 CFR 51.308(e)(2)(iii).
[28] 40 CFR 51.308(e)(2)(iv).
[29] 77 FR 33029 (June 4, 2012).
[30] 79 FR 5039 (January 30, 2014).

TABLE 3—SUMMARY OF THE EPA'S LARAMIE RIVER UNITS 1–3 NO_X BART ANALYSIS—Continued

Unit	Technology *	Emission limit (lb/MMBtu) (30-day rolling average)	Emission reduction (tpy)
Unit 3	New LNBs with OFA and SCR	0.07	5,181

* The technology listed is the technology evaluated as BART, but sources can choose to use another technology or combination of technologies to meet established limits.

As described previously, reductions in SO_2 emissions were previously accounted for under the SO_2 backstop trading program, per 40 CFR 51.309.

d. Analysis of projected emissions reductions achievable through the BART alternative

To determine the projected emissions reductions achievable through the BART alternative, the emissions are calculated using the same process explained in the 2014 FIP, whereby a percent reduction is applied to the Laramie River Units 1–3 baseline emissions. However, the actual percent reduction for the BART alternative is different than the 2014 FIP because the controlled rates are different between the 2014 FIP and BART alternative. The percent reduction, for both the BART alternative and the 2014 FIP, is calculated as the controlled annual emission rate (in units of lb/MMBtu) divided by the annual average emission rate (in units of lb/MMBtu) during the BART baseline period (2001–2003). In the BART alternative, the modeled controlled NO_X annual emission rate for Unit 1, using SCR controls, is 0.04 lb/MMBtu (annual) based on the expected annual emission performance under a 0.06 lb/MMBtu emission limit (30-day rolling average). Likewise, the modeled controlled NO_X annual emission rate for Units 2 and 3, using LNB with OFA and SNCR, is 0.128 lb/MMBtu based on the expected annual emission performance as calculated in the 2014 FIP under a 0.15 lb/MMBtu emission rate (30-day rolling average). The controlled SO_2 annual emission rate for Units 1 and 2 is 0.115 lb/MMBtu (annual) for each unit based on the expected annual emission performance under a 0.12 lb/MMBtu emission limit (30-day rolling average).

The controlled annual emissions rates are divided by the average emission rates during the BART baseline period (2001–2003) to calculate the percent reduction for each unit. The average emission rates during the BART baseline period for each unit are: [31]

- Unit 1: 0.2585 lb NO_X/MMBtu; 0.159 lb SO_2/MMBtu,
- Unit 2: 0.2703 lb NO_X/MMBtu; 0.162 lb SO_2/MMBtu, and
- Unit 3: 0.2669 lb NO_X/MMBtu.

The percent reduction for each unit is applied to the baseline emissions to determine the NO_X and SO_2 emission reductions associated with the BART alternative for Laramie River Units 1–3 (Table 4).

TABLE 4—SUMMARY OF THE EPA'S LARAMIE RIVER UNITS 1–3 BART ALTERNATIVE ANALYSIS

Unit	Technology	NO_X		SO_2	
		Emission limit (lb/MMBtu) (30-day rolling average)	Emission reduction (tpy)	Emission limit (lb/MMBtu) (30-day rolling average)	Emission reduction (tpy)
Unit 1	New LNBs with OFA and SCR	0.06	4,880	0.12	1,032
Unit 2	New LNBs with OFA and SNCR	0.15	3,342	0.12	1,091
Unit 3	New LNBs with OFA and SNCR	0.15	3,337	NA	NA

NA = not applicable.

e. Determination that the BART alternative achieves greater reasonable progress than would be achieved through the installation and operation of BART.

Pursuant to 40 CFR 51.308(e)(2)(i)(E), the FIP revision must provide a determination under 40 CFR 51.308(e)(3) or otherwise based on the clear weight of evidence that the BART alternative achieves greater reasonable progress than BART. Two different tests for determining whether the BART alternative achieves greater reasonable progress than BART are outlined in 40 CFR 51.308(e)(3). Under the first test, if the distribution of emissions is not substantially different than under BART, and the BART alternative measure results in greater emission reductions, then the BART alternative measure may be deemed to achieve greater reasonable progress. Under the second test, if the distribution of emissions is significantly different, then dispersion modeling must be conducted to determine differences between BART and the BART alternative for each impacted Class I area for the worst and best 20 percent days. The modeling results would demonstrate ''greater reasonable progress'' if both of the following criteria are met: (1) Visibility does not decline in any Class I area; and (2) there is an overall improvement in visibility, determined by comparing the average differences between BART and the BART alternative over all affected Class I areas. This modeling test is sometimes referred to as the ''two-prong test.''

For the proposed FIP revision, we determined that the BART alternative will not achieve greater emissions reductions than BART because, while the SO_2 emission reductions for Units 1 and 2 (1,032 tons per year (tpy) and 1,091 tpy respectively under the BART alternative, compared to 0 tpy under BART) and NO_X emission reduction for Unit 1 (5,179 tpy under the BART

[31] *Laramie River Station Power Plant Visibility Impacts for Two Emissions Control Scenarios: Final Report.* Prepared for Basin Electric, AECOM (May 2016). Data based on the information obtained from the EPA's Clean Air Markets Division (CAMD) database, available at: *https://ampd.epa.gov/ampd/.*

alternative compared to 4,880 tpy under BART) are greater under the BART alternative, the NO_X emission reductions under the BART alternative are less for Units 2 and 3 (3,342 lb/MMBtu and 3,337 lb/MMBtu, respectively) than the NO_X emission reductions under BART (5,129 lb/MMBtu and 5,181 lb/MMBtu, respectively). Therefore, we evaluated the results of modeling (using the Comprehensive Air Quality Model with Extensions (CAMx) model version 5.41[32]) performed by a contractor for Basin Electric, AECOM, to assess whether the BART alternative would result in ''greater reasonable progress'' under the two-prong test in 40 CFR 51.308(e)(3).[33]

CAMx has a scientifically current treatment of chemistry to simulate transformation of emissions into visibility-impairing particles of species such as ammonium nitrate and ammonium sulfate, and is often employed in large-scale modeling when many sources of pollution and/or long transport distances are involved. Photochemical grid models like CAMx include all emissions sources and have realistic representation of formation, transport, and removal processes of the particulate matter that causes visibility degradation. The use of the CAMx model for analyzing potential cumulative air quality impacts has been well established: The model has been used for previous visibility modeling studies in the U.S., including SIPs.[34]

The modeling followed a modeling protocol that was reviewed by the EPA.[35] The starting point for assessing visibility impacts for different levels of emissions from Laramie River was the Three-State Air Quality Modeling Study (3SAQS) modeling platform that provides a framework for addressing air quality impacts in Colorado, Utah and Wyoming. The 3SAQS is a publicly available platform intended to facilitate air resources analyses.[36] The 3SAQS developed a base year modeling platform using the year 2008 to leverage work completed during the West-wide Jump-start Air Quality modeling study (WestJump).[37] For the Laramie River modeling, AECOM performed additional modeling to refine the modeling domain from the 3SAQS 12-kilometer (km) grid resolution to a finer 4-km grid resolution. The refined spatial resolution was used to more accurately simulate the concentration gradients of gas and particulate species in the plumes emitted from the source facilities. The AECOM modeling data sets used for this action are available in the docket.[38] For the two-prong test, an existing projected 2020 emissions database was used to estimate emissions of sources within the modeling domains. The existing 2020 database was derived from the 3SAQS study, which projected emissions from 2008 to 2020. Since the BART alternative emissions reductions will not be fully in place until the end of 2018, the 2020 emissions projections are more representative of the air quality conditions that will be obtained while the BART alternative is being implemented than the 2008 database. In the three 2020 CAMx modeling scenarios, Laramie River emissions were modeled to represent the baseline, the BART 2014 FIP, and the proposed BART alternative as described in the proceeding section and Table 5.

The CAMx-modeled concentrations for sulfur, nitrogen, and primary particulate matter (PM) were tracked using the CAMx Particulate Source Apportionment Technology (PSAT) tool[39] so that the concentrations and visibility impacts due to Laramie River could be separated out from those due to the total of all other modeled sources. AECOM computed visibility impairment due to Laramie River using the EPA's Modeled Attainment Test Software (MATS) tool which bias-corrects CAMx outputs to available measurements of PM species and uses the revised IMPROVE equation to calculate the 20 percent best and 20 percent worst days for visibility impacts.[40]

As described previously, the CAMx system was configured using the 3SAQS modeling platform to simulate future year 2020 conditions for the following modeling scenarios:

- *Baseline:* This scenario included the actual emission rates for all three units during the 2001–2003 BART baseline period that were previously modeled in CALPUFF simulations.
- *BART:* This scenario included the emission rates for all three units that correspond to the EPA's 2014 FIP.
- *BART alternative:* This scenario included the emission rates for all three units that correspond to the BART alternative.

The only differences among scenarios are the NO_X and SO_2 emission rates for Laramie River (Table 5). All other model inputs, including other regional emission sources, remained unchanged among all future year scenarios.

TABLE 5—LARAMIE RIVER UNITS 1–3 EMISSIONS FOR THE CAMX MODEL BY SCENARIO PROJECTED TO YEAR 2020 CONDITIONS

Scenario	NO_X (tpy)	SO_2 (tpy)	VOC (tpy)	CO (tpy)	PM_{10} (tpy)	$PM_{2.5}$ (tpy)	NH_3 (tpy)
Baseline	18,890	11,605	234	1,950	2,748	2,440	41
BART	3,560	11,605	234	1,950	2,748	2,440	41
BART alternative	7,030	9,479	234	1,950	2,748	2,440	41

[32] CAMx modeling software (*http://www.camx.com/download/default.aspx*) and User's Guide (*http://www.camx.com/about/default.aspx*) are available on these CAMx web pages.

[33] *Laramie River Station Power Plant Visibility Impacts for Two Emissions Control Scenarios: Final Report.* Prepared for Basin Electric, AECOM (May 2016).

[34] 82 FR 46903 (October 10, 2017) (Final action for the Coronado Generating Station in the Regional Haze Plan for Arizona); 81 FR 296 (January 5, 2016) (Final action for Texas and Oklahoma Regional Haze Plans).

[35] *Photochemical Modeling Protocol for the Visibility Assessment of Basin Electric Laramie River Power Plant.* Prepared for Basin Electric, AECOM (September 2015). *Draft Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,* EPA (December 3, 2014).

[36] *Three-State Air Quality Modeling Study CAMx Photochemical Grid Model Final Model Performance Evaluation.* University of North Carolina and Environ (September 2014). *http://views.cira.colostate.edu/wiki/Attachments/Modeling/3SAQS_Base08b_MPE_Final_30Sep2014.pdf.*

[37] *https://www.wrapair2.org/WestJumpAQMS.aspx.* Additional information on the WestJump study available in the docket for this action, ''WestJump Fact Sheet.''

[38] CAMx modeling data available on hard disk in the docket.

[39] PSAT is included in the CAMx modeling code and is described in the CAMx User's Guide available at: *http://www.camx.com/download/default.aspx.*

[40] IMPROVE refers to a monitoring network and also to the equation used to convert monitored concentrations to visibility impacts. ''Revised IMPROVE Algorithm for Estimating Light Extinction from Particle Speciation Data'', IMPROVE technical subcommittee for algorithm review (January 2006). *http://vista.cira.colostate.edu/Improve/gray-literature/.*

Maintaining consistent model inputs allows the CAMx modeling results to be easily compared to analyze the effects of different emissions control scenarios. As described previously, the PSAT was applied to the simulations to track and account for the particulate mass concentrations that originate or are formed as a result of emissions from Laramie River.

Once all the scenarios above were simulated with the photochemical grid model, model results were post-processed to isolate the changes to visibility conditions as a result of emissions controls applied to Laramie River Units 1–3 under the scenarios described previously. To assess compliance with the RHR requirements, visibility changes are assessed during the 20 percent best visibility days and the 20 percent worst visibility days at each potentially affected federally regulated Class I area. Model-predicted visibility impacts at the thirteen Class I areas in the 4-km modeling domain were estimated for each of the three future year modeling scenarios.

The MATS tool was used to convert model concentrations into visibility estimates and account for quantifiable model bias. All models are affected by biases, *i.e.,* model results simulate complex natural phenomena and, as such, model results can either over or under estimate measured concentrations. The use of MATS helps mitigate model bias by pairing model estimates of PM species concentrations with actual measured conditions.

As a final step, Laramie River's visibility impact under the BART alternative is compared to the visibility impact under the Baseline and BART scenarios to determine if the BART alternative meets the requirements of the two-prong test, *i.e.,* prong 1, no degradation compared to the Baseline at any Class I area on the best visibility days, and prong 2, greater progress compared to BART averaged over all Class I areas on the worst visibility days.

The visibility impacts derived from modeling results are summarized in Tables 6 and 7. The tables show the projected Laramie River contribution to visibility on the 20 percent best days and worst days, respectively, for the 2020 Baseline (Column A), BART (Column B), and BART alternative (Column C) scenarios at each of the Class I areas analyzed. The last two columns show the predicted visibility benefits from the BART alternative scenario relative to both the 2020 baseline (Column D) and BART (Column E). Also shown at the bottom row are the average visibility values from all the areas. Negative values in Column D indicate that the BART alternative scenario has smaller contributions to visibility relative to the baseline (''prong 1''), and therefore it improves visibility over the baseline. Similarly, negative values in Column E indicate that the BART alternative scenario has smaller contributions to visibility relative to the BART scenario (''prong 2'').

TABLE 6—LARAMIE RIVER VISIBILITY IMPACT (UNITS 1–3) FOR THE 2020 BASELINE, BART, AND BART ALTERNATIVE SCENARIOS ON THE 20 PERCENT BEST DAYS

Class I area *	[A] Baseline (dv)	[B] BART (dv)	[C] BART alternative (dv)	[D] BART alternative—Baseline	[E] BART alternative—BART
Badland NP	0.0212	0.0131	0.0138	−0.0074	0.0007
Bridger WA	0.0000	0.0000	0.0000	0.0000	0.0000
Fitzpatrick WA	0.0000	0.0000	0.0000	0.0000	0.0000
Grand Teton NP	0.0012	0.0012	0.0009	−0.0003	−0.0003
Mount Zirkel WA	0.0000	0.0000	0.0000	0.0000	0.0000
North Absaroka WA **	0.0005	0.0005	0.0004	−0.0001	−0.0001
Rawah WA	0.0000	0.0000	0.0000	0.0000	0.0000
Red Rock Lakes WA	0.0012	0.0012	0.0009	−0.0003	−0.0003
Rocky Mountain NP	0.0000	0.0000	0.0000	0.0000	0.0000
Teton WA	0.0012	0.0012	0.0009	−0.0003	−0.0003
Washakie WA **	0.0005	0.0005	0.0004	−0.0001	−0.0001
Wind Cave NP	0.0055	0.0051	0.0047	−0.0008	−0.0004
Yellowstone NP	0.0012	0.0012	0.0009	−0.0003	−0.0003
All Class I Area Average ***	0.0025	0.00185	0.00176	NA	−0.00009

* NP = National Park; WA = Wilderness Area.
** Values reported for these Class I areas have been calculated with only 2 years of valid monitoring data.
*** The average visibility impact is calculated as the sum of the visibility impacts divided by the number of Class I areas.
**** NA = Not applicable.

TABLE 7—LARAMIE RIVER VISIBILITY IMPACT (UNITS 1–3) FOR THE 2020 BASELINE, BART, AND BART ALTERNATIVE SCENARIOS ON THE 20 PERCENT WORST DAYS

Class I area *	[A] Baseline (dv)	[B] BART (dv)	[C] BART alternative (dv)	[D] BART alternative—Baseline	[E] BART alternative—BART
Badland NP	0.0259	0.0177	0.0176	−0.0083	−0.0001
Bridger WA	0.0029	0.0028	0.0023	−0.0006	−0.0005
Fitzpatrick WA	0.0029	0.0028	0.0023	−0.0006	−0.0005
Grand Teton NP	0.0024	0.0023	0.0019	−0.0005	−0.0004
Mount Zirkel WA	0.0065	0.0059	0.0053	−0.0012	−0.0006
North Absaroka WA **	0.0003	0.0003	0.0001	−0.0002	−0.0002
Rawah WA	0.0065	0.0059	0.0053	−0.0012	−0.0006
Red Rock Lakes WA	0.0024	0.0023	0.0019	−0.0005	−0.0004
Rocky Mountain NP	0.0137	0.0119	0.0106	−0.0031	−0.0013
Teton WA	0.0024	0.0023	0.0019	−0.0005	−0.0004
Washakie WA **	0.0003	0.0003	0.0001	−0.0002	−0.0002

TABLE 7—LARAMIE RIVER VISIBILITY IMPACT (UNITS 1–3) FOR THE 2020 BASELINE, BART, AND BART ALTERNATIVE SCENARIOS ON THE 20 PERCENT WORST DAYS—Continued

Class I area *	[A] Baseline (dv)	[B] BART (dv)	[C] BART alternative (dv)	[D] BART alternative—Baseline	[E] BART alternative—BART
Wind Cave NP	0.0369	0.0267	0.0253	−0.0116	−0.0014
Yellowstone NP	0.0024	0.0023	0.0019	−0.0005	−0.0004
All Class I Area Average	0.00812	0.00642	0.00589	NA	−0.00054

* NP = National Park; WA = Wilderness Area.
** Values reported for these Class I areas have been calculated with only 2 years of valid monitoring data.
*** NA = Not applicable.

Table 6 shows that the proposed BART alternative emissions will not result in degradation of visibility on the 20 percent best days compared to the 2020 baseline conditions at any of the 13 analyzed Class I areas. In each individual area, visibility is predicted to improve or remain unchanged compared to the 2020 baseline visibility since all values shown in Column D are either negative or zero. Overall, the BART alternative scenario shows an average improvement in visibility of 0.00009 deciviews (dv) relative to BART for the best 20 percent days. Table 6 also shows that for the BART alternative scenario, visibility during the best days improves or remains unchanged at all Class I areas compared to the BART scenario except for Badlands National Park.

Table 7 shows that the proposed BART alternative emissions will not result in degradation of visibility on the 20 percent worst days compared to the 2020 baseline conditions at any of the 13 analyzed Class I areas. In each individual area, visibility is predicted to improve compared to the 2020 baseline visibility, since all values in Column D are negative. Overall, the BART alternative shows an average improvement in visibility of 0.00054 dv relative to BART for the 20 percent worst days. Table 7 also shows that for the BART alternative scenario, visibility during the 20 percent worst days improves at all Class I areas compared to the BART scenario.

Pursuant to 40 CFR 51.309(e)(3), the modeling demonstrates ''greater reasonable progress'' if both of the following criteria are met: (1) Visibility does not decline in any Class I area; and (2) there is an overall improvement in visibility, determined by comparing the average differences between BART and the BART alternative over all affected Class I areas. For the first prong of the modeling test, the modeling results show that visibility improves or stays the same (*i.e.,* does not decline) under the BART alternative scenario for all Class I areas for the 20 percent best and 20 percent worst days when compared with the baseline scenario (Column D in Tables 6 and 7). For the second prong of the modeling test, the modeling results show that there is an overall improvement in visibility under the BART alternative scenario for all Class I areas averaged over the 20 percent best and 20 percent worst days when compared with the BART scenario (Column E in Tables 6 and 7). Based on the modeling analysis, we propose to find that the BART alternative would achieve greater reasonable progress than BART under 40 CFR 51.308(e)(3).

Additionally, AECOM used PSAT to further evaluate the modeling to determine whether the results represent ''real'' modeled visibility differences and not the result of numerical artifacts or ''noise'' in the model results. The numerical method used to simulate aerosol thermodynamics in CAMx may be subject to some level of numerical error when calculating the difference between two model simulations. This typically occurs in areas with high concentrations of sulfate and nitrate, and numerical error is manifested as areas of small random checkerboard increases and decreases in concentrations, as illustrated in the AECOM final report, Figure A–1, left panels.[41] Note that this numerical error is typically a very small percentage of the total modeled nitrate and sulfate concentration. However, this error can be relatively large in comparison to the impacts of a single emissions source such as the Laramie River Station. The PSAT-based evaluation approach eliminates numerical error in the model results by using model tracer species that track the emissions and chemical transformation of SO_2 and NO_X from a single source. By calculating the changes in the PSAT mass attributed to Laramie River Station in the baseline for the 2014 FIP and BART alternative simulations, the effects of numerical error in other emissions sources are excluded from the analysis of the Laramie River Station impacts. The AECOM report Figure A–1, right panels, shows the nitrate mass attributed to the Laramie River Station and illustrates that numerical error from other sources is eliminated using this approach. Thus, the PSAT plots show that concentrations within the modeling domain are attributable to the emissions from Laramie River, and therefore provide reliable data for assessing whether there is a numerical difference between the visibility benefits from the BART and BART alternative control scenarios.

Finally, we note that 40 CFR 51.308(e)(3) allows for a straight numerical test, regardless of the magnitude of the computed differences. The regulation does not specify a minimum delta deciview difference between the modeled scenarios that must be achieved in order for a BART alternative to be deemed to achieve greater reasonable progress than BART. Accordingly, given that the modeling results show that visibility under the BART alternative does not decline at any of the 13 affected Class I areas compared to the baseline (prong 1) and will result in improved visibility, on average, across all 13 Class I areas compared to BART in the 2014 FIP (prong 2), we propose to find that the BART alternative will achieve greater reasonable progress than BART (2014 FIP) under the two-prong modeling test in 40 CFR 51.308(e)(3).

2. A requirement that all necessary emissions reductions take place during the period of the first long-term strategy for regional haze.

Pursuant to 40 CFR 51.308(e)(2)(iii), all necessary emission reductions must take place during the period of the first long-term strategy for regional haze. The RHR further requires a detailed description of the BART alternative measure, including schedules for implementation, the emission reductions required by the program, all necessary administrative and technical

[41] *Laramie River Station Power Plant Visibility Impacts for Two Emissions Control Scenarios: Final Report.* Prepared for Basin Electric, AECOM (May 2016).

procedures for implementing the program, rules for accounting and monitoring emissions, and procedures for enforcement.[42]

As noted previously, the 2017 settlement agreement includes requirements for implementing the BART alternative. In addition to the emission limitations for NO_X and SO_2, the 2017 settlement agreement includes compliance dates, interim limits, averaging times, and control technology requirements. The monitoring, recordkeeping, and reporting requirements,[43] along with other aspects of the 2014 FIP that are not contained within the 2017 settlement agreement, remain unchanged in the EPA's FIP.[44] The compliance date for the BART alternative is December 31, 2018, for Laramie River Units 2 and 3 to install and operate SNCR with corresponding NO_X emission limits of 0.15 lb/MMBtu (30-day rolling average).[45] Laramie River Units 2 and 3 must also meet interim NO_X emission limits of 0.18 lb/MMBtu (30-day rolling average; each) commencing the date that the EPA's final revised FIP becomes effective and ending on December 30, 2018.[46] In addition, Laramie River Units 1 and 2 must meet an SO_2 emission limit of 0.12 lb/MMBtu averaged annually across the two units commencing on December 31, 2018.[47] Therefore, we propose to find that the proposed FIP revision along with the existing FIP provisions will ensure that all necessary emission reductions take place during the period of the first long-term strategy and therefore meets the requirements of 40 CFR 51.308(e)(2)(iii).

3. Demonstration that emissions reductions from the BART alternative measure will be surplus.

Pursuant to 40 CFR 51.308(e)(2)(iv), the SIP (or FIP) must demonstrate that the emissions reductions resulting from the BART alternative measure will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP. The baseline date for regional haze SIPs is 2002. All the NO_X emission reductions required by the BART alternative are surplus to reductions resulting from SIP measures applicable to Laramie River as of 2002. In addition, the proposed SIP revision discussed in Section IV, revises the SO_2 emissions reporting requirements for Laramie River Units 1 and 2 so that the SO_2 emissions reductions achieved from the 2017 settlement agreement are not also counted towards reductions under the SO_2 backstop trading program and thereby included in the regional SO_2 milestone. As discussed in Section IV, we propose to approve these changes to the SIP. Therefore, we propose to find that the BART alternative complies with 40 CFR 51.308(e)(2)(iv). In sum, we propose to find that the BART alternative meets all the applicable requirements of 40 CFR 51.308(e)(2).

Finally, in accordance with the proposed establishment of SO_2 emission limits in the proposed FIP for Laramie River Units 1 and 2, we also propose to revise the monitoring, recordkeeping, and reporting requirements of the 2014 FIP to reflect the establishment of SO_2 emission limits in the proposed FIP. These proposed revisions support CAA section 110(a)(2)(A) requiring implementation plans to include enforceable emission limitations. In order to be considered enforceable, emission limits must include associated monitoring, recordkeeping, and reporting requirements. In addition, the CAA and the EPA's implementing regulations expressly require implementation plans to include regulatory requirements related to monitoring, recordkeeping, and reporting for applicable emissions limitations.[48] We do not propose to alter the monitoring, record keeping, and reporting requirements established in the 2014 FIP that relate to compliance with the BART emission limit for NO_X.

C. The NO_X Emission Limit for Laramie River Unit 1

In addition to the BART alternative, we are also proposing to amend the 2014 FIP by revising the NO_X emission limit for Laramie River Unit 1 as voluntarily requested by Basin Electric in the settlement agreement.[49] The amendment revises the NO_X emission limit for Unit 1 from the NO_X BART limit of 0.07 lb/MMBtu to 0.06 lb/MMBtu (30-day rolling average) commencing July 1, 2019, with an interim limit of 0.18 lb/MMBtu (30-day rolling average) commencing the effective date of the EPA's final revised FIP and ending June 30, 2019. Because the revision to the NO_X emission limit for Laramie River Unit 1 achieves greater NO_X emission reductions than the relevant portions of the 2014 FIP, we propose to amend the Wyoming regional haze 2014 FIP with this revision.

IV. Proposed Action on Submitted SIP Revisions

A. Background

Wyoming submitted SIP revisions on January 12, 2011, and April 19, 2012, that address regional haze requirements under 40 CFR 51.309. As explained previously, 40 CFR 51.309 allows certain western Transport Region States an optional way to fulfill regional haze requirements as opposed to adopting the requirements under 40 CFR 51.308. As required by 40 CFR 51.309, the participating states must adopt a trading program, or what has been termed the Western Backstop Sulfur Dioxide Trading Program (backstop trading program or trading program). One of the components of the backstop trading program is for stationary source SO_2 emissions reductions.[50] Thus, under 40 CFR 51.309, states can satisfy the section 308 SO_2 BART requirements by adopting SO_2 emissions milestones and a backstop trading program. Under this approach, states must establish declining SO_2 emissions milestones for each year of the program through 2018. If the milestones are exceeded in any year, the backstop trading program is triggered.

Among other things, the January 2011 and April 2012 SIP submittals contained amendments to the Wyoming Air Quality Standards and Regulations (WAQSR) Chapter 14, *Emission Trading Program Regulations,* Section 3, *Sulfur dioxide milestone inventory.* On December 12, 2012, we approved these amendments into the SIP as meeting the requirements of 40 CFR 51.309.[51]

B. April 5, 2018 Submittal

On April 5, 2018, Wyoming submitted a SIP revision containing amendments to WAQSR, Chapter 14, *Emission Trading Program Regulations,* Section 3, *Sulfur dioxide milestone inventory* and additions to the regional haze narrative.[52] The amendments modify the SO_2 emissions backstop trading program reporting requirements for Laramie River Station Units 1 and 2. The revisions ensure that SO_2 emissions reductions proposed under the 2017 settlement are no longer counted as

[42] 40 CFR 51.308(e)(2)(iii).

[43] 40 CFR 52.2636(e)–(h).

[44] 40 CFR 52.2636.

[45] Settlement Agreement between Basin Electric Power Cooperative, the State of Wyoming and the EPA (April 24, 2017).

[46] *Ibid.*

[47] Second Amendment to Settlement Agreement (pursuant to Paragraph 15 of the Agreement, amended the date in Paragraph 5.b.ii. for the SO_2 emission limits for Laramie River Units 1 and 2 to commence December 31, 2018) (September 14, 2018).

[48] *See, e.g.* CAA section 110(a)(2)(F) and 40 CFR 51.212(c).

[49] Settlement Agreement between Basin Electric Power Cooperative, the State of Wyoming and the EPA (April 24, 2017).

[50] 40 CFR 51.309(d)(4).

[51] 77 FR 73926 (December 12, 2012).

[52] State of Wyoming. *Addressing Regional Haze Visibility Protection For The Mandatory Federal Class I Areas Required Under 40 CFR 51.309.* Revised April 5, 2018.

reductions under the backstop trading program. Specifically, the amendments revise the SO_2 emissions reporting requirements for Laramie River Units 1 and 2 so that Unit 1's SO_2 emissions shall be reported based on an annual emission rate of 0.159 lb/MMBtu multiplied by the actual annual heat input, and Unit 2's SO_2 emissions shall be reported based on an annual emission rate of 0.162 lb/MMBtu multiplied by the actual heat input. Annual SO_2 emissions for Laramie River Unit 3 shall be reported as otherwise provided in Chapter 14, Section 3(b). The revisions also require that the revised SO_2 emissions reporting requirements for Units 1 and 2 commence as of the year that Basin Electric commences operation of SCR at Unit 1 and that Wyoming use the revised SO_2 emissions reporting requirements for all purposes under Chapter 14. The additions to the SIP narrative provide an explanation of the regulatory amendments. The Wyoming Environmental Quality Council approved the proposed revisions on December 5, 2017 (effective February 5, 2018).

C. The EPA's Evaluation of the SO_2 Emissions Reporting Amendments

We are proposing to approve Wyoming's amendments to the SO_2 emissions reporting requirements and the addition to the SIP narrative for Laramie River Units 1 and 2, including when Basin Electric is required to use the revised SO_2 emissions reporting requirements and how the SO_2 emissions will be reported within the context of the SO_2 emissions milestone inventory. Together, these revisions ensure that the SO_2 emissions reductions in the BART alternative are not ''double-counted'' in the backstop trading program in order to meet the requirement in 40 CFR 51.308(e)(2)(iv) (requirement that emissions reductions from the alternative will be surplus to the SIP). We evaluated how these revisions meet the relevant requirements under 40 CFR 51.309(d)(4).

We agree with Wyoming that the revisions to the SO_2 emissions reporting requirements for Laramie River Units 1 and 2 are sufficient to ensure that the SO_2 emissions reductions obtained under the settlement agreement under the NO_X BART alternative (see Section III) are not also counted towards reductions under the SO_2 backstop trading program milestones.[53] The annual SO_2 emission rates of 0.159 lb/MMBtu and 0.162 lb/MMBtu (30-day average) for Laramie River Units 1 and 2, respectively, reflect the actual average emission rates from 2001 to 2003 for these units.[54] By reporting SO_2 emissions using the average annual SO_2 emission rates from 2001 to 2003 (and multiplied by the actual annual heat input) instead of reporting the actual average annual SO_2 emission rates, emissions reductions achieved since the baseline period at these units will no longer be included in the backstop trading program. Thus, if EPA decides to finalize this proposed action, instead of reporting the actual annual SO_2 emissions for Units 1 and 2 achieved under the revised average annual emission limit of 0.115 lb/MMBtu (0.12 lb/MMBtu; 30-day rolling average limit), pursuant to 40 CFR 51.309(d)(4)(vi)(A) and the settlement agreement, as of the year that Basin Electric commences operation of SCR on Unit 1, SO_2 emissions would be calculated using the average annual emission rates reflective of the baseline period (0.159 lb/MMBtu for Unit 1 and 0.162 lb/MMBtu for Unit 2) multiplied by the actual annual heat input. Thus, these revisions not only ensure that the SO_2 emissions reductions achieved under the NO_X BART alternative are only accounted for under the BART alternative, and not ''double-counted,'' but also describe how compliance with the backstop trading program requirements will be determined as required under 40 CFR 51.309(d)(4)(i).

Under 40 CFR 51.309(d)(4)(ii), documentation of the SO_2 emission calculation methodology and any changes to the specific methodology used to calculate the emissions at any emitting unit for any year after the base year must be provided in the backstop trading program implementation plan. The revisions in Wyoming's 2018 SIP submittal: (1) Document the changes to the specific methodology used to calculate and report SO_2 emissions at Laramie River Units 1 and 2, including the annual average SO_2 emission rates for each unit and how to determine the actual annual heat rate (Chapter 14, Section 3(d)); (2) specify that the revised methodology will commence as of the year that SCR is operational on Unit 1 (Chapter 14, Section 3(d)(i)); and (3) clarify that the revisions to the SO_2 emissions reporting methodology for Units 1 and 2 shall be used for all purposes under Chapter 14, *Emission Trading Program Regulations* (Chapter 14, Section 3(e)). Thus, the revisions meet the requirements of 40 CFR 51.309(d)(4)(ii) because the amendments to the SO_2 emissions reporting requirements provide for documentation of the changes to the specific methodology used to calculate emissions at Laramie River Units 1 and 2 for the relevant years after the base year, and the amendments are contained within Wyoming's backstop trading program implementation plan (Chapter 14, Section 3).

Under 40 CFR 51.309(d)(4)(iii), the EPA-approved plan includes provisions requiring the monitoring, recordkeeping, and annual reporting of actual stationary source SO_2 emissions within the State, (Chapter 14, Section 3(b)). These requirements continue to apply to the Laramie River Units 1 and 2 and were not modified in Wyoming's 2018 SIP submittal. Likewise, the requirements found in 40 CFR 51.309(d)(4)(iv), 40 CFR 51.309(d)(4)(v) and 40 CFR 51.309(d)(4)(vi) pertaining to the market trading program and provisions for the 2018 milestone were not modified in Wyoming's 2018 SIP submittal. Because the revisions to the SO_2 emissions reporting requirements for Laramie River Units 1 and 2 meet the requirements of 40 CFR 51.309(d)(4) we propose to approve the SIP revisions to Chapter 14, Section 3.

V. Clean Air Act Section 110(*l*)

Under CAA section 110(*l*), the EPA cannot approve a plan revision ''if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.''[55] We propose to find that these revisions satisfy section 110(*l*). The previous sections of the notice explain how the proposed FIP revision will comply with applicable regional haze requirements and general implementation plan requirements such as enforceability. Likewise, the SIP revision will also comply with applicable regional haze requirements. With respect to

[53] 40 CFR 51.309(d)(4)(i).

[54] *Laramie River Station Power Plant Visibility Impacts for Two Emissions Control Scenarios: Final Report.* Prepared for Basin Electric, AECOM (May 2016). Data based on the information obtained from the EPA's Clean Air Markets Division (CAMD) database, available at: *https://ampd.epa.gov/ampd/.*

[55] Note that ''reasonable further progress'' as used in CAA section 110(*l*) is a reference to that term as defined in section 301(a) (*i.e.,* 42 U.S.C. 7501(a)), and as such means reductions required to attain the National Ambient Air Quality Standards (NAAQS) set for criteria pollutants under section 109. This term as used in section 110(*l*) (and defined in section 301(a)) is *not* synonymous with ''reasonable progress'' as that term is used in the regional haze program. Instead, section 110(*l*) provides that EPA cannot approve plan revisions that interfere with regional haze requirements (including reasonable progress requirements) insofar as they are ''other applicable requirement[s]'' of the Clean Air Act.

requirements concerning attainment and reasonable further progress, the Wyoming Regional Haze SIP and FIP, as revised by this action, will result in a significant reduction in emissions compared to historical levels. In addition, the area where the Laramie River Station is located is in attainment for all National Ambient Air Quality Standards (NAAQS). Thus, the revisions will ensure a significant reduction in NO_X and SO_2 emissions compared to historical levels in an area that has not been designated nonattainment for the relevant NAAQS at those current levels.

VI. Consultation With FLMs

There are seven (7) Class I areas in the State of Wyoming. The United States Forest Service manages the Bridger Wilderness, Fitzpatrick Wilderness, North Absaroka Wilderness, Teton Wilderness, and Washakie Wilderness. The National Park Service manages the Grand Teton National Park and Yellowstone National Park. The RHR grants the FLMs, regardless of whether a FLM manages a Class I area within the state, a special role in the review of regional haze implementation plans, summarized in Section II.E of this preamble.

There are obligations to consult on plan revisions under 40 CFR 51.308(i)(3). Thus, we consulted with the Forest Service, the Fish and Wildlife Service and the National Park Service on the proposed FIP revision. We described the proposed revisions to the regional haze 2014 FIP and 2018 SIP revisions with the Forest Service, the Fish and Wildlife Service and the National Park Service on August 15, 2018 and met our obligations under 40 CFR 51.308(i)(3).

VII. The EPA's Proposed Action

In this action, the EPA is proposing to approve SIP amendments, shown in Table 8, to the Wyoming Air Quality Standards and Regulations, Chapter 14, *Emission Trading Program Regulations,* Section 3, *Sulfur dioxide milestone inventory,* revising the backstop trading program SO_2 emissions reporting requirements for Laramie River Units 1 and 2.

TABLE 8—LIST OF WYOMING AMENDMENTS THAT EPA IS PROPOSING TO APPROVE

Amended sections in April 5, 2018 submittal proposed for approval
Chapter 14, Section 3: (d), (e).

We are also proposing to amend the Wyoming regional haze FIP contained in 40 CFR 52.2636 to remove the 2014 FIP's NO_X emission limits and instead incorporate the BART alternative and associated NO_X and SO_2 emission limits for Laramie River Units 1–3, revise the NO_X emission limit for Unit 1, and add control technology requirements. Specifically, the EPA is proposing to revise the NO_X emission limits and add SO_2 emission limits and control technologies in Table 2 of 40 CFR 52.2636(c)(1) for Laramie River Units 1–3. We are also proposing to add associated compliance dates in 40 CFR 52.2636(d)(4) for Laramie River Units 1–3. Finally, we are proposing to reference SO_2 in the following sections: *Applicability* (40 CFR 52.2636(a)); *Definitions* (40 CFR 52.2636(b)); *Compliance determinations for NO_X* (40 CFR 52.2636(e)); *Reporting* (40 CFR 52.2636(h)); and *Notifications* (40 CFR 52.2636(i)). We are not proposing to change any other regulatory text in 40 CFR 52.2636.

VIII. Incorporation by Reference

In this document, EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the SIP amendments described in Section VII of this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* (refer to docket EPA–R08–OAR–2018–0606) and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IX. Statutory and Executive Order Reviews

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

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 [56] and was therefore not submitted to the Office of Management and Budget (OMB) for review. This proposed rule applies to only one facility in the State of Wyoming. It is therefore not a rule of general applicability.

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

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

[56] 58 FR 51735, 51738 (October 4, 1993).

C. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (PRA).[57] A ''collection of information'' under the PRA means ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.'' [58] Because this proposed rule revises the NO_X and SO_2 emission limits and associated reporting requirements for one facility, the PRA does not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This rule does not impose any requirements or create impacts on small entities as no small entities are subject to the requirements of this rule.

E. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of

[57] 44 U.S.C. 3501 *et seq.*

[58] 5 CFR 1320.3(c) (emphasis added).

their regulatory actions on state, local and tribal governments and the private sector. Under section 202 of UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more (adjusted for inflation) in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of UMRA allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory actions with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under Title II of UMRA, the EPA has determined that this proposed rule does not contain a federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million [59] by state, local, or tribal governments or the private sector in any one year. The proposed revisions to the 2014 FIP would reduce private sector expenditures. Additionally, we do not foresee significant costs (if any) for state and local governments. Thus, because the proposed revisions to the 2014 FIP reduce annual expenditures, this proposed rule is not subject to the requirements of sections 202 or 205 of UMRA. This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Executive Order 13132: Federalism

Executive Order 13132, *Federalism,*[60] revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' [61] ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' [62] Under Executive Order 13132, the EPA may not issue a regulation ''that has federalism implications, that imposes substantial direct compliance costs, . . . and that is not required by statute, unless [the federal government provides the] funds necessary to pay the direct [compliance] costs incurred by the State and local governments,'' or the EPA consults with state and local officials early in the process of developing the final regulation.[63] The EPA also may not issue a regulation that has federalism implications and that preempts state law unless the agency consults with state and local officials early in the process of developing the final regulation.

This action does not have federalism implications. The proposed FIP revisions will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments,'' requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' [64] This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule. However, on September 5, 2018, the EPA did send letters to each of the Wyoming tribes explaining our regional haze proposed FIP revision and offering consultation.[65]

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997). The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the executive order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires federal agencies to evaluate existing technical standards when developing a new regulation. Section 12(d) of NTTAA, Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to consider and use ''voluntary consensus standards'' in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

[59] Adjusted to 2014 dollars, the UMRA threshold becomes $152 million.

[60] 64 FR 43255, 43255–43257 (August 10, 1999).

[61] 64 FR 43255, 43257.

[62] *Ibid.*

[63] *Ibid.*

[64] 65 FR 67249, 67250 (November 9, 2000).

[65] Letters to tribal governments (September 5, 2018).

This action involves technical standards. The EPA has decided to use the applicable monitoring requirements of 40 CFR part 75. Part 75 already incorporates a number of voluntary consensus standards. Consistent with the agency's Performance Based Measurement System (PBMS), part 75 sets forth performance criteria that allow the use of alternative methods to the ones set forth in part 75. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. At this time, the EPA is not recommending any revisions to part 75. However, the EPA periodically revises the test procedures set forth in part 75. When the EPA revises the test procedures set forth in part 75 in the future, the EPA will address the use of any new voluntary consensus standards that are equivalent. Currently, even if a test procedure is not set forth in part 75, the EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified; however, any alternative methods must be approved through the petition process under 40 CFR 75.66 before they are used.

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

Executive Order 12898, establishes federal executive policy on environmental justice.[66] Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

I certify that the approaches under this proposed rule will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous/tribal populations. As explained previously, the Wyoming Regional Haze FIP, as revised by this action, will result in a significant reduction in emissions compared to current levels. Although this revision will allow an increase in future emissions as compared to the 2014 FIP, the proposed FIP, as a whole, will still result in overall NO_X and SO_2 reductions compared to those currently allowed. In addition, the area where Laramie River Station is located has not been designated nonattainment for any NAAQS. Thus, the proposed FIP will ensure a significant reduction in NO_X and SO_2 emissions compared to current levels and will not create a disproportionately high and adverse human health or environmental effect on minority, low-income, or indigenous/tribal populations. The EPA, however, will consider any input received during the public comment period regarding environmental justice considerations.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Sulfur oxides.

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

Dated: October 3, 2018.

Douglas Benevento,

Regional Administrator, Region 8.

40 CFR part 52 is proposed to be 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 ZZ—Wyoming

■ 2. Section 52.2620 is amended by revising:

■ a. In paragraph (c), the table entry for 'Section 3' under the centered table heading ''Chapter 14. Emission Trading Program Regulations.''; and

■ b. In paragraph (e), the table entry for '(20)XX'.

The revisions read as follows:

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

Rule No.	Rule title	State effective date	EPA effective date	Final rule/citation date	Comments
*	*	*	*	*	*
Chapter 14. Emission Trading Program Regulations					
*	*	*	*	*	*
Section 3	Sulfur dioxide milestone inventory	2/5/2018	11/13/2018	[**Federal Register** citation], [**Federal Register** date of publication].	
*	*	*	*	*	*

* * * * *

(e) * * *

Rule No.	Rule title	State effective date	EPA effective date	Final rule/citation date	Comments
*	*	*	*	*	*
(20)XX	Addressing Regional Haze Visibility Protection For The Mandatory Federal Class I Areas Required Under 40 CFR 51.309.	4/5/2018	11/13/2018	[**Federal Register** citation], [**Federal Register** date of publication].	
*	*	*	*	*	*

[66] 59 FR 7629 (February 16, 1994).

■ 3. Section 52.2636 is amended by:
■ a. Revising paragraphs (a)(2), (b)(4), (b)(12), (c)(1), (c)(1) Table 2, (d)(2) and (d)(3), (e), (e)(1)(i), (e)(1)(ii)(A) through (C), (h)(1), and (i)(1); and
■ b. Adding paragraphs (b)(13), (d)(4), and (e)(1)(ii)(D).

The revisions and additions read as follows:

§ 52.2636 Implementation plan for regional haze.

(a) * * *

(2) This section also applies to each owner and operator of the following emissions units in the State of Wyoming for which EPA disapproved the State's BART determination and issued a SO_2 and/or NO_X BART Federal Implementation Plan:

(i) Basin Electric Power Cooperative Laramie River Station Units 1, 2, and 3;

(ii) PacifiCorp Dave Johnston Unit 3; and

(iii) PacifiCorp Wyodak Power Plant Unit 1.

* * * * *

(b) * * *

(4) Continuous emission monitoring system or CEMS means the equipment required by this section to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of SO_2 and/or NO_X emissions, diluent, or stack gas volumetric flow rate.

* * * * *

(12) *SO_2* means sulfur dioxide.

(13) *Unit* means any of the units identified in paragraph (a) of this section.

(c) * * *

(1) The owners/operators of emissions units subject to this section shall not emit, or cause to be emitted, PM, NO_X, or SO_2 in excess of the following limitations:

* * * * *

TABLE 2 TO § 52.2636

[Emission limits and required control technologies for BART units for which the EPA disapproved the State's BART determination and implemented a FIP]

Source name/BART unit	NO_X required control technology	NO_X emission limit—lb/MMBtu (30-day rolling average)	SO_2 emission limit—lb/MMBtu (averaged annually across both units)
Basin Electric Power Cooperative Laramie River Station/Unit 1 [1]	Selective Catalytic Reduction (SCR) [2]	[4] 0.18/0.06	0.12
Basin Electric Power Cooperative Laramie River Station/Unit 2 [1]	Selective Non-catalytic Reduction (SNCR) [3].	0.18/0.15	
Basin Electric Power Cooperative Laramie River Station/Unit 3 [1]	Selective Non-catalytic Reduction (SNCR) [3].	0.18/0.15	N/A
PacifiCorp Dave Johnston Unit 3	N/A	* 0.07	N/A
PacifiCorp Wyodak Power Plant/Unit 1	N/A	0.07	N/A

[1] The owners and operators of Laramie River Station Unit 1 shall comply with the NO_X emission limit of 0.18 lb/MMBtu on [the effective date of the final rule] and ending June 30, 2019. The owners and operators of Laramie River Station Unit 1 shall comply with the NO_X emission limit of 0.06 lb/MMBtu on July 1, 2019. The owners and operators of the Laramie River Station Units 2 and 3 shall comply with the NO_X emission limit of 0.18 lb/MMBtu on [the effective date of the final rule] and ending on December 30, 2018. The owners and operators of Laramie River Station Units 2 and 3 shall comply with the NO_X emission limit of 0.15 lb/MMBtu on December 31, 2018. The owners and operators of Laramie River Station Units 1 and 2 shall comply with the SO_2 emission limit of 0.12 lb/MMBtu averaged annually across the two units on December 31, 2018.
[2] By July 1, 2019.
[3] By December 30, 2018.
[4] These limits are in addition to the NO_X emission limit for Laramie River Station Unit 1 of 0.07 MMBtu on a 30-day rolling average.
* (or 0.28 and shut-down by December 31, 2027).

* * * * *

(d) * * *

(2) The owners and operators of Laramie River Station Unit 1 shall comply with the NO_X emission limit of 0.18 lb/MMBtu on [the effective date of the final rule] and ending June 30, 2019. The owners and operators of Laramie River Station Unit 1 shall comply with the NO_X emission limit of 0.06 lb/MMBtu on July 1, 2019. The owners and operators of the Laramie River Station Units 2 and 3 shall comply with the NO_X emission limit of 0.18 lb/MMBtu on [the effective date of the final rule] and ending on December 30, 2018. The owners and operators of Laramie River Station Units 2 and 3 shall comply with the NO_X emission limit of 0.15 lb/MMBtu on December 31, 2018. The owners and operators of Laramie River Station Units 1 and 2 shall comply with the SO_2 emission limit of 0.12 lb/MMBtu averaged annually across the two units on December 31, 2018.

(3) The owners and operators of the other BART sources subject to this section shall comply with the emissions limitations and other requirements of this section by March 4, 2019.

(4) *Compliance alternatives for PacifiCorp Dave Johnston Unit 3.* (i) The owners and operators of PacifiCorp Dave Johnston Unit 3 will meet a NO_X emission limit of 0.07 lb/MMBtu (30-day rolling average) by March 4, 2019; or

(ii) Alternatively, the owners and operators of PacifiCorp Dave Johnston Unit 3 will permanently cease operation of this unit on or before December 31, 2027.

(e) *Compliance determinations for SO_2 and NO_X.*

(1) * * *

(i) *CEMS.* At all times after the earliest compliance date specified in paragraph (d) of this section, the owner/operator of each unit shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR part 75, to accurately measure SO_2 and/or NO_X, diluent, and stack gas volumetric flow rate from each unit. The CEMS shall be used to determine compliance with the emission limitations in paragraph (c) of this section for each unit.

(ii) * * *

(A) For any hour in which fuel is combusted in a unit, the owner/operator of each unit shall calculate the hourly average NO_X emission rates in lb/MMBtu at the CEMS in accordance with the requirements of 40 CFR part 75. At the end of each operating day, the owner/operator shall calculate and record a new 30-day rolling average

emission rate in lb/MMBtu from the arithmetic average of all valid hourly emission rates from the CEMS for the current operating day and the previous 29 successive operating days.

(B) At the end of each calendar year, the owner/operator shall calculate the annual average SO_2 emission rate in lb/MMBtu across Laramie River Station Units 1 and 2 as the sum of the SO_2 annual mass emissions (pounds) divided by the sum of the annual heat inputs (MMBtu). For Laramie River Station Units 1 and 2, the owner/operator shall calculate the annual mass emissions for SO_2 and the annual heat input in accordance with 40 CFR part 75 for each unit.

(C) An hourly average SO_2 and/or NO_X emission rate in lb/MMBtu is valid only if the minimum number of data points, as specified in 40 CFR part 75, is acquired by both the pollutant concentration monitor (SO_2 and/or NO_X) and the diluent monitor (O_2 or CO_2).

(D) Data reported to meet the requirements of this section shall not include data substituted using the missing data substitution procedures of subpart D of 40 CFR part 75, nor shall the data have been bias adjusted according to the procedures of 40 CFR part 75.

* * * * *

(h) * * *

(1) The owner/operator of each unit shall submit quarterly excess emissions reports for SO_2 and/or NO_X BART units no later than the 30th day following the end of each calendar quarter. Excess emissions means emissions that exceed the emissions limits specified in paragraph (c) of this section. The reports shall include the magnitude, date(s), and duration of each period of excess emissions, specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

* * * * *

(i) * * *

(1) The owner/operator shall promptly submit notification of commencement of construction of any equipment which is being constructed to comply with the SO_2 and/or NO_X emission limits in paragraph (c) of this section.

* * * * *

[FR Doc. 2018–21949 Filed 10–10–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2014–0065; 4500030114]

RIN 1018–BD52

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Black Pinesnake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revision, reopening of comment period, and announcement of public meetings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on our March 11, 2015, proposed designation of critical habitat for the black pinesnake (*Pituophis melanoleucus lodingi*) under the Endangered Species Act of 1973, as amended (Act). We are reopening the comment period to accept comments on our proposal, including revisions to proposed Units 7 and 8 that are described in this document. As a result of these revisions, we are now proposing to designate a total of 338,379 acres (136,937 hectares) as critical habitat for the black pinesnake across eight units within portions of Forrest, George, Greene, Harrison, Jones, Marion, Perry, Stone, and Wayne Counties in Mississippi, and Clarke County in Alabama. This is a small increase in acreage from the area we proposed to designate in our March 11, 2015, proposed rule but constitutes less privately owned lands. In addition, we announce two public informational meetings on the proposed rule. We are reopening the comment period on our March 11, 2015, proposed rule to allow all interested parties the opportunity to comment on the revised proposed rule. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: The comment period for the proposed rule published March 11, 2015, at 80 FR 12846 is reopened.

Written comments: So that we can fully consider your comments in our final determination, submit them on or before November 13, 2018. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

Public informational meetings: We will hold two public meetings, one from 6:00 p.m. to 7:30 p.m. on October 22, 2018, and a second from 6:00 p.m. to 7:30 p.m. on October 24, 2018.

ADDRESSES:

Document availability: You may obtain copies of the March 11, 2015, proposed rule and associated documents on the internet at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2014–0065 or by mail from the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Written comments: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2014–0065, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit your comments by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2014–0065, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

Public informational meetings: The public informational meetings will be held in the following locations:

- On October 22, 2018, at Pearl River Community College, Lowery A. Woodall Advanced Technology Center, 906 Sullivan Drive, Hattiesburg, MS 39401.
- On October 24, 2018, at Alabama Coastal Community College, Administration Building, Tombigbee Conference Room, 30755 Hwy. 43 South, Thomasville, AL 36784. See Public Informational Meetings, below, for more information.

FOR FURTHER INFORMATION CONTACT: Stephen Ricks, Field Supervisor, Mississippi Ecological Services Field Office, 6578 Dogwood View Parkway, Jackson, MS 39213; telephone 601–321–1122; or facsimile 601–965–4340. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed designation of critical habitat for the black pinesnake that was published in the **Federal Register** on March 11, 2015 (80 FR 12846), the revisions to the proposed designation that are described in this document, and our draft economic assessment (DEA) of the proposed designation. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act, including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The amount and distribution of black pinesnake habitat;

(b) What areas occupied by the species at the time of listing (or are currently occupied) that contain features essential for the conservation of the species we should include in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their probable impacts on proposed critical habitat.

(4) How the patch size of proposed critical habitat was derived (*i.e.,* how much acreage a viable population of black pinesnakes requires).

(5) Information on the projected and reasonably likely impacts of climate change on the black pinesnake and proposed critical habitat.

(6) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, we seek information on any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(7) Information on the extent to which the description of economic impacts in the DEA is a reasonable estimate of the likely economic impacts and is complete and accurate.

(8) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the associated documents of the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(9) Whether any areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act, particularly those areas described in this document.

(10) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

If you submitted comments or information on the March 11, 2015, proposed rule during the initial comment period from March 11, 2015, to May 11, 2015, please do not resubmit them. Any such comments are incorporated as part of the public record of this rulemaking proceeding, and we will fully consider them in the preparation of our final determination. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. The final decision may differ from this revised proposed rule, based on our review of all information received during this rulemaking proceeding.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the website. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2014–0065, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the internet at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2014–0065, or by mail from the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Informational Meetings

We will hold two public informational meetings on the dates and times shown in **DATES** at the addresses shown in **ADDRESSES**. People needing reasonable accommodations in order to attend and participate in the public informational meetings should contact Stephen Ricks, Mississippi Ecological Services Field Office, at (601) 321–1122, as soon as possible. In order to allow sufficient time to process requests, please call no later than 1 week before the meeting date (see **DATES**).

Background

It is our intent to discuss in this document only those topics directly relevant to the designation of critical habitat for black pinesnake. For more information on previous Federal actions concerning the black pinesnake, or information regarding its biology, status, distribution, and habitat, refer to the proposed designation of critical habitat published in the **Federal Register** on March 11, 2015 (80 FR 12846), and the October 6, 2015, final listing rule (80 FR 60468), both of which are available online at *http://www.regulations.gov* (at Docket Nos. FWS–R4–ES–2014–0065 and FWS–R4–ES–2014–0046) or from the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

In our March 11, 2015, proposed rule, we proposed to designate critical habitat for the black pinesnake in eight units encompassing approximately 338,100 acres (136,824 hectares) in Forrest, George, Greene, Harrison, Jones, Marion, Perry, Stone, and Wayne Counties, Mississippi, and Clarke County, Alabama. In addition, we announced the availability of a DEA of the proposed critical habitat designation. We accepted comments on the proposal and DEA for 60 days, ending May 11, 2015. Based on information we received during the public comment period, we have decided to reopen the comment period

to allow the public additional time to submit comments on the proposed critical habitat designation and to hold two informational meetings.

New Information and Revisions to Previously Proposed Critical Habitat

In this document, we propose certain revisions to the critical habitat designation we proposed for the black pinesnake on March 11, 2015. Specifically, we propose to revise the name of Unit 7 to reflect the removal of all lands by the landowner from the State Wildlife Management Area (WMA). As a result of the removal, the name of the proposed unit is changed from Scotch WMA to Jones Branch. We also propose to revise the boundaries of Unit 8 in Clarke County, Alabama, resulting in fewer acres on private land and more acres on State-owned land, with a net increase in acreage. An index map of the revised proposed critical habitat area (338,379 acres (136,937 hectares)) is provided in the Proposed Regulation Promulgation section, below.

Unit 7: Jones Branch (formerly Scotch WMA), Clarke County, Alabama

In September 2015, we received notice of a recent observation of a black pinesnake in proposed Unit 7 within the Scotch WMA in Clarke County, Alabama. A black pinesnake was captured during the course of a turkey trapping study and was positively verified by Service and State herpetologists. Therefore, within proposed Unit 7, there are now 5 records for black pinesnakes, one observed as recently as July 2015, and all records are in close proximity to one another and part of the same breeding population.

In June 2016, Scotch Land Management Company, LCC, which manages most of the lands in proposed Unit 7, announced the withdrawal of its lands from the Alabama Department of Conservation and Natural Resources' WMA program. As a result, no lands within proposed Unit 7 are within the WMA, and therefore, the name of the unit is being changed from Scotch WMA to Jones Branch. Ownership of the lands within proposed Unit 7 has not changed; it remains entirely privately owned. In addition, the boundaries and acreage of proposed Unit 7 are the same as what we proposed for this unit on March 11, 2015.

Unit 8: Fred T. Stimpson WMA, Clarke County, Alabama

During a re-examination of all the proposed critical habitat units following the close of the proposed rule's comment period on May 11, 2015, we determined that some of the best black pinesnake habitat, located on the southern end of the Stimpson WMA, had not been incorporated into proposed Unit 8, and that other land, located on the northern end of proposed Unit 8, had been included in error. This re-assessment used updated aerial imagery, and wetlands, elevation, soils, and land cover overlays, to redefine the best available, most suitable, contiguous forested habitat surrounding the known pinesnake records at that site. Accordingly, we are shifting proposed Unit 8 to the south; among other things, this results in more acreage overlapping with the WMA, as well as a slight increase in the size of the unit. The total acreage in revised proposed Unit 8 is now 5,940 acres (2,404 hectares), an increase of 279 acres (113 hectares). The State of Alabama owns 3,789 acres (1,533 hectares; 64 percent) of Unit 8, and 2,151 acres (870 hectares; 36 percent) are privately owned. The newly added land in revised proposed Unit 8 is of the same habitat type, and contiguous with, those lands analyzed in the March 11, 2015, proposed rule; therefore, the determination that these additional lands meet the definition of critical habitat is the same as for the original proposed Unit 8. As with the original lands within proposed Unit 8, the additional lands are occupied; contain all of the physical or biological features of the black pinesnake to support life-history functions essential to the conservation of the subspecies; and may require special management and protection from threats as outlined in the March 11, 2015, critical habitat proposal.

Authors

The primary authors of this document are the staff members of the Mississippi Ecological Services Field Office, Southeast Region, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 80 FR 12846 (March 11, 2015) as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

■ 2. Amend § 17.95 by revising paragraphs (c)(5), (12), and (13) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(c) *Reptiles.*

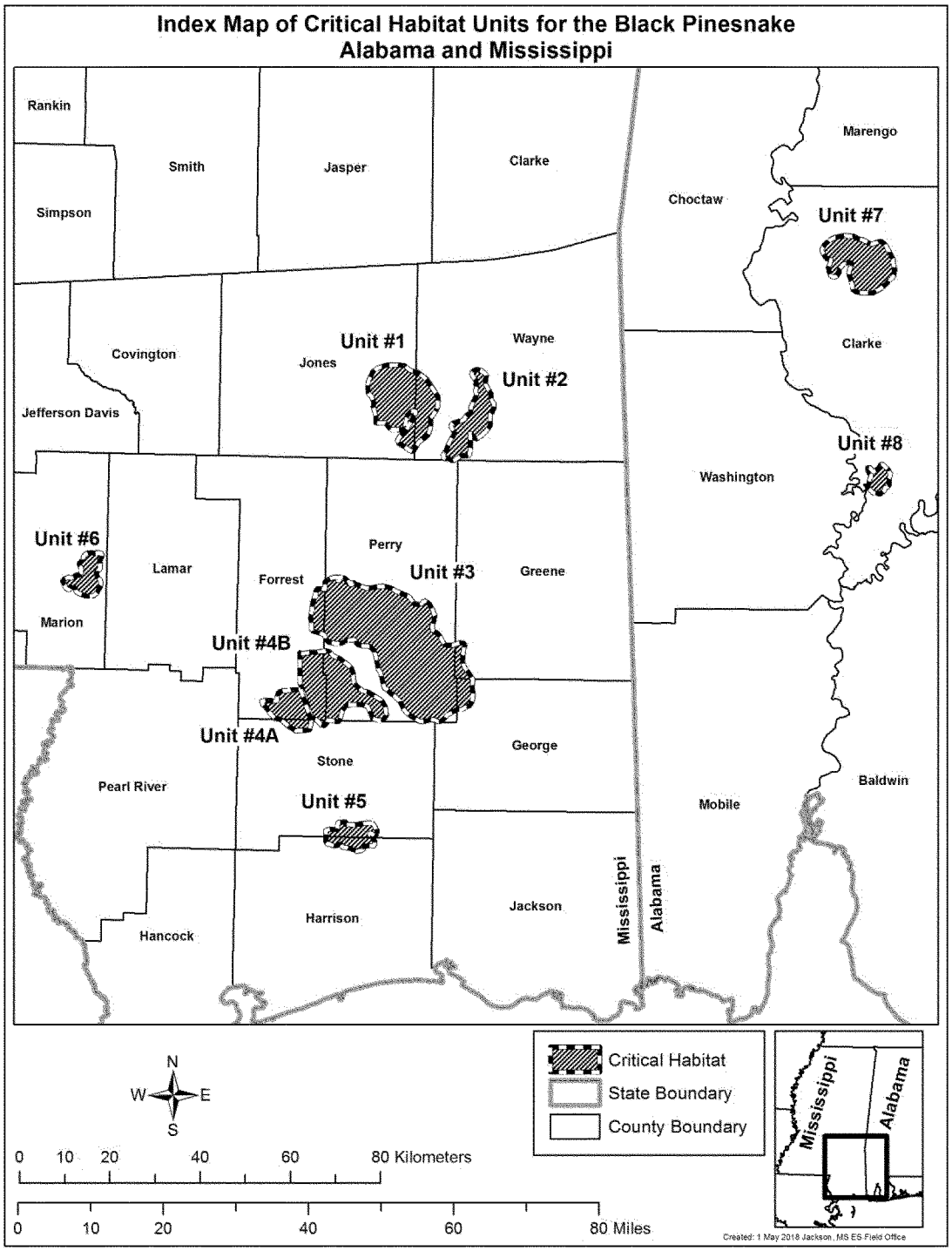
* * * * *

Black Pinesnake (*Pituophis melanoleucus lodingi*)

* * * * *

(5) *Note:* Index map follows:

BILLING CODE 4333–15–P

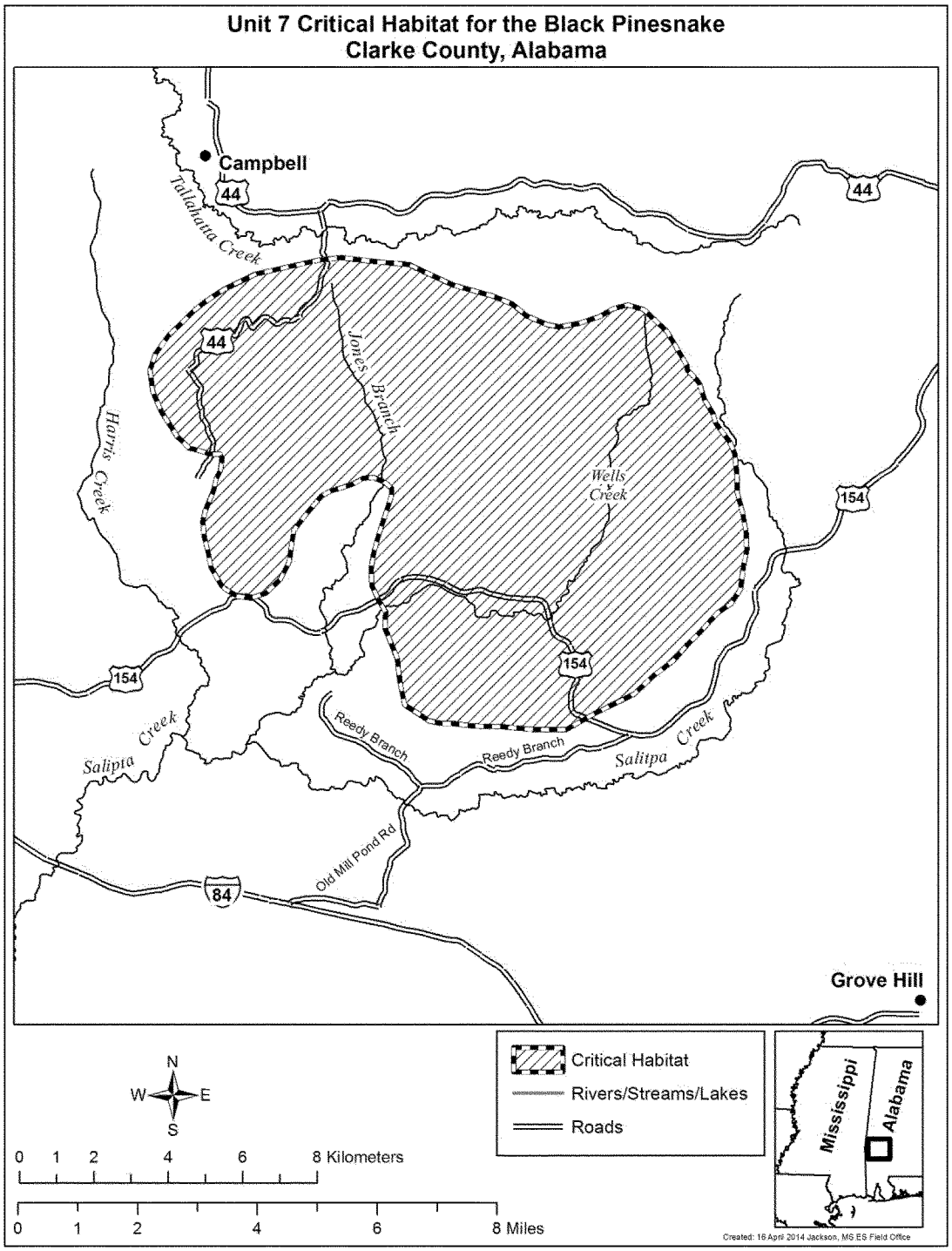


* * * * *

(12) Unit 7: Jones Branch—Clarke County, Alabama.

(i) This unit is bordered by Salitpa Creek to the south, Tallahatta Creek to the north, and Harris Creek to the west. It is located approximately 2.7 mi (4.3 km) southeast of Campbell. Unit 7 is located 1.1 mi (1.8 km) north of the intersection of Old Mill Pond Road and Reedy Branch Road.

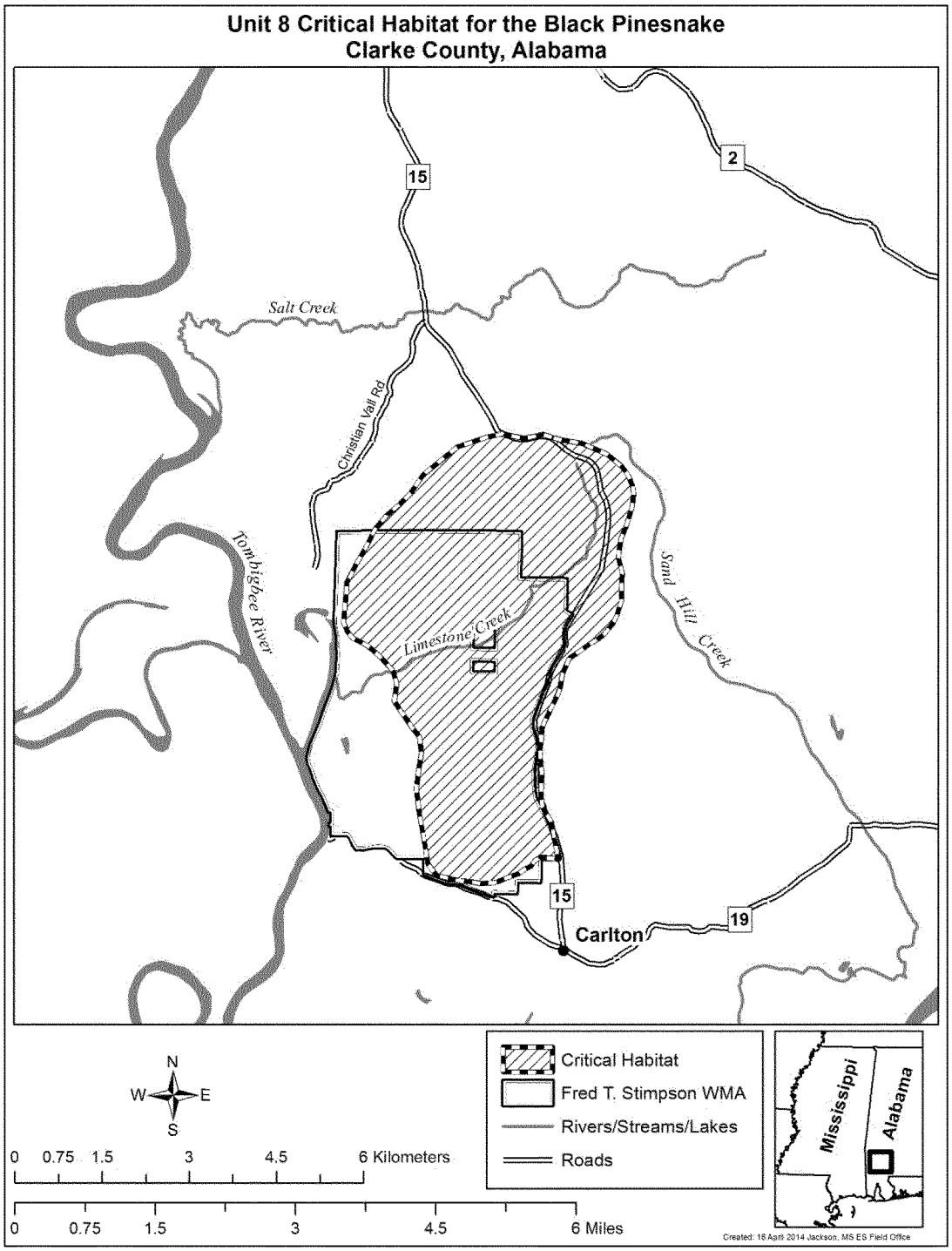
(ii) Map of Unit 7 (Jones Branch) follows:



(13) Unit 8: Fred T. Stimpson Wildlife Management Area (WMA)—Clarke County, Alabama.

(i) This unit is located between Sand Hill Creek and the Tombigbee River, is approximately 1 mi (1.6 km) north of Carlton, and is 1.5 mi (2.4 km) south of the intersection of County Road 15 and Christian Vall Road. Most of this unit is on the Fred T. Stimpson WMA.

(ii) Map of Unit 8 (Fred T. Stimpson WMA) follows:


Unit 8 Critical Habitat for the Black Pinesnake
Clarke County, Alabama
15
2
Salt Creek
Christian Vall Rd
Tombigbee River
Limestone Creek
Sand Hill Creek
15
19
Carlton
N
W
E
S
0 0.75 1.5 3 4.5 6 Kilometers
0 0.75 1.5 3 4.5 6 Miles
Critical Habitat
Fred T. Stimpson WMA
Rivers/Streams/Lakes
Roads
Mississippi
Alabama
Created: 16 April 2014 Jackson, MS ES Field Office

* * * * *

Dated: August 14, 2018.

James W. Kurth,

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

[FR Doc. 2018–22013 Filed 10–10–18; 8:45 am]

BILLING CODE 4333–15–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BI46

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagics Resources in the Gulf of Mexico and Atlantic Region; Amendment 31

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

ACTION: Notification of availability; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (South Atlantic Council) and Gulf of Mexico Fishery Management Council (Gulf Council) (Councils) have submitted Amendment 31 to the Fishery Management Plan (FMP) for Coastal Migratory Pelagics (CMP) of the Gulf of Mexico (Gulf) and Atlantic Region (Amendment 31) for review, approval, and implementation by NMFS. Amendment 31 would remove Atlantic migratory group cobia (Atlantic cobia) from Federal management under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). At the same time, NMFS would implement comparable regulations under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) to replace the existing Magnuson-Stevens Act based regulations in Atlantic Federal waters. The purpose of Amendment 31 is to facilitate improved coordination of Atlantic cobia in state and Federal waters, thereby more effectively constraining harvest and preventing overfishing and decreasing adverse socio-economic effects to fishermen.

DATES: Written comments on Amendment 31 must be received by December 10, 2018.

ADDRESSES: You may submit comments on Amendment 31, identified by ''NOAA–NMFS–2018–0114,'' by either of the following methods:

• *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0114* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Karla Gore, NMFS Southeast Regional Office, 263 13th Avenue South St. Petersburg, FL 33701.

• *Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in required fields if you wish to remain anonymous).

Electronic copies Amendment 31 may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/coastal-migratory-pelagics-amendment-31-management-atlantic-migratory-group-cobia.* Amendment 31 includes an environmental assessment, a fishery impact statement, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis.

FOR FURTHER INFORMATION CONTACT: Karla Gore, NMFS Southeast Regional Office, telephone: 727–551–5753, or email: *karla.gore@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires each regional fishery management council to submit FMPs or amendments to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the **Federal Register** notifying the public that the FMP or amendment is available for review and comment.

Background

Through the CMP FMP, cobia is managed in two distinct migratory groups. The Gulf migratory group of cobia ranges in the Gulf from Texas through Florida and in the Atlantic includes cobia off the east coast of Florida. Atlantic cobia is managed from Georgia through New York. The boundary between the two migratory groups is the Georgia-Florida state boundary. Both Gulf and Atlantic cobia were assessed through SEDAR 28 in 2013 and neither stock was determined to be overfished or experiencing overfishing.

The majority of Atlantic cobia landings occur in state waters and, despite closures in Federal water in recent years, recreational landings have exceeded the recreational annual catch limit (ACL) and the combined stock ACL. This has resulted in shortened fishing seasons, which have been ineffective at constraining harvest. Following overages of the recreational and combined stock ACLs in 2015 and 2016, Federal waters closures for recreational harvest occurred in both 2016 (June 20) and 2017 (January 24). Additionally, Federal waters were closed to commercial harvest of Atlantic cobia in 2016 (December 5) and 2017 (September 4), because the commercial ACL was projected to be reached during the fishing year.

Allowable harvest in state waters following the Federal closures varied by time and area. Georgia did not close state waters to recreational harvest of Atlantic cobia in 2016 or 2017. South Carolina allowed harvest in 2016 during May in the Southern Cobia Management Zone and closed state waters in 2017 when Federal waters closed. Most harvest of Atlantic cobia off Georgia and South Carolina occurs in Federal waters. Off North Carolina, recreational harvest of Atlantic cobia closed on September 30, 2016; in 2017, harvest was allowed May 1 through August 31. Off Virginia in 2016, harvest was allowed until August 30, 2016, and in 2017, Virginia allowed harvest June 1 through September 15. Harvest in state waters during the Federal closures contributed to the overage of the recreational ACL and the combined stock ACL.

The South Atlantic Council requested that the Atlantic States Marine Fisheries Commission (ASMFC) consider complementary management measures for Atlantic cobia, as constraining harvest in Federal waters has not prevented the recreational and combined ACLs from being exceeded. The ASMFC consists of 15 Atlantic coastal states that manage and conserve their shared coastal fishery resources. The majority of ASMFC's fisheries decision-making occurs through the Interstate Fisheries Management Program, where species management boards determine management strategies that the states implement through fishing regulations.

In May 2016, the ASMFC started developing an interstate FMP for Atlantic cobia with the purpose to

improve cobia management in the Atlantic. In April 2018, the ASFMC implemented their Interstate FMP, which established state management for Atlantic cobia. Each affected state developed an implementation plan that included regulations in their state waters. In addition, the ASMFC is currently amending the Interstate FMP for Atlantic cobia to establish a mechanism for recommending future management measures to NMFS. If Amendment 31 is implemented, such management recommendations would need to be implemented in Federal waters through the authority and process defined in the Atlantic Coastal Act.

The management measures contained within the ASMFC's Interstate FMP are consistent with the current Federal regulations for Atlantic cobia. For the recreational sector, the management measures in the Interstate FMP include a recreational bag and possession limit of one fish per person, not to exceed six fish per vessel per day, and a minimum size limit of 36 inches (91.4 cm), fork length. For the commercial sector, the management measures in the Interstate FMP include a commercial possession limit of two cobia per person, not to exceed six fish per vessel, and a minimum size limit of 33 inches (83.8 cm), fork length. Under the ASMFC plan, regulations in each state must match, or be more restrictive than, the Interstate FMP management measures. Georgia, South Carolina, North Carolina, and Virginia have implemented more restrictive regulations for the recreational sector in their state waters than specified in the Interstate FMP. Those regulations include recreational bag and vessel limits, and minimum size limits, in addition to allowable fishing seasons. The Interstate FMP also provides the opportunity for states to declare *de minimis* status for their Atlantic cobia recreational sector, if a state's recreational landings for 2 of the previous 3 years is less than 1 percent of the coastwide recreational landings for the same time period. States in a *de minimis* status would be required to adopt the regulations (including season) of the closest adjacent non-*de minimis* state or accept a one fish per vessel per day trip limit and a minimum size limit of 29 inches (73.7 cm), fork length. Maryland, Delaware, and New Jersey have declared a *de minimis* status.

The Magnuson-Stevens Act requires a council to prepare an FMP for each fishery under its authority that requires conservation and management. Any stocks that are predominately caught in Federal waters and are overfished or subject to overfishing, or likely to become overfished or subject to overfishing, are considered to require conservation and management (50 CFR 600.305(c)(1)). Beyond such stocks, councils may determine that additional stocks require conservation and management. However, not every fishery requires Federal management and the NMFS National Standard Guidelines at 50 CFR 600.305(c) provide factors that NMFS and the councils should consider when considering removal of a stock from a FMP. This analysis is contained in Amendment 31.

Based on this analysis, the Councils and NMFS have determined that Atlantic cobia is no longer in need of conservation and management within the South Atlantic Council's jurisdiction and the stock is eligible for removal from the CMP FMP. The majority of Atlantic group cobia landings are in state waters and the stock is not overfished or undergoing overfishing. However, the CMP FMP has proven ineffective at resolving the primary ongoing user conflict between the recreational fishermen from different states, and it does not currently appear to be capable of promoting a more efficient utilization of the resource. Most significantly, the harvest of Atlantic cobia is adequately managed in state waters by the ASMFC and their Interstate FMP, which was implemented in April 2018. Georgia, South Carolina, North Carolina, and Virginia have implemented more restrictive recreational regulations than those specified in the Insterstate FMP. Furthermore, the Interstate FMP requires that if a state's average annual landings over the 3-year time period are greater than their annual harvest target, then that state must adjust their recreational season length or recreational vessel limits for the following 3 years, as necessary, to prevent exceeding their harvest target in the future years. For the commercial sector, the ASMFC's Interstate FMP specified management measures for Atlantic cobia that are consistent with the current ACL and AM specified in the Federal regulations implemented pursuant to the CMP FMP.

Therefore, NMFS and the Councils have determined that management of Atlantic cobia by the states, in conjunction with the ASMFC and Secretary of Commerce, will be more effective at constraining harvest and preventing overfishing; thereby, offering greater biological protection to the stock and decreasing adverse socioeconomic effects to fishermen. Further, management of Atlantic cobia by ASMFC is expected to promote a more equitable distribution of harvest of the species among the states.

Action Contained in Amendment 31

Amendment 31 would remove Atlantic cobia from Federal management under the Magnuson-Stevens Act. At the same time, NMFS would implement comparable regulations under the Atlantic Coastal Act to replace the existing Magnuson-Stevens Act based regulations in Federal waters.

Current commercial management measures for Atlantic cobia include a minimum size limit of 33 inches (83.8 cm), fork length and a commercial trip limit of two fish per person per day, not to exceed six fish per vessel per day. Federal regulations for recreational harvest of Atlantic cobia in Federal waters include a minimum size limit of 36 inches (91.4 cm), fork length and a bag and possession of one fish per person per day, not to exceed six fish per vessel per day.

Under the authority of the Atlantic Coastal Act, NMFS would implement these same minimum size limits, recreational bag and possession limits, and commercial trip limits in Federal waters. Additionally, NMFS would implement regulations consistent with current CMP FMP regulations for the fishing year, general prohibitions, authorized gear, and landing fish intact provisions specific to Atlantic cobia.

The current Atlantic cobia commercial ACL is 50,000 lb (22,680 kg) and the recreational ACL is 620,000 lb (281,227 kg). The proposed removal of Atlantic cobia from Federal management under the Magnuson-Stevens Act would remove these sector ACLs. Thus, NMFS would implement a commercial quota of 50,000 lb (22,280 kg) through the Atlantic Coastal Act consistent with the current commercial ACL. The current commercial accountability measure (AM) requires that if commercial landings reach or are projected to reach the ACL, then commercial harvest will be prohibited for the remainder of the fishing year. NMFS would implement commercial quota closure provisions to prohibit commercial harvest once the commercial quota is reached or projected to be reached.

The ASMFC's Interstate FMP has specified a recreational harvest limit (RHL) of 613,800 lb (278,415 kg) in state and Federal waters and state-by-state recreational quota shares (harvest targets) of the coastwide RHL. During the development of the Insterstate FMP, one percent of the amount of the recreational allocation of the current Federal ACL (initially 6,200 lb (2,812

kg)) was set aside to account for harvests in *de minimis* states (Maryland, Delaware, New Jersey). The harvest targets for each state, in both state and Federal waters, are 58,311 lb (26,449 kg) for Georgia, 74,885 lb (33,967 kg) for South Carolina, 236,316 lb (107,191 kg) for North Carolina and 244,292 lb (110,809 kg) for Virginia. Percentage allocations are based on states' percentages of the coastwide historical landings in numbers of fish, derived as 50 percent of the 10-year average landings from 2006–2015 and 50 percent of the 5-year average landings from 2011–2015.

The proposed removal of Atlantic cobia from Federal management under the Magnuson-Stevens Act would remove the recreational sector AM for Atlantic cobia. The recreational AM requires that both the recreational ACL and the stock ACL are exceeded in a fishing year then in the following fishing year, recreational landings will be monitored for a persistence in increased landings, and, if necessary, the recreational vessel limit will be reduced to no less than 2 fish per vessel to ensure recreational landings achieve the recreational annual catch target, but do not exceed the recreational ACL in that fishing year. Additionally, if the reduction in the recreational vessel limit is determined to be insufficient to ensure that recreational landings will not exceed the recreational ACL, then the length of the recreational fishing season will also be reduced.

In place of the current recreational AM, state-defined regulations and seasons implemented consistent with the ASMFC's Interstate FMP are designed to keep harvest within the state harvest targets. If a state's average annual landings over the 3-year time period are greater than their annual harvest target, then the Insterstate FMP requires the state to adjust their recreational season length or recreational vessel limits for the following 3 years, as necessary, to prevent exceeding their harvest target in the future years.

If Amendment 31 is subsequently approved and implemented, Atlantic cobia would be managed under the ASMFC Interstate FMP in state waters and through Atlantic Coastal Act regulations in Federal waters. This will ensure that Atlantic cobia continues to be managed in Federal waters and that there would be no lapse in management of the stock. These regulations would be expected to be implemented concurrently with the removal of Atlantic cobia from the CMP FMP and serve essentially the same function as the current CMP FMP based management measures.

Proposed Rule for Amendment 31

A proposed rule that would implement Amendment 31 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the CMP FMP, the Magnuson-Stevens Act, and other applicable laws. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Councils have submitted Amendment 31 for Secretarial review, approval, and implementation. Comments on Amendment 31 must be received by December 10, 2018. Comments received during the respective comment periods, whether specifically directed to Amendment 31 or the proposed rule, will be considered by NMFS in the decision to approve, disapprove, or partially approve Amendment 31. Comments received after the comment periods will not be considered by NMFS in this decision. All comments received by NMFS on Amendment 31 or the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 4, 2018.

Margo B. Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–22000 Filed 10–10–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 698

[Docket No. 180328324–8464–01]

RIN 0648–BH87

Magnuson-Stevens Fishery Conservation and Management Act; Traceability Information Program for Seafood

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

ACTION: Proposed rule; request for comments.

SUMMARY: Pursuant to the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2018 and the Magnuson-Stevens Fishery Conservation and Management Act (MSA), NMFS is proposing a Traceability Information Program for Seafood to establish registration, reporting and recordkeeping requirements for U.S. aquaculture producers of shrimp and abalone, two species subject to the Seafood Traceability Program, also known as the Seafood Import Monitoring Program (SIMP). This proposed rule, if finalized, would provide traceability for these species from the point of production to entry into U.S. commerce. Collection of traceability information for U.S. aquacultured shrimp and abalone will be accomplished by electronic submission of data to NMFS. This rule would require owners or operators of U.S. inland, coastal and marine commercial aquaculture facilities (''producers'') to report information about production and entry into U.S. commerce of shrimp and abalone products. In addition, this rule would require producers to register with NMFS and retain records pertaining to the production of shrimp and abalone and entry of those products into U.S. commerce. This proposed rule serves as a domestic counterpart to the shrimp and abalone import requirements under SIMP, and will help NMFS verify that U.S. aquacultured shrimp and abalone were lawfully produced by providing information to trace each production event(s) to entry of the fish or fish products into U.S. commerce. The rule will also decrease the incidence of seafood fraud by requiring the reporting of this information to the U.S. Government at the point of entry into U.S. commerce so that the information reported (*e.g.,* regarding species and harvest location) can be verified.

DATES: Written comments must be received by November 26, 2018.

ADDRESSES: Written comments on this action, identified by NOAA–NMFS–2018–0055, may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* Go to Docket Number NOAA–NMFS–2018–0055, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Celeste Leroux, Office of International Affairs and Seafood Inspection, NOAA Fisheries, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: All comments received are a part of the public record and will generally be posted to *http://*

www.regulations.gov without change. All personal identifying information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Enter N/A in the required fields if you wish to remain anonymous. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (PDF) formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the NOAA Fisheries Office of International Affairs and Seafood Inspection (IASI) and by email to: *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Celeste Leroux at (301) 427–8372 or *Celeste.Leroux@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On March 15, 2015, the Presidential Task Force on Combating Illegal, Unreported, and Unregulated (IUU) Fishing and Seafood Fraud (Task Force), co-chaired by the Departments of Commerce and State, published its action plan to implement Task Force recommendations for a comprehensive framework of integrated programs to combat IUU fishing and seafood fraud. As part of implementing the Task Force plan, NMFS issued a final rule (81 FR 88975, December 9, 2016) for a risk-based traceability program to track seafood from production to entry into U.S. commerce known as the Seafood Traceability Program or Seafood Import Monitoring Program (SIMP) (*see* 50 CFR 300.320–300.325). For clarity, NMFS will refer to this program as SIMP throughout this preamble, while the codified regulatory text at 50 CFR 300.320–300.325 uses the term ''Seafood Traceability Program.'' The final rule included, for designated priority fish species, permitting, reporting, and recordkeeping requirements relating to the importation of certain fish and fish products to provide for traceability from point of production to point of entry into U.S. commerce in order to prevent illegally harvested or produced and misrepresented seafood from entering into U.S. commerce. SIMP applies to thirteen species and species groups, including shrimp and abalone, identified as particularly vulnerable to IUU fishing and/or seafood fraud. However, in the final rule establishing SIMP, NMFS stayed program requirements for shrimp and abalone species indefinitely because there is commercial scale aquaculture of shrimp and abalone in the United States and gaps existed in the collection of traceability information for domestic aquaculture, which is largely regulated at the State level.

In the SIMP final rule, NMFS explained that when the domestic reporting and recordkeeping gaps have been closed, NMFS will then publish an action in the **Federal Register** to lift the stay of the effective date for § 300.324(a)(3) of the rule pertaining to shrimp and abalone. (81 FR at 88977–78, December 9, 2016).

On March 23, 2018, the President signed into law the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2018 (2018 Appropriations Act) (Pub. L. 115–141, Div. B). Section 539 of the Act directs the Secretary of Commerce to lift the stay on the effective date of the SIMP final rule for shrimp and abalone species and establish a compliance date not later than December 31, 2018. On April 24, 2018, NMFS published a final rule lifting that stay, and established a compliance date of December 31, 2018 for imports of shrimp and abalone (83 FR 17762).

In addition to the requirement to include shrimp and abalone species under SIMP, section 539 of the 2018 Appropriations Act directed the Secretary of Commerce to ''. . . establish a traceability program for United States inland, coastal, and marine aquaculture of shrimp and abalone . . .'' and by December 31, 2018 to ''. . . promulgate such regulations as are necessary and appropriate to establish and implement the program.''

This proposed Traceability Information Program for Seafood (Program) would establish registration, reporting and recordkeeping requirements for domestic, commercial aquaculture producers of shrimp and abalone species and products containing those species from the point of production to entry into U.S. commerce. A producer, *i.e.,* the owner or operator of an aquaculture facility that produces shrimp or abalone for human consumption, is responsible for the registration, reporting and recordkeeping requirements of this Program. Section 698.2 defines producer and aquaculture facility. Consistent with the plain language of section 539 of the 2018 Appropriations Act, the scope of the Program will be limited to shrimp and abalone species unless and until otherwise authorized by Congress. The requirements under this proposed Program will fill the gaps identified during development of the SIMP with respect to the collection of traceability information for domestic aquaculture of shrimp and abalone species.

Section 539 further directs that information collected pursuant to a regulation promulgated under this section shall be confidential and shall not be disclosed except for the information disclosed under section 401(b)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881a(b)(1). Section 1881a(b)(1) corresponds to MSA section 402(b)(1). Thus, NMFS believes that the reference to MSA section 401(b)(1) is a typographical error and the intent of Congress was to cite to MSA section 402(b)(1). MSA section 401(b)(1) pertains to fishing vessel registration, whereas 402(b)(1) addresses data confidentiality which lends further support to the notion that Congress intended to cite to section 402(b)(1). Accordingly, NMFS will apply the data confidentiality provisions of MSA section 402(b)(1) to the data required to be submitted under this proposed Program.

The proposed Traceability Information Program for Seafood consists of three components: (1) Registration; (2) monthly reporting of production events; and (3) recordkeeping requirements with respect to both production events and chain of custody information from production to the point of entry into U.S. commerce via sale or non-sale transaction (including transfers between components of a vertically-integrated enterprise). Application of the Program's reporting and recordkeeping requirements would enable NMFS to determine the origin of the domestic aquaculture shrimp and abalone products and confirm that they were lawfully produced and not misrepresented. Coextensive with the scope of SIMP, the Traceability Information Program for Seafood traces fish and fish products from production to entry into U.S. commerce. Fish or fish products regulated under the Traceability Information Program for Seafood are shrimp and abalone species produced by an aquaculture facility and products containing those aquacultured species. Section 698.2 defines fish or fish products regulated under this part, ''produce/production,'' and ''entry into U.S. commerce.''

I. Registration

In § 698.4, NMFS proposes to identify aquaculture producers (*i.e.,* owners or

operators of aquaculture facilities) through a registration process that will link each producer with a unique producer identifier. The purpose of registration is not to permit or regulate production activities, but rather to identify the person responsible for reporting data to NMFS and recordkeeping for audit and inspection purposes. Use of a unique producer identifier will ensure that data reported is attributed to the correct producer. As proposed, all U.S. producers of species covered by this program that annually enter product for human consumption valued at $1,000 or more into U.S. commerce must electronically register and submit their fee for registration via an electronic reporting system established by NMFS. The amount of the one-time registration fee, currently estimated to be $30.00, will be calculated in accordance with procedures set forth in Chapter 9 of the NOAA Finance Handbook for determining the administrative costs for special products and services (*http://www.corporateservices.noaa.gov/finance/Finance%20Handbook.html*); the registration fee will not exceed such costs. Because the electronic registration system has not yet been completed, NMFS has not made a final determination about total development costs and out-year costs for operations and maintenance. Additionally, the number of users may vary from NMFS estimates as the number of aquaculture operations expands or contracts. Consequently, the calculation of the administrative cost recovery fee may be higher or lower than the $30 estimate. NMFS requests comment on the impact that registration fees may have on aquaculture operations that would be subject to this rule.

NMFS is proposing $1,000 as the *de minimis* sales level for exemption from the Program because it matches the U.S. Department of Agriculture minimum sales threshold for reporting under the Census of Agriculture. As producers are familiar with the Census of Agriculture, adopting their threshold should allow producers to easily self-identify their need to register and report under this Program. Additionally, it is presumed that foreign aquaculture operations producing under this annual value threshold would be serving local markets and not be exporting product to the United States, thus they would not have shipments subject to the documentation requirements of SIMP. NMFS requests public comment to assist in the identification of alternative thresholds for registration and reporting under this Program that would exempt aquaculture facilities where all production for human consumption is intended for direct sale to consumers, as this level of small-scale commerce is not comparable to the scale of commerce monitored under the Seafood Traceability Program.

A producer who is required to register only needs one registration identifier. If the producer provides a valid and unique registration identifier for its aquaculture facility that is currently in use by another State or federal agency, NMFS may approve the use of that alternative identifier, provided that NMFS can independently verify the identity of the producer. NOAA seeks public comment on whether identifiers assigned under other programs, such as the Data Universal Numbering System (DUNs), the U.S. Food and Drug Administration's Registration of Food Facilities, or a similar State or federal facility registration, could be used for this purpose, and whether such an approach would reduce the burden of registration on industry.

In addition to the requirements in this proposed rule, for some species or products, permits from other federal or State agencies may be required (*e.g.,* U.S. Fish and Wildlife Service permits for products of species listed under the Convention for International Trade in Endangered Species). The Traceability Information Program for Seafood does not supersede any other federal or State requirements.

The electronic reporting system to be established by NMFS will consist of two parts. The first will be a publicly accessible registration page where producers (an aquaculture facility owner or operator) will provide basic information to identify their business:

- Business name, Tax Identification Number, physical address, and phone number
- Farm physical address (if different than business physical address)
- Point of contact name, mailing address, email and phone number

Once a producer identifier has been designated via the NMFS system, the producer can obtain login credentials to access the second part—a data entry portal that will require a unique login for each user. After logging into this site, the user will be able to report the required data elements as described in section III below, Data for Reporting and Recordkeeping.

II. Registration Renewal

Section 698.4(c) sets out a registration renewal requirement. As explained below, this rule requires that the producer, or representative acting on its behalf, submit reports to NMFS via an electronic reporting system at monthly intervals. If a producer has no reportable production events for an entire 12-month period, the producer must so certify through the electronic registration and reporting system established by NMFS in order to renew the producer's registration. Producers that have submitted monthly reports would need to certify that all applicable entries have been reported. Annually, all producers would need to confirm their identifying business information in order to renew their registration. Once the producer has submitted all required certifications, registration renewals would be automatic and at no additional cost to the producer. If the registration lapses, the producer would have to re-register and pay the cost-recovery fee.

III. Data for Reporting and Recordkeeping

The data reporting and recordkeeping requirements under this rule would be in addition to any reporting and recordkeeping required by States or other federal agencies. To align this proposed Program with the SIMP data reporting requirements, NMFS proposes, in § 698.5, that producers required to register under the Traceability Information Program for Seafood would be required to report information for each entry into U.S. commerce of fish or fish products regulated under the Traceability Information Program for Seafood that are intended for human consumption. As outlined in § 698.5(b), producers would submit reports through NMFS's electronic registration and reporting system and reports would include:

- Identifying the aquaculture facility producing the fish or fish products by providing a current, valid producer identifier.
- Information on the fish or fish products produced: 3-alpha Aquatic Sciences and Fisheries Information System (ASFIS) code; Product weight and form (whole, head removed, etc.) at point of production and at point of entry into U.S. commerce.
- Information on where and when the fish were produced: Location of aquaculture facility; Date of production (*i.e.,* removal from aquaculture facility).
- Name of entity(ies) (processor, dealer, retailer) to which fish was sold or delivered. For direct sales, the producer would need to report information under the first three bullets above. The producer would not need to report information about the consumer, just describe where the fish was sold (*e.g.,* on premises of the aquaculture facility, roadside stand, or farmer's

market). See proposed §§ 698.5(b) and 698.2 (defining ''direct sale'' and ''entry into U.S. commerce'').

NMFS proposes that at monthly intervals producers would be required to report information for each entry into U.S. commerce of fish or fish products intended for human consumption from the previous month. For example, a producer would be required to report each applicable entry occurring in the month of May on or before the last day of June. If no applicable entries occurred in a given month, no report to NMFS is required. However, if a producer has no reportable production events for an entire 12-month period, the producer must certify that through the electronic reporting system established by NMFS in order to renew its registration. See Registration Renewal section above.

In designing the reporting requirements for the Traceability Information Program for Seafood, NMFS reviewed the temporal span of harvests that contribute to an entry subject to SIMP requirements and found that the temporal span for most entries was a month or less. Thus, NMFS is proposing monthly reporting for the Traceability Information Program for Seafood which provides a similar reporting burden when compared to the SIMP and contributes to the objective of the rule. NMFS seeks comment on whether producers would have production to report every month and whether the monthly reporting frequency for domestic producers is, in fact, comparable to the temporal aggregation of harvests required under the SIMP.

Producers would also be required to keep supporting documentation for the reports that are sufficient to trace the fish or fish product from the point of production (*i.e.,* removal from the aquaculture facility) to entry into U.S. commerce as described in § 698.6(a). NMFS expects that typical supply chain records that are kept in the normal course of business, including production logs, and transaction records which include such information as the identity of the custodian, the type of processing, and the weight of the product, would provide sufficient information for NMFS to conduct a trace of the supply chain. Such information must include records regarding each custodian of the fish and fish product, including, as applicable, processors, storage facilities, and distributors, sufficient to trace the fish or fish product from the point of entry into U.S. commerce back to the point of production and to verify the information reported about entry into U.S. commerce. Section 698.6(a) establishes that producers would be required to retain reports and supporting documentation, in either paper or electronic format, for two years from the date of the reports. Producers must make reports and supporting documentation available for inspection by NMFS and must provide them to NMFS upon request to support an audit as stated in § 698.6(b)–(c)). NMFS requests comment on the duration of the recordkeeping requirement and the extent to which the two-year period is consistent with other State and Federal recordkeeping requirements applicable to the business operations of aquaculture facilities that would be subject to this program.

NMFS proposes to mirror the requirements of this Program such that its requirements are equivalent to those that apply to imports of shrimp and abalone under SIMP. Thus, production of shrimp and abalone species not intended for human consumption (*e.g.,* fish produced for research, grow out of post-larvae, broodstock, or environmental management programs) would not be within the scope of this proposed domestic Traceability Information Program for Seafood as stated in § 698.1(d), because SIMP is limited to imports of covered species for human consumption. In addition, any producer that enters shrimp and/or abalone valued at less than $1,000 total per year into U.S. commerce is exempt from the registration, reporting, and recordkeeping requirements of this Program as stated in § 698.4(c).

IV. Audit and Inspection Mechanisms

To implement this regulation, business rules will be programmed into the electronic registration and reporting system established by NMFS to automatically validate that the producer has populated all data fields in conformance with format specifications. Absent this validation, the report submission would be rejected and the producer would be notified of the deficiencies that must be addressed in order for the report to be accepted.

Reports may also be subject to random or targeted audit by NMFS, as provided in § 698.6(b), in order to verify that the supplied data elements are true, can be corroborated (*e.g.,* production was authorized by the applicable authority, processor receipts correspond to outputs/deliveries), and are sufficient to demonstrate that products entering U.S. commerce were not produced in violation of domestic law and are not fraudulently represented. If a producer fails to provide requested records to NMFS in a timely manner, or fails to provide information to verify that covered products were lawfully produced and accurately represented, the matter will be referred to NOAA Fisheries Office of Law Enforcement for possible follow-up action.

Intersection With Other Applicable Requirements

In addition to the registration, reporting, and recordkeeping requirements of this proposed rule, several States have specific regulations applicable to aquaculture operations, typically including requirements on permitting, certification, and registration. Table 1 contains information, by State, on existing regulations relevant to traceability. To the extent practicable, and subject to applicable data confidentiality laws, NMFS will work to minimize duplicative requirements. For example, proposed § 698.4(b) provides that NMFS may approve the use of an alternative producer identifier obtained through other Federal or State programs.

TABLE 1—EXISTING AQUACULTURE REGISTRATION AND REPORTING REQUIREMENTS

State	Citation	Summary of requirement
Alabama	Statute: Ala. Code section 9–2–150 (2015)	Oyster leases required.
California	Statute: California Fish & Game Code section 15400 (2006).	Aquaculture Registration is required for each facility devoted to the propagation, cultivation, maintenance, and harvesting of fish, shellfish and plants in marine, brackish, and fresh water.
Connecticut	Statutes: Conn. Gen. Stat. section 26–194 (2013); Conn. Gen. Stat. section 22–11i (2013).	Aquaculture-related permits are overseen by the Department of Agriculture, Bureau of Aquaculture and the Department of Energy and Environmental Protection. Permits are required.
Delaware	Statute: Del. Code tit. 3 section 4 (2013); Regulation: 7–3800 Del. Admin. Code (2014).	In addition to various permits needed dependent on species, all aquaculture operations must register with Delaware Department of Agriculture—valid for 5 years.
Northern Marianas Islands.	Statute: 2006 N. Mar. I. Public Law 15–43	Site permit in coastal waters only.

TABLE 1—EXISTING AQUACULTURE REGISTRATION AND REPORTING REQUIREMENTS—Continued

State	Citation	Summary of requirement
Florida	Statute: Fla. Stat. section 597.004 (2017)	Aquaculture registration is required with the Florida Department of Agriculture and Consumer Affairs, annually.
Georgia	Statute: Ga. Code Ann. section 27–4–255 (2017).	Aquaculture of some species requires permits and for other species, registration with the Georgia Department of Natural Resources.
Hawaii	Statute: Haw. Rev. Stat. section 187–3.5 (2012); Regulation: Haw. Code R. section 13–74–43 (1996).	Permit with record-keeping required for aquaculture, including fish ponds through the Hawaii Department of Land and Natural Resources.
Illinois	Regulation: Ill. Admin. Code tit. 17, pt. 870	Annual permit required, with a recordkeeping component and annual reporting to the Illinois Department of Natural Resources.
Indiana	Regulation: Aquaculture Permit, 312 Ind. Admin. Code 9–10–17 (2001).	A permit is needed from Indiana Department of Agriculture, which requires records retention and inspection of the facility at any time.
Iowa	Regulation: Iowa Admin. Code r. 571–89 (1992).	Annual License required through Iowa Department of Natural Resources, which includes an annual reporting requirement.
Louisiana	Regulation: La. Admin. Code tit. 76, section 901–907.	Permit applications currently available for Catfish, Tilapia and Oysters. Other species must enter a separate approval process for permitting through the Louisiana Department of Fish and Wildlife.
Maine	Statutes: Me. Rev. Stat. Ann. tit. 12, section 6072 (2017); Me. Rev. Stat. Ann. tit. 7 section 1501 (2017); Regulation: 13 188 Me. Code R. 2 (2018).	Coastal aquaculture through 20 year leases from the Maine Department of Marine Resources with annual rent and record-keeping requirements. Land-based aquaculture is licensed through the Department of Agriculture, Conservation & Forestry.
Maryland	Regulation: Md. Code Regs. 08.02.14 (2016)	Must be permitted before operating a facility through the Maryland Department of Natural Resources.
Massachusetts	Statute: Mass. Gen. Laws ch. 130, section 80; Regulation: 322 Mass. Code Regs. 7.01–02 (2017); Guidance: Dept. of Food & Agriculture, *Mass. Aquaculture Permits Guidance Doc.* (April 1, 1998).	Facilities must be permitted and the permit has a record keeping component and requires a State Inspection prior to permitting. Both the Department of Environmental Protection and the Division of Fisheries and Wildlife are involved in permitting.
Michigan	Statute: Mich. Comp. Laws section 286.871–884 (1996).	Aquaculture facilities must be registered annually with the Michigan Department of Agriculture and Rural Development and are limited to approve species. Operations may be inspected by State Officials at any time.
Mississippi	Statute: Miss. Code Ann. section 79–22–13 (2013).	Some types of aquaculture require a permit from the Mississippi Department of Agriculture and Commerce. A requirement of the permit is record-keeping.
Nevada	Statutes: Nev. Rev. Stat. section 561.301; Nev. Rev. Stat. section 576.128.	Aquaculture registration (same as farm registration) is annual with the Nevada Department of Agriculture.
New Hampshire	Statute: N.H. Rev. Stat. Ann. section 211: 62–e (2016).	Aquaculture must be permitted through the New Hampshire Department of Fish and Game.
New Jersey	Statute: N.J. Rev. Stat. section 4:27 (1997)	Aquaculture permit is required along with a license for operations through both the Department of Environmental Protection and the Department of Agriculture.
New York	Regulation: N.Y. Comp. Codes R. & Regs. tit. 6, section 48 (2018).	The New York Department of Environmental Conservation issues annual permits that require record-keeping.
North Carolina	Statutes: N.C. Gen. Stat. section 63–106; N.C. Gen. Stat. section 16A–113 (2017).	The North Carolina Department of Agriculture and Consumer Services administers permits for allowable freshwater species. North Carolina Division of Marine Fisheries authorizes marine aquaculture leases with annual fees.
Ohio	Regulation: Ohio Adm. Code 1501:31–39–01	Annual Permit from the Ohio Division of Wildlife is required along with a recordkeeping requirement.
Oregon	Statutes: Or. Rev. Stat. Ann. section 215.213 (2018); Or. Rev. Stat. Ann. section 622.270.	Annual permit for shellfish required through the Oregon Department of Agriculture with record-keeping and an annual report submission.
Rhode Island	Statute: 20 R.I. Gen. Laws section 20–10 (2013); Regulation: 250 R.I. Code R. section 40–00–1 (2017).	Permit through the Coastal Resources Management Council is required, and automatically renewed annually. Other permits may also be required.
South Carolina	Statute: S.C. Code Ann. section 50–18–2 (2003).	Permit required for freshwater game fish aquaculture through the South Carolina Department of Natural Resources, with a record keeping requirement. Annual permits also required for shellfish.
Texas	Statute: Tex. Agriculture Code sections 134.011–134.023 (1999).	A Texas Department of Agriculture license. Texas Natural Resource Conservation Commission permit to dispose of wastewater. The license is valid for two years and is renewable.
Washington	Statutes: Wash. Aadmin. Code section 220–370–060 (2017); Wash. Admin. Code section 220–370–090 (2017).	In addition to various permits for different types of aquaculture, all aquatic farms must register with the Washington Department of Fish and Wildlife. Finfish farms must also keep records.

State and federal regulations applicable to aquaculture operations are not affected by this rule, thus proposed § 698.3 provides that the registration, reporting and recordkeeping requirements under the Traceability Information Program for Seafood do not supersede any requirements established under any other federal or State law.

NOAA seeks public comment on Table 1, including information on additional, existing registration and reporting requirements and mechanisms that might assign unique, alternate producer identifiers referenced in § 698.4(b) that could be recognized by NMFS for purposes of the Traceability Information Program for Seafood.

Stakeholder Engagement

NMFS will hold public meetings to discuss implementation of the Traceability Information Program for Seafood and address questions from participants. Information on future Program implementation meetings and transcripts of prior meetings and webinars can be found at *https://www.fisheries.noaa.gov/about/office-international-affairs-seafood-inspection.*

NMFS encourages stakeholders who may be affected by this rule, if implemented as proposed, to participate in the public meetings and to submit written comments (*see* **ADDRESSES**). In particular, NMFS seeks comment on:

The assumption that the proposed recordkeeping incurs a marginal cost given the background of Food and Drug Administration recordkeeping requirements and that the proposed NMFS online reporting system will minimize the reporting burden;

the assumption that the $1000 annual value threshold as a *de minimis* level for exemption from the Program is, in fact, comparable to the minimum size of farms contributing to imports of these species under the SIMP;

the assumption that the registration/reporting system, if operated at cost of $30 per registrant, is not a significant business cost and, if the cost varies depending on final system costs and number of users, what threshold fee would constitute a significant cost;

whether the proposed recordkeeping period of 2 years is inconsistent with other State or federal requirements applicable to businesses affected by the Program; and,

whether the Program overlaps with State recordkeeping and reporting programs, especially for abalone producers in California and Hawaii.

Classification

This proposed rule is published under the authority of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2018, Public Law 115–141, and the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

The NMFS Assistant Administrator has determined that this proposed action is consistent with the provisions of these and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be significant for the purposes of Executive Order 12866. NMFS has prepared a regulatory impact review of this action, which is available from NMFS (*see* **ADDRESSES**).

Regulatory Flexibility Act

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for this proposed rule, as required by section 603 of the RFA, 5 U.S.C. 603. The IRFA describes the economic impact that this proposed rule, if implemented, would have on small entities. A description of the proposed rule, why it is being considered, and the objectives of, and legal basis for this proposed rule are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the NMFS (*see* **ADDRESSES**). A summary of the IRFA follows.

For U.S. commercial aquaculture producers of shrimp and abalone for human consumption, this proposed rule would create a mandatory registration, reporting and recordkeeping program. NMFS anticipates that U.S. entities will not have any significant adverse economic effects as a result of this action, because it does not pose any significant new burdens with regard to existing reporting and recordkeeping requirements or business practices. NMFS believes the recordkeeping and reporting costs are accounted for in earlier U.S. Food and Drug Administration (FDA) regulatory actions, which contain more extensive recordkeeping requirements. See FDA Public Health Security and Bioterrorism Preparedness and Response Act (Bioterrorism Act) final rule, Table 23, 69 FR 71562 at 71646 and Table 26 at 71650 (Dec. 9, 2004); Food Safety Modernization Act regulations (21 CFR 1.361); and Seafood Hazard Analysis and Critical Control Point (HACCP) regulations (21 CFR part 123). NMFS seeks comment on whether there could be economic impacts that have not been evaluated in the supporting analyses of this proposed rule, or that could be difficult to anticipate.

NMFS proposes this action to comply with the 2018 Appropriations Act and to collect or have access to additional data on domestic aquaculture shrimp and abalone products to determine whether they have been lawfully produced and are accurately represented, to deter illegally-produced or misrepresented seafood from entering into U.S. commerce, and as a domestic counterpart to the shrimp and abalone species import requirements under the Seafood Import Monitoring Program. These data reporting and recordkeeping requirements affect producers of aquacultured shrimp and abalone products, many of which are small businesses that commercially produce for entry into U.S. commerce products valued at $1,000 or more per year. The registration, electronic reporting and recordkeeping requirements proposed by this rulemaking would build on current business practices (*e.g.,* information systems to document business transactions, facilitate product recalls, maintain product quality, or reduce risks of food borne illnesses) and are not estimated to pose significant adverse or long-term economic impacts on small entities.

The proposed rule, if implemented, will directly affect entities engaged in aquaculture of shrimp and abalone within the scope of the Traceability Information Program for Seafood. The Small Business Administration has established size criteria for all major industry sectors in the United States including aquaculture operations. A business involved in aquaculture 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 $0.75 million North American Industry Classification System (NAICS) code 112512 Shellfish Farming, 112519 Other Aquaculture, and 112511 finfish farming and fish hatcheries) for all its affiliated operations worldwide.

Based on the United States Department of Agriculture Census of Agriculture, Census of Aquaculture 2013 and the Bureau of Labor and Statistics' 2017 mean hourly wage for bookkeeping, NMFS has estimated that this rule would potentially affect 66 producers, requiring each to make a maximum of 12 reports annually ($19.76/hour at 0.5 hours per report) to NMFS on production of the species subject to the Traceability Information Program for Seafood. Total maximum costs for registration and renewal, data entry, recordkeeping and data storage per registrant are estimated by NMFS to amount to $150.21 (includes $30.00 registration fee and registration labor cost) in the first year, and $118.56 annually thereafter.

This rule has been developed to avoid duplication or conflict with any other federal rules. To the extent that the requirements of the rule overlap with other reporting requirements applicable to the designated species, this has been taken into account to avoid collecting data more than once. Given the fact that traceability systems are being increasingly used within the seafood industry, it is not expected that this rule will significantly affect the overall volume of trade or alter trade flows in the U.S. market for fish and fish products that are legally produced and accurately represented.

Based on limited financial information available to NMFS about the affected entities, NMFS believes that most affected producers of shrimp are small entities as defined by the Regulatory Flexibility Act (RFA); that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than $0.75 million. NMFS believes there are a few producers of abalone that would be considered large entities. While there are a few large entities, the one-time registration fee and cost of reporting are low (maximum annual cost of $150.21). Therefore, NMFS has determined that this proposed rule would affect a substantial number of small entities; however, the issue of disproportionate effects on small versus large entities does not arise in the present case.

With regard to the possible economic effects of this action, NMFS believes that small entities will not be significantly adversely affected by this action because it does not directly restrict production or trade in the designated species and does not pose entirely new burdens with regard to the collection and submission of information necessary to comply with the monitoring program. While this rule

would establish new reporting requirements, it will not require any additional professional skill. Some of the data proposed to be collected at entry into U.S. commerce or to be subject to recordkeeping requirements is already collected by the seafood industry in order to comply with food safety and product labeling requirements or to document business transactions.

NMFS considered two regulatory action alternatives in this rulemaking as well as a no-action alternative: NMFS considered requiring registration for all shrimp and abalone aquaculture producers, including those who sell under $1,000 per year of these species, but determined that producers of such small amounts of shrimp and abalone can be exempted from the Program without impacting its overall integrity. Also, there is no verifiable data on firms under the $1,000 threshold. The $1,000 threshold was chosen because it matches the U.S. Department of Agriculture minimum sales threshold for reporting under the Census of Agriculture. NMFS also considered requiring reporting of all shrimp and abalone production regardless of its intended use, but determined this was not necessary as the selection of certain Harmonized Tariff Schedule codes for inclusion under SIMP limits the scope of SIMP to just those seafood products intended for human consumption and excludes products not intended for human consumption. Recognizing that $1,000 in sales per year may result in the inclusion of facilities not selling meaningful quantities of shrimp and abalone into U.S. commerce, NMFS may finalize a higher threshold. NMFS seeks comment on a threshold that both satisfies the requirements of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2018, while also minimizing burden on the smallest producers.

In light of the information on total annual compliance cost described above, NMFS believes the rule, if implemented will not reduce profits for a substantial number of small entities. Therefore, NMFS believes the proposed rule will not have a significant economic impact on a substantial number of small entities, however, we seek public comment on this analysis. NMFS prepared an Initial Regulatory Flexibility Analysis to describe the economic impact this proposed rule would have on small entities. A copy of this analysis is available from NMFS (*see* **ADDRESSES**). NMFS requests comments, particularly focused on the costs of compliance with the proposed reporting and recordkeeping requirements.

Paperwork Reduction Act

This proposed rule contains a new collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. The information collection burden for the requirements proposed under this rule (*i.e.,* registration or renewal; monthly reports; recordkeeping and data storage; and provision of records of supply chain information when selected for audit) as applicable to production of shrimp and abalone species is estimated by NMFS to be 0.5 hour. Compliance costs are estimated to total a maximum of $1,980.00 ($30.00 × 66) for the registration fees, no more than $7,824.96 ($118.56 × 66) for data entry, and $0 for data storage as these records are already required for tax and business purposes.

Registration Requirement: With the requirement to register as a producer under this program, there would be approximately 66 respondents who would need approximately 5 minutes to fill out the online registration form resulting in a total annual burden of 5.5 hours and a cost of $108.68.

Data Submission Requirement: Data to be submitted electronically are, to some extent, either already collected by the trade in the course of supply chain management, already required to be collected and available for inspection under existing federal programs (*e.g.,* Bioterrorism Act; Food, Drug and Cosmetic Act), or may be collected in support of third party certification schemes voluntarily adopted by the trade.

Public comment is sought regarding: Whether this 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 appropriateness of monthly reporting for achieving stated objectives; the accuracy of the assumptions used in calculating the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the NOAA Fisheries Office of International Affairs and Seafood Inspection at the **ADDRESSES** above, and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 698

Fisheries, Statistics, Aquaculture, Reporting and recordkeeping.

Dated: October 4, 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 698 is proposed to be added to read as follows:

PART 698—TRACEABILITY INFORMATION PROGRAM FOR SEAFOOD

Sec.

698.1 Purpose and scope.
698.2 Definitions.
698.3 Relation to other Federal and state laws.
698.4 Aquaculture facility registration.
698.5 Reporting.
698.6 Recordkeeping and audits.
698.7 Confidentiality and disclosure.
698.8 Prohibitions.

Authority: Pub. L. 115–141, Div. B, section 539; 16 U.S.C. 1801 *et seq.*

§ 698.1 Purpose and scope.

(a) This part implements a Traceability Information Program for Seafood from the point of production to entry into U.S. commerce pursuant to the Commerce, Justice, Science and Related Agencies Appropriations Act, 2018, section 539 (Pub. L. 115–141, Div. B) and the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

(b) This Program establishes registration, reporting and recordkeeping requirements for U.S. inland, coastal, and marine aquaculture facilities that produce shrimp and abalone and complements the Seafood Traceability Program established in § 300.324 of this title.

(c) The scope of the Program is limited to U.S. commercial aquaculture facilities that produce shrimp and abalone for human consumption for entry into U.S. commerce.

(d) Production of fish and fish products regulated under this part not intended for human consumption, including production intended for research, broodstock, or post-larval grow out, is outside the scope of the Program.

§ 698.2 Definitions.

In addition to the terms defined in § 600.10 of this title, and in the MSA, the following definitions apply to this part. If a term is defined differently in § 600.10, or in the MSA, the definition in this section shall apply.

Aquaculture facility means any farm with ponds, tanks or pools in open air or in an enclosed structure, or a net pen or enclosure in open water that produces for human consumption fish or fish products regulated under this part.

Direct sale means the sale or offer for sale of fish or fish products regulated under this part from an aquaculture facility, whether on or off the premises of the facility, to an individual for personal use.

Entry into U.S. commerce means direct sale or the sale or transfer of custody of fish or fish products regulated under this part to a first receiver, either directly or through a third party. Entry into U.S. commerce includes changes in custody with no change in ownership, *e.g.,* the receiving or acquiring of fish or fish products from an aquaculture facility by a processor or distributor that is owned by the same person who owns the aquaculture facility.

First receiver means the person who first receives fish produced from an aquaculture facility for any commercial purpose (*e.g.,* processing, distribution or sale) other than a direct sale. The first receiver may be a person affiliated with the aquaculture facility that receives fish or fish products regulated under this part through a no–sale transaction but does not include a person taking possession of fish for the sole purpose of transportation.

Fish or fish products regulated under this part means shrimp and abalone species produced by an aquaculture facility and products containing those species.

Person has the same meaning as under section 3 of the MSA, 16 U.S.C. 1802.

Producer means the owner or operator of an aquaculture facility.

Produce/Production means remove/removal of fish from an aquaculture facility for the purposes of entry into U.S. commerce.

Traceability Information Program for Seafood means the registration, data reporting and recordkeeping requirements established under this part.

§ 698.3 Relation to other Federal and state laws.

Registration, reporting and recordkeeping requirements under the Traceability Information Program for Seafood do not supersede any requirements established under any other federal or State law.

§ 698.4 Aquaculture facility registration.

(a) The producer of fish or fish products regulated under this part must register the aquaculture facility through the NMFS Traceability Information Program for Seafood electronic registration and reporting system. Such registration is valid for a period of one year and must be renewed annually. The electronic registration and reporting system will assign a unique producer identifier. Producers must notify NMFS within 30 days of any change in their information submitted to or used in the electronic registration and reporting system (*e.g.,* business name, addresses or contact information; if such changes are not reported to NMFS within 30 days, the registration is invalid as of the 30th day after such change.

(b) *Alternative Producer Identifier.* NMFS may approve the use of an alternative producer identifier obtained through another Federal or State program.

(c) *Registration Renewal.* Annually, all producers must confirm their identifying business information in order to renew their registration. Producers that have submitted monthly reports under § 698.5 must certify that all applicable entries have been reported. Producers that have had no reportable production events for an entire 12-month period must so certify through the electronic registration and reporting system. If registration lapses, the producer must re-register.

(d) *De Minimis Exemption.* Any producer that produces for entry into U.S. commerce fish or fish products regulated under this part valued at less than $1,000 per year is exempt from the registration requirement of this section.

§ 698.5 Reporting.

A producer that is required to be registered under § 698.4 must report information regarding all entries into U.S. commerce of fish or fish products regulated under this part.

(a) *Frequency.* The producer must submit monthly reports through the NMFS electronic registration and reporting system, including all entries into U.S. commerce of fish or fish products regulated under this part that occurred during that calendar month. The report for a monthly period is due on or before the last day of the next calendar month. Producers are not required to submit reports for any month in which there were no entries into U.S. commerce.

(b) *Content.* Reports must contain the details of each entry into U.S. commerce, including producer identifier, the species (3-alpha Aquatic Sciences and Fisheries Information System (ASFIS) code), the date of production, date of entry into U.S. commerce, the production volume, the unit of measure, the product form and weight at entry into U.S. commerce, and business name, address and email and/or phone number for the first receiver. For direct sales, the report need not contain the name, address and email and/or phone number of the individual who purchased the fish or fish products for personal use.

§ 698.6 Recordkeeping and audits.

(a) Recordkeeping. The producer must maintain a paper or electronic copy of any report required under § 698.5 and supporting documentation for the report sufficient to trace the fish or fish product from point of production to entry into U.S. commerce. Records may include widely used commercial documents (*e.g.,* records related to production, sale, processing, shipment, cold storage, and distribution). The supporting documentation must include records regarding each custodian of the fish and fish product, *e.g.,* including processors, storage facilities, and distributors, sufficient to trace the fish or fish product from the point of entry into U.S. commerce back to the point of production and to verify the information reported about entry into U.S. commerce. The producer must retain such reports and supporting documentation in electronic or paper format for a period of two years from the date of the report.

(b) *Audit.* Reports and supporting documentation described under paragraph (a) of this section may be selected for audit in order to verify the information submitted in the reports. To support such audits, the producer must, upon request, make such reports and supporting documentation available for inspection by NMFS or otherwise provide them as requested by NMFS.

(c) *Inspection.* The producer must make all reports and records required under paragraph (a) of this section available for inspection by an authorized officer upon request.

§ 698.7 Confidentiality and disclosure.

All information and records required to be submitted under this part shall be subject to the Magnuson-Stevens Act confidentiality provisions and shall not be disclosed except as provided under section 402(b)(1) of the Magnuson-Stevens Act and part 600, subpart E of this title.

§ 698.8 Prohibitions.

In addition to the general prohibitions listed at § 600.725 of this title, it is unlawful for any person to do any of the following:

(a) Violate any of the registration, reporting or recordkeeping provisions of this part.

(b) Sell, offer for sale, or attempt to sell or offer for sale, fish or fish products regulated under this part that were produced by an aquaculture facility that has failed to register as required under § 698.4.

(c) Dispose of fish or fish products regulated under this part, or any reports or supporting documentation required to be retained under § 698.6(a), after any communication from an authorized officer that the aquaculture facility, or such reports or supporting documentation, are to be inspected.

(d) Make any false statement, oral or written, to an authorized officer concerning the production, purchase, sale, offer for sale, receipt, acquisition, possession, transport or transfer of any fish or fish products regulated under this part, or any attempt to do any of the above.

(e) Provide false, incomplete or inaccurate information in the registration required under § 698.4 or reports required under § 698.5 or falsify any reports or supporting documentation required to be retained under § 698.6.

(f) Fail to make reports or supporting documentation available for inspection, as required under § 698.6(c).

(g) Fail to make available, or otherwise produce, reports and supporting documentation to support an audit, as required under § 698.6(b).

[FR Doc. 2018–22039 Filed 10–10–18; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 83, No. 197

Thursday, October 11, 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.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Tennessee Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Tennessee Advisory Committee will hold meetings on Wednesday, November 7, 2018, and Wednesday, December 5, 2018, at 12:30 p.m. EST. The purpose of the meetings is to prepare the panelist list and logistics for a public meeting to hear testimony on legal financial obligations and civil rights issues.

DATES: The meetings will be held on Wednesday, November 7, 2018 at 12:30 p.m. EST, and Wednesday, December 5, 2018, at 12:30 p.m. EST.

Public Call Information: The meeting will be by teleconference. On Wednesday, November 7, 2018, the toll-free call-in number: 877–260–1479, conference ID: 9226907. On Wednesday, December 5, 2018, the toll-free call-in number: 877–260–1479, conference ID: 4321056.

FOR ADDITIONAL INFORMATION CONTACT: Jeff Hinton, DFO, at *jhinton@usccr.gov.*

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number conference id numbers listed. Any interested member of the public may call this number and listen to the meetings. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Written comments may be mailed to the Regional Program Unit Office, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324 or may be emailed to Jeff Hinton at *jhinton@usccr.gov.* Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Tennessee Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Southern Regional Office at the above email or street address.

Agenda

Welcome and Call to Order
  Diane DiIanni, Tennessee SAC Chairman
  Jeff Hinton, Regional Director
Regional Update—Jeff Hinton
New Business: Diane DiIanni, Tennessee SAC Chairman/Staff/Advisory Committee
  Continuation: Preparation for public hearing (LFO).
Public Participation
Adjournment

Dated: October 4, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–22068 Filed 10–10–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–954]

Certain Magnesia Carbon Bricks From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines to rescind this administrative review, as there is no evidence of any reviewable entries, shipments, or sales of certain magnesia carbon bricks (magnesia carbon bricks) from the People's Republic of China (China) to the United States during the September 1, 2016, through August 31, 2017, period of review (POR) by the companies subject to this review. Interested parties are invited to comment on these preliminary results.

DATES: Applicable October 11, 2018.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202.482.0413.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 2017, Commerce published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on magnesia carbon bricks for five producers/exporters for the POR.[1] Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through January 22, 2018.[2] As a result, all deadlines in this segment of the proceeding have been extended by three days.

Scope of the Order

The scope of the order includes certain chemically-bonded magnesia carbon bricks from China. A full description of the scope of the order is contained in the Preliminary Decision Memorandum, which is hereby adopted by this notice.[3]

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(B) of the Tariff

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 52268 (November 13, 2017) (*Initiation Notice*). The companies subject to this review are Fedmet Resources Corporation; Fengchi Imp. and Exp. Co., Ltd. of Haicheng City, Fengchi Mining Co., Ltd. of Haicheng City; Fengchi Refractories Co., of Haicheng City; and RHI Refractories Liaoning Co., Ltd.

[2] *See* Memorandum, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated January 23, 2018.

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Certain Magnesia Carbon Bricks from the People's Republic of China; 2016–2017,'' (dated concurrently with this notice) (Preliminary Determination Memorandum).

Act of 1930, as amended (the Act). The Preliminary Decision Memorandum contains a full description of the methodology underlying our conclusions and is a public document on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn.* The signed Preliminary Decision Memorandum and the election version of this memorandum are identical in content.

Preliminary Intent To Rescind the Administrative Review

Based on information submitted after the initiation of this administrative review, and due to the fact that we have not received any information from U.S. Customs and Border Protection (CBP) indicating that the companies subject to this review had reviewable entries of subject merchandise to the United States during the POR, Commerce preliminarily determines that the record evidence indicates that no company subject to this review had reviewable entries during the POR.[4] Should evidence arise that leads us to conclude that the companies subject to this review had reviewable entries of subject merchandise to the United States during the POR, we will revisit this issue in the final results of this administrative review. Absent any evidence of POR entries of subject merchandise being placed on the record, pursuant to 19 CFR 351.213(d)(3), we intend to rescind the administrative review of these companies in the final results.

Public Comment

Case briefs must be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) at a date to be determined by Commerce, and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for the submission for case briefs.[5] Commerce will notify interested parties when it has determined a deadline for case briefs *via* ACCESS. Parties who submit case or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[6]

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, U.S. Department of Commerce, filed electronically through ACCESS, within 30 days after the publication of this notice. Hearing requests should contain the party's name, address, telephone number, the number of participants, and a list of the issues parties intend to present at the hearing. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time to be determined. Prior to the hearing, Commerce will contact all parties who submitted case or rebuttal briefs to determine if they wish to participate in the hearing. Commerce will then distribute a hearing schedule to these parties prior to the hearing, and only those parties listed on the hearing schedule may present issues raised in their briefs.

All submissions, with limited exceptions, must be filed electronically using ACCESS.[7] An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, on the due dates established above (or, where applicable, to be established by Commerce at a later date). Documents excepted from the electronic submission requirements must be filed manually, (*i.e.,* in paper form) with the APO/Dockets Unit in Room 18022 and stamped with the date and time of receipt by on the due date.[8]

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of the publication of these preliminary results or review, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

We intend to issue appropriate assessment instructions to CBP 15 days after the publication of the final rescission (or, should we find that the companies subject to this review had reviewable entries of subject merchandise to the United States during the POR, the final results) of this administrative review.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: October 3, 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 I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Preliminary Determination of No Shipments
V. Public Comment
VI. Recommendation

[FR Doc. 2018–22130 Filed 10–10–18; 8:45 am]

BILLING CODE 3510–DS–P

[4] *Id.*

[5] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

[6] *See* 19 CFR 351.309(c)(2) and 351.309(d)(2).

[7] *See* 19 CFR 351.303.

[8] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–823]

Laminated Woven Sacks From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that laminated woven sacks (LWS) from the Socialist Republic of Vietnam (Vietnam) are being, or are likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation (POI) July 1, 2017, through December 31, 2017. Interested parties are invited to comment on this preliminary determination.

DATES: *Applicable:* October 11, 2018.

FOR FURTHER INFORMATION CONTACT: Drew Jackson or Celeste Chen, 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) 482–4406 or (202) 482–0890, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation

on April 3, 2018.[1] On July 31, 2018, Commerce postponed the preliminary determination of this investigation and the revised deadline is now October 3, 2018.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are LWS from Vietnam. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice,* as well as additional language proposed by Commerce. For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Because Vietnam is a non-market economy country, within the meaning of section 771(18) of the Act, Commerce has calculated normal value (NV) in accordance with section 773(c) of the Act. Furthermore, Commerce preliminarily has denied a separate rate to mandatory respondent Xinsheng Plastic Industry Co., Ltd., which failed to respondent to certain supplemental questionnaires. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,*[7] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[8]

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Duong Vinh Hoa Packaging Company Limited	Duong Vinh Hoa Packaging Company Limited	161.16	158.43
C.P. Packaging (Vietnam) Industry Co., Ltd	C.P. Packaging (Vietnam) Industry Co., Ltd	161.16	156.19
Tan Dai Hung d.b.a. Tan Dai Hung Joint Stock Co. and Tan Dai Hung Plastic Joint Stock Company.	Tan Dai Hung d.b.a. Tan Dai Hung Joint Stock Co. and Tan Dai Hung Plastic Joint Stock Company.	161.16	156.19
TKMB Joint Stock Company	TKMB Joint Stock Company	161.16	156.19
Trung Dong Corporation	Trung Dong Corporation	161.16	156.19
Vietnam-wide entity[9]		292.61	289.88

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted average amount by which normal value exceeds U.S. price, as indicated in the table above as follows: (1) For the producer/exporter combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of Vietnam producers/exporters of merchandise under consideration that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the Vietnam-wide entity; and (3) for all third-county exporters of merchandise under consideration not listed in the table

[1] *See Laminated Woven Sacks from the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigation,* 83 FR 14257 (April 3, 2018) (*Initiation Notice*).

[2] *See Laminated Woven Sacks from the Socialist Republic of Vietnam: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation,* 83 FR 36876 (July 31, 2018).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Laminated Woven Sacks from the Socialist Republic of Vietnam,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Laminated Woven Sacks from the Socialist Republic of Vietnam: Scope Comments Decision Memorandum for the Preliminary Determination'' (Preliminary Scope Decision Memorandum), dated concurrently with this preliminary determination.

[7] *See Initiation Notice.*

[8] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

[9] The Vietnam-wide entity includes Xinsheng Plastic Industry Co., Ltd.

above, the cash deposit rate is the cash deposit rate applicable to the Vietnam producer/exporter combination (or the Vietnam-wide entity) that supplied that third-country exporter.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion CVD proceeding when CVD provisional measures are in effect. Accordingly, where Commerce has made a preliminary affirmative determination for domestic subsidy pass-through or export subsidies, Commerce has offset the calculated estimated weighted-average dumping margin by the appropriate rate(s). Any such adjusted rates may be found in the Preliminary Determination Section's table of estimated weighted-average dumping margins above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting cash deposits at a rate equal to the estimated weighted-average dumping margins calculated in this preliminary determination unadjusted for the passed-through domestic subsidies or for export subsidies at the time the CVD provisional measures expire.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last final verification report is issued in this investigation, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 3, 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 I—Scope of the Investigation

The merchandise covered by this investigation is laminated woven sacks. Laminated woven sacks are bags consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (BOPP), polyester (PET), polyethylene (PE), nylon, or any film suitable for printing, or to an exterior ply of paper; printed; displaying, containing, or comprising three or more visible colors (*e.g.,* laminated woven sacks printed with three different shades of blue would be covered by the scope), not including the color of the woven fabric; regardless of the type of printing process used; with or without lining; with or without handles; with or without special closing features (including, but not limited to, closures that are sewn, glued, easy-open (*e.g.,* tape or thread), re-closable (*e.g.,* slider, hook and loop, zipper), hot-welded, adhesive-welded, or press-to-close); whether finished or unfinished (*e.g.,* whether or not closed on one end and whether or not in roll form, including, but not limited to, sheets, lay-flat, or formed in tubes); not exceeding one kilogram in actual weight. Laminated woven sacks produced in the Socialist Republic of Vietnam are subject to the scope regardless of the country of origin of the fabric used to make the sack.

The scope of this investigation excludes laminated woven sacks having each of the following physical characteristics: (1) No side greater than 24 inches, (2) weight less than 100 grams, (3) an open top that is neither sealable nor closable, the rim of which is hemmed or sewn around the entire circumference, (4) carry handles sewn on the open end, (5) side gussets, and (6) either a bottom gusset or a square or rectangular bottom. The excluded items with the above-mentioned physical characteristics may be referred to as reusable shopping bags.

Subject laminated woven sacks are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 6305.33.0040 and 6305.33.0080. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including, but not limited to, sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings, including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500. If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500,4601.99.9000, and 4602.90.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

[10] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

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[FR Doc. 2018–22126 Filed 10–10–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: 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 Weihai Zhongwei Rubber Co., Ltd. (Zhongwei), an exporter of certain new pneumatic off-the-road tires (OTR tires) from the People's Republic of China (China), sold merchandise in the United States at prices below normal value (NV) during the period of review (POR) September 1, 2016, through August 31, 2017. We invite interested parties to comment on these preliminary results.

DATES: Applicable: October 11, 2018.

FOR FURTHER INFORMATION CONTACT: Keith Haynes, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone: (202) 482–5139.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2017, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on OTR tires from China for the period of September 1, 2016, through August 31, 2017.[1] On November 17, 2017, Commerce initiated a review of three exporters of subject merchandise.[2] On March 16, 2018, Commerce rescinded the review with respect to two exporters upon which the review was initiated.[3] On January 23, 2018, Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018.[4] On June 4, 2018, Commerce fully extended the deadline for issuing the preliminary results to October 3, 2018.[5]

Scope of the Order

The merchandise covered by this order includes new pneumatic tires designed for off-the-road and off-highway use, subject to certain exceptions. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the order is dispositive. For a complete description of the scope of the order, see the Preliminary Decision Memorandum.[6]

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 82 FR 41595 (September 1, 2017).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Review*, 82 FR 52268 (November 13, 2017) (Initiation Notice).

[3] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Notice of Partial Rescission of the Antidumping Duty Administrative Review;* 2016 2017, 83 FR 11682 (March 16, 2018).

[4] *See* memorandum, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

[5] *See* memorandum, ''New Pneumatic Off-The-Road Tires from the People's Republic of China: Extension of Deadline for Preliminary Results of the 2016–2017 Antidumping Duty Administrative Review,'' dated June 4, 2018.

[6] *See* memorandum, ''Decision Memorandum for Preliminary Results of the Antidumping Duty Administrative Review: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China; 2016–2017,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) and 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act). Export prices have been calculated in accordance with section 772(a) of the Act. Because China is a non-market economy within the meaning of section 771(18) of the Act, NV has been calculated in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*, and 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/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

Commerce preliminarily determines that information placed on the record by the sole respondent, Zhongwei, indicates that it is eligible to receive a separate rate and has made sales in the United States during the POR at prices below NV. For additional information, *see* the Preliminary Decision Memorandum. Commerce preliminarily determines that the following weighted-average dumping margin exists for the period September 1, 2016, through August 31, 2017:

Exporter	Weighted-average dumping margin (percent)
Weihai Zhongwei Rubber Co., Ltd	0.79

Disclosure and Public Comment

Commerce intends to disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs within 30 days after the date of publication of these preliminary results

of review in the **Federal Register**.[7] Rebuttals to case briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the time limit for filing case briefs.[8] Parties who submit arguments are requested to submit with the argument (a) a statement of the issue, (b) a brief summary of the argument, and (c) a table of authorities.[9] Parties submitting briefs should do so pursuant to Commerce's electronic filing system, ACCESS.[10]

Any interested party may request a hearing within 30 days of publication of this notice.[11] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[12]

Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[13] Commerce intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

For Zhongwei, Commerce will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of sales, in accordance with 19 CFR 351.212(b)(1). For customers or importers of Zhongwei for which we do not have entered values, we calculated importer- (or customer-) specific antidumping duty assessment amounts based on the ratio of the total amount of dumping duties calculated for the examined sales of subject merchandise to the total sales quantity of those same sales.[14] For customers or importers of Zhongwei for which we received entered-value information, we have calculated importer- (or customer-) specific antidumping duty assessment rates based on importer- (or customer-) specific *ad valorem* rates.[15] Where an importer-or (customer-) specific *ad valorem* rate is greater than *de minimis*, Commerce will instruct CBP to collect the appropriate duties at the time of liquidation.[16]

For entries that were not reported in the U.S. sales database submitted by an exporter individually examined during this review, Commerce will instruct CBP to liquidate such entries at the China-wide rate. Additionally, if Commerce determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number will be liquidated at the China-wide rate.[17]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For the companies listed above that have a separate rate (*i.e.* , Zhongwei), the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, then a cash deposit of zero will be required); (2) for previously investigated or reviewed China and non-China exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all China exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity (*i.e.*, 105.31 percent);[18] and (4) for all non-China exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the China exporter that supplied that non-China exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: October 3, 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 I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of Methodology
  A. Non-Market Economy Country
  B. Surrogate Country and Surrogate Value Data
  C. Surrogate Country
  D. Separate Rates
  E. Date of Sale
  F. Comparisons to Normal Value
  G. Export Price
  H. Value-Added Tax
  I. Norma Value
  J. Factor Valuations
  K. Currency Conversion
V. Adjustment Under Section 777A(f) of the Act
VI. Recommendation

[FR Doc. 2018–22127 Filed 10–10–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–817]

Oil Country Tubular Goods From the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

[7] *See* 19 CFR 351.309(c)(1)(ii).

[8] *See* 19 CFR 351.309(d)(1)–(2).

[9] *See* 19 CFR 351.309(c)(2), (d)(2).

[10] *See* 19 CFR 351.303 (for general filing requirements).

[11] *See* 19 CFR 351.310(c).

[12] *See* 19 CFR 351.310(d).

[13] See 19 CFR 351.212(b).

[14] *See* 19 CFR 351.212(b)(1).

[15] Id.

[16] *See* 19 CFR 351.212(b)(1).

[17] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR (October 24, 2011).

[18] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012 2013*, 80 FR 20197 (April 15, 2015).

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain producers and exporters of oil country tubular goods (OCTG) from the Republic of Turkey (Turkey) received countervailable subsidies during the period of review (POR) January 1, 2016, through December 31, 2016. Interested parties are invited to comment on these preliminary results.

DATES: *Applicable:* October 11, 2018.

FOR FURTHER INFORMATION CONTACT: Aimee Phelan, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0697.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2017, Commerce published a notice of opportunity to request an administrative review of the CVD order on OCTG from Turkey for the period January 1, 2016, through December 31, 2016.[1] On September 29, 2017, Commerce received a review request from Maverick Tube Corporation and TenarisBayCity (domestic interested parties), for the following seven exporters and/or producers of subject merchandise: (1) Borusan Mannesmann Boru Sanayi ve Ticaret A.S., (2) Borusan Istikbal Ticaret, (3) Cayirova Boru San A.S., (4) Cayirova Boru Sanayi ve Ticaret A.S., (5) HG Tubulars Canada Ltd., (6) Yucel Boru Ihracat ve Pazarlama A.S., and (7) Yucelboru Ihracat, Ithalat.[2] On October 2, 2017, Borusan submitted a letter to Commerce requesting a review of itself.[3] On November 13, 2017, Commerce published a notice of initiation of an administrative review for this CVD order.[4] Commerce postponed the deadline for issuing the preliminary results of this administrative review to October 3, 2018.[5]

Scope of the Order

The merchandise covered by the order is certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock. A full description of the scope of the order is contained in the Preliminary Decision Memorandum, which is hereby adopted by this notice.[6]

Methodology

We are conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we preliminarily find that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[7] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.[8] The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Central Records Unit, 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/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of topics discussed in the Preliminary Decision Memorandum is provided in the Appendix to this notice.

Preliminary Results of the Review

We preliminarily determine the following net countervailable subsidy rate for the mandatory respondent, Borusan, for the period January 1, 2016, through December 31, 2016:

Company	Net subsidy rate *ad valorem* (percent)
Borusan Mannesmann Boru Sanayi ve Ticaret A.S., and Borusan Istikbal Ticaret.[9]	0.66

Assessment Rates

Consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), upon issuance of the final results, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown above for Borusan, with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most recent company specific or all-others rate applicable to the company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 82 FR 41595 (September 1, 2017).

[2] *See* Letter from Maverick Tube Corporation and TenarisBayCity, ''Oil Country Tubular Goods from Turkey: Request for Administrative Review,'' dated September 29, 2017. The domestic interested parties also requested a review of Tosyali Dis Ticaret A.S., Toscelik Profil ve Sac Endustrisi A.S., Tosyali Elektrik Enerjisi Toptan Satis, Ith. Ihr. A.S., Tosyali Demir Celik San. A.S., and Tosyali Holding A.S. (collectively, Toscelik). However, on October 5, 2017, Commerce published an amendment to the CVD order to exclude Toscelik. Thus, Commerce did not initiate an administrative review of Toscelik. *See Oil Country Tubular Goods from the Republic of Turkey: Amendment of Countervailing Duty Order,* 82 FR 46483 (October 5, 2017).

[3] *See* Letter from Borusan, ''Oil Country Tubular Goods from Turkey, Case No. C–489–817: Request for Countervailing Duty Administrative Review,'' dated October 2, 2017. In the investigation, Commerce determined that Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret are cross-owned and applied a single CVD rate to both companies. *See Certain Oil Country Tubular from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination,* 79 FR 41964 (July 18, 2014), and accompanying, Issues and Decisions Memorandum (IDM) at 4–5.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 52268 (November 13, 2017).

[5] *See* Memorandum re: ''Extension of Deadline for Preliminary Results,'' dated August 29, 2018.

[6] *See* Memorandum re: ''Decision Memorandum for the Preliminary Results of 2016 Countervailing Duty Administrative Review: Oil Country Tubular Goods from the Republic of Turkey,'' dated concurrently with this notice (Preliminary Decision Memorandum).

[7] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and, section 771(5A) of the Act regarding specificity.

[8]

[9] Commerce has determined that Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret are cross-owned. *See* Preliminary Decision Memorandum.

Disclosure and Public Comment

We will disclose to parties in this review the calculations performed in reaching the preliminary results within five days of publication of these preliminary results.[10] Interested parties may submit written comments (case briefs) on the preliminary results no later than 30 days from the date of publication of this **Federal Register** notice, and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[11] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12] All briefs must be filed electronically using ACCESS.

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, filed electronically via ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[13] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues addressed at the hearing will be limited to those raised in the briefs. If a request for a hearing is made, parties will be notified of the date and time for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[14] Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h), unless this deadline is extended.

These preliminary results and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: October 3, 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

I. Summary
II. Background
III. Scope of the Order
IV. Subsidies Valuation Information
V. Analysis of Programs
VI. Recommendation

[FR Doc. 2018–22129 Filed 10–10–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–870]

Certain Oil Country Tubular Goods 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 NEXTEEL Co., Ltd. (NEXTEEL) and SeAH Steel Corporation (SeAH) sold certain oil country tubular goods (OCTG) from the Republic of Korea (Korea) in the United States at prices below normal value during the period of review (POR) September 1, 2016, through August 31, 2017. Interested parties are invited to comment on these preliminary results.

DATES: Applicable: October 11, 2018.

FOR FURTHER INFORMATION CONTACT: Mike Heaney or Erin Kearney, 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) 482–4475 or (202) 482–0167, respectively.

SUPPLEMENTARY INFORMATION:

Background

We published the initiation of this administrative review on November 13, 2017.[1] We selected NEXTEEL and SeAH as the two mandatory respondents in this review. For a detailed description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum, dated concurrently with these preliminary results and hereby adopted by this notice.[2]

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). Access to ACCESS is available to registered users at *https://access.trade.gov/login.aspx* and is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *https://enforcement.trade.gov/frn/index.html.* A list of the topics discussed in the Preliminary Decision Memorandum is attached to this notice as Appendix 1. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Scope of the Order

The merchandise covered by the order is certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock. For the full text of the scope of the order, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our

[10] *See* 19 CFR 351.224(b).

[11] *See* 19 CFR 351.309(c)(1)(ii); 351.309(d)(1); and 19 CFR 351.303 (for general filing requirements).

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] *See* 19 CFR 351.310(c).

[14] *See* 19 CFR 351.310(d).

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 52268 (November 13, 2017).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2016–2017 Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea,'' dated October 3, 2018 (Preliminary Decision Memorandum).

conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Determination of No Shipments

Among the companies under review, Samsung, Samsung C and T Corporation (Samsung C&T), and SeAH Besteel Corporation (SeAH Besteel) properly filed certifications reporting that they had no exports, sales, or entries of subject merchandise to the United States during the POR.[3] On September 20, 2018, we issued no-shipment inquiries to CBP to confirm the claims of no shipments by Samsung C&T and SeAH Besteel, and on October 1, 2018, we issued a no-shipment inquiry to CBP to confirm Samsung's claim of no shipments. We have not yet received CBP's response to all of our inquiries. Therefore, based on the claims of no shipments by Samsung, Samsung C&T, and SeAH Besteel, and because the record currently contains no information to the contrary, we preliminarily determine that Samsung, Samsung C&T, and SeAH Besteel had no shipments of subject merchandise. However, we intend to consider information received from CBP in response to our no-shipment inquiries for the final results of this review. Moreover, consistent with our practice, we are not preliminarily rescinding the review with respect to Samsung, Samsung C&T, and SeAH Besteel, but, rather, we will complete the review with respect to these companies and issue appropriate instructions to CBP based on the final results of this review.[4]

Rates for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this review, we have preliminarily calculated weighted-average dumping margins for NEXTEEL and SeAH that are not zero, *de minimis,* or determined entirely on the basis of facts available. Accordingly, Commerce preliminarily has assigned to the companies not individually examined (*see* Appendix 2 for a full list of these companies) a margin of 35.25 percent, which is the weighted average of NEXTEEL's and SeAH's calculated weighted-average dumping margins.[5]

Preliminary Results of Review

Commerce preliminarily determines that, for the period September 1, 2016 through August 31, 2017, the following weighted-average dumping margins exist:

Producer or exporter	Weighted-average dumping margin (percent)
NEXTEEL Co., Ltd	47.62
SeAH Steel Corporation	19.40
Non-examined companies	35.25

Disclosure, Public Comment, and Opportunity To Request a Hearing

We intend to disclose the calculations performed for these preliminary results of review to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, the content of which is limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.[6] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[7] Case and rebuttal briefs should be filed using ACCESS[8] and must be served on interested parties.[9] 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, filed electronically *via* Commerce's electronic records system, ACCESS. An electronically filed request must be received successfully in its entirety by 5:00 p.m. Eastern Time within 30 days of the date of publication of this notice.[10] 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.[11] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any case or rebuttal briefs, no later than 120 days after the date of publication of this notice, unless extended.[12]

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries. We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

For any individually examined respondent whose weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, if the respondent reported reliable entered values, we will calculate importer-

[3] *See* Letter from Samsung C&T, ''Oil Country Tubular Goods from Korea: Notice of No Sales,'' dated December 4, 2017 and Letter from SeAH Besteel, ''Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea for the 2016–17 Review Period—No Shipments Letter,'' dated December 13, 2017.

[4] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), *unchanged in Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306, 51307 (August 28, 2014).

[5] For more information regarding the calculation of this margin, *see* Memorandum, ''Preliminary Results of the 2016–2017 Administrative Review of Certain Oil Country Tubular Goods from the Republic of Korea; Calculation of the Margin for Non-Examined Companies,'' dated October 3, 2018. As the weighting factor, we relied on the publicly ranged sales data reported in NEXTEEL's and SeAH's quantity and value charts.

[6] *See* 19 CFR 351.309(d).

[7] *See* 19 CFR 351.309(c)(2) and (d)(2).

[8] *See generally* 19 CFR 351.303.

[9] *See* 19 CFR 351.303(f).

[10] *See* 19 CFR 351.310(c).

[11] *See* 19 CFR 351.310(d).

[12] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined sales made to each importer and 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 calculated for the examined sales made 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* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). If a 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.'' [13]

For entries of subject merchandise during the POR produced by NEXTEEL or SeAH for which the producer did not know its merchandise was destined for the United States, or for any respondent for which we have a final determination of no shipments, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[14]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for the companies listed in the final results of review will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 5.24 percent,[15] the all-others rate established in the less-than-fair-value investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

Commerce is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 3, 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 I

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Preliminary Determination of No Shipments
5. Rates for Non-Examined Companies
6. Duty Absorption
7. Duty Reimbursement
8. Affiliation
9. Discussion of the Methodology
10. Currency Conversion
11. Recommendation

Appendix II

List of Companies Not Individually Examined

AJU Besteel Co., Ltd.
BDP International
Daewoo International Corporation
Daewoo America
Dong-A Steel Co. Ltd.
Dong Yang Steel Pipe
Dongbu Incheon Steel
DSEC
Erndtebruecker Eisenwerk and Company
Hansol Metal
Husteel Co., Ltd.
HYSCO
Hyundai RB
Hyundai Steel Co., Ltd.
Hyundai Steel Company [16]
ILJIN Steel Corporation
Jim And Freight Co., Ltd.
Kia Steel Co. Ltd.
KSP Steel Company
Kukje Steel
Kurvers
POSCO Daewoo Corporation
POSCO Daewoo America
Steel Canada
Sumitomo Corporation
TGS Pipe
Yonghyun Base Materials
ZEECO Asia

[FR Doc. 2018–22128 Filed 10–10–18; 8:45 am]

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[13] *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*).

[14] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[15] *See Certain Oil Country Tubular Goods from the Republic of Korea: Notice of Court Decision Not in Harmony With Final Determination,* 81 FR 59603 (August 30, 2016).

[16] On September 21, 2016, Commerce published the final results of a changed circumstances review with respect to OCTG from Korea, finding that Hyundai Steel Corporation is the successor-in-interest to Hyundai HYSCO for purposes of determining antidumping duty cash deposits and liabilities. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Oil Country Tubular Goods from the Republic of Korea,* 81 FR 64873 (September 21, 2016). Hyundai Steel Corporation is also known as Hyundai Steel Company and Hyundai Steel Co. Ltd.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–955]

Certain Magnesia Carbon Bricks From the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review; 2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines to rescind this administrative review as there is no evidence of any reviewable entries, shipments, or sales of certain magnesia carbon bricks (magnesia carbon bricks) from the People's Republic of China (China) to the United States during the January 1, 2016, through December 31, 2016, period of review (POR) by the companies subject

to this review. Interested parties are invited to comment on these preliminary results.

DATES: Applicable: October 11, 2018.

FOR FURTHER INFORMATION CONTACT: Gene H. Calvert, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3586.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 2017, Commerce published in the **Federal Register** a notice of initiation of an administrative review of the countervailing duty order for five producers/exporters of magnesia carbon bricks from China for the POR.[1] Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through January 22, 2018.[2] As a result, all deadlines in this segment of the proceeding have been extended by three days.

Scope of the Order

The scope of the order includes certain chemically-bonded magnesia carbon bricks from China. A full description of the scope of the order is contained in the Preliminary Decision Memorandum, which is hereby adopted by this notice.[3]

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). The Preliminary Decision Memorandum contains a full description of the methodology underlying our conclusions and is a public document on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn.* The signed Preliminary Decision Memorandum and the election version of this memorandum are identical in content.

Preliminary Intent To Rescind the Administrative Review

Based on information submitted after the initiation of this administrative review, and due to the fact that we have not received any information from U.S. Customs and Border Protection (CBP) indicating that the companies subject to this review had reviewable entries of subject merchandise to the United States during the POR, Commerce preliminarily determines that the record evidence indicates that no company subject to this review had reviewable entries during the POR.[4] Should evidence arise that leads us to conclude that the companies subject to this review had reviewable entries of subject merchandise to the United States during the POR, we will revisit this issue in the final results of this administrative review. Absent any evidence of POR entries of subject merchandise being placed on the record, pursuant to 19 CFR 351.213(d)(3), we intend to rescind the administrative review of these companies in the final results.

Public Comment

Case briefs must be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) at a date to be determined by Commerce, and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for the submission for case briefs.[5] Commerce will notify interested parties when it has determined a deadline for case briefs *via* ACCESS. Parties who submit case or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[6]

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, U.S. Department of Commerce, filed electronically through ACCESS, within 30 days after the publication of this notice. Hearing requests should contain the party's name, address, telephone number, the number of participants, and a list of the issues parties intend to present at the hearing. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time to be determined. Prior to the hearing, Commerce will contact all parties who submitted case or rebuttal briefs to determine if they wish to participate in the hearing. Commerce will then distribute a hearing schedule to these parties prior to the hearing, and only those parties listed on the hearing schedule may present issues raised in their briefs.

All submissions, with limited exceptions, must be filed electronically using ACCESS.[7] An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, on the due dates established above (or, where applicable, to be established by Commerce at a later date). Documents excepted from the electronic submission requirements must be filed manually, (*i.e.,* in paper form) with the APO/Dockets Unit in Room 18022 and stamped with the date and time of receipt by on the due date.[8]

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of the publication of these preliminary results or review, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

We intend to issue appropriate assessment instructions to CBP 15 days after the publication of the final rescission (or, should we find that the companies subject to this review had reviewable entries of subject merchandise to the United States during the POR, the final results) of this administrative review.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(I) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 52268 (November 13, 2017) (*Initiation Notice*). The companies subject to this review are Fedmet Resources Corporation; Fengchi Imp. and Exp. Co., Ltd. of Haicheng City, Fengchi Mining Co., Ltd. of Haicheng City; Fengchi Refractories Co., of Haicheng City; and RHI Refractories Co., of Haicheng City.

[2] *See* Memorandum, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated January 23, 2018.

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Administrative Review of the Countervailing Duty Order on Certain Magnesia Carbon Bricks from the People's Republic of China; 2016,'' (dated concurrently with this notice) (Preliminary Determination Memorandum).

[4] *Id.*

[5] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

[6] *See* 19 CFR 351.309(c)(2) and 351.309(d)(2).

[7] *See* 19 CFR 351.303.

[8] *Id.*

Dated: October 3, 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

I. Summary
II. Background
III. Scope of the Order
IV. Preliminary Determination of No Shipments
V. Public Comment
VI. Recommendation

[FR Doc. 2018–22131 Filed 10–10–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–882]

Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, 2016

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Hyundai Steel Co., Ltd. (Hyundai Steel), a producer/exporter of certain cold-rolled steel flat products (cold-rolled steel) from the Republic of Korea (Korea), and POSCO, a producer/exporter of cold-rolled from Korea, received countervailable subsidies during the period of review (POR), July 29, 2016, through December 31, 2016. We invite interested parties to comment on these preliminary results.

DATES: *Applicable:* October 11, 2018.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas or Tyler Weinhold, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3813 and (202) 482–1121, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 2017, Commerce published a notice of initiation of an administrative review of the countervailing duty (CVD) order on cold-rolled steel from Korea.[1] On May 17, 2018, and September 14, 2018, Commerce extended the deadline for preliminary results of this review to no later than October 3, 2018.[2] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included at the Appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Order

The merchandise covered by the order is certain cold-rolled steel flat products. For a complete description of the scope of the order, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] For a full description of the methodology underlying our conclusions, *see* the accompanying Preliminary Decision Memorandum.

Companies Not Selected for Individual Review

For the companies not selected for individual review, because the rates calculated for Hyundai Steel and POSCO were above *de minimis* and not based entirely on facts available, we applied a subsidy rate based on a weighted-average of the subsidy rates calculated for Hyundai Steel and POSCO using publicly-ranged sales data submitted by the respondents. This is consistent with the methodology that we would use in an investigation to establish the all-others rate, consistent with section 705(c)(5)(A) of the Act.

Preliminary Results of Review

In accordance with 19 CFR 351.224(b)(4)(i), we calculated individual subsidy rates for Hyundai Steel and POSCO. For the period July 29, 2016, through December 31, 2016, we preliminarily determine that the net subsidy rates for the producers/exporters under review to be as follows:

Company	Subsidy rate (percent *ad valorem*)
POSCO	1.73
Hyundai Steel Co., Ltd	0.65
Dongbu Steel Co., Ltd	1.21
Dongbu Incheon Steel Co., Ltd	1.21
Dongkuk Steel Mill Co., Ltd	1.21
Dongkuk Industries Co., Ltd	1.21
Hyuk San Profile Co., Ltd	1.21
Taihan Electric Wire Co., Ltd	1.21
Union Steel Co., Ltd	1.21

Assessment Rate

Consistent with section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce shall determine, and Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of this review. Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Cash Deposit Rate

Pursuant to section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount indicated above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 52268 (November 13, 2017) (*Initiation Notice*).

[2] *See* March 23, 2018 Memorandums re: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review—2015–2016; and July 3, 2018 Memorandums re: Second Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review—2015–2016.

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review; 2016: Certain Cold-Rolled Steel Flat Products from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

company-specific or all-others rate applicable to the company, as appropriate. These cash deposit instructions, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[5] Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[6] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[7]

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance using Enforcement and Compliance's ACCESS system.[8] Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce will inform parties of the scheduled date of the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined.[9] Issues addressed during the hearing will be limited to those raised in the briefs.[10] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: October 3, 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

I. Summary
II. Background
III. Period of Review
IV. Scope of the Order
V. Rate for Non-Examined Companies
VI. Subsidies Valuation Information
VII. Use of Facts Otherwise Available
VIII. Analysis of Programs
IX. Recommendation

[FR Doc. 2018–22124 Filed 10–10–18; 8:45 am]

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[5] *See* 19 CFR 224(b).
[6] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).
[7] *See* 19 CFR 351.309(c)(2) and 351.309(d)(2).
[8] *See* 19 CFR 351.310(c).
[9] *See* 19 CFR 351.310.
[10] *See* 19 CFR 351.310(c).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG536

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Joint Scallop Advisory Panel and Plan Development Team to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, October 23, 2018 at 9 a.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, 100 Boardman Street, Boston, MA 02128; phone: (617) 567–6789.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scallop Advisory Panel and Plan Development Team will review Framework (FW) 30 alternatives and analyses. The primary focus of this meeting will be to provide input on the range of specification alternatives. FW 30 will set specifications including ABC/ACLs, days-at-sea, access area allocations, total allowable catch for the Northern Gulf of Maine (NGOM) management area, targets for General Category incidental catch, and set-asides for the observer and research programs for fishing year 2019 and default specifications for fishing year 2020. Management measures in FW 30 include: (1) Standard default measures. They also plan to review progress toward 2018 work items, make recommendations on 2019 scallop work priorities, and consider approaches for moving priorities forward. Other business may be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 5, 2018.

Margo Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–22120 Filed 10–10–18; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG521

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 58 Pre-Data Workshop Webinar for Atlantic Cobia.

SUMMARY: The SEDAR 58 assessment of the Atlantic stock of Cobia will consist of a series of workshops and webinars: Data Workshop; Assessment Webinars; and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 58 Pre-Data Workshop Webinar will be held on Thursday, October 25, 2018, from 9 a.m. to 1 p.m.

ADDRESSES: The meetings will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julia Byrd at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Julia Byrd, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *julia.byrd@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the Pre-Data Workshop webinar are as follows: Participants will continue to discuss data needs and treatments in order to prepare for the Data Workshop.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 5, 2018.

Margo Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–22118 Filed 10–10–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Fisher Behavior and Protected Species Interactions in Hawai'i and American Samoa Longline Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), 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.

DATES: Written comments must be submitted on or before December 10, 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 *pracomments@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kirsten Leong, (808) 725–5398 or *kirsten.leong@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new information collection.

The National Marine Fisheries Service (NMFS) proposes to collect information, through interviews, about fisher behavior related to protected species interactions (such as avoidance, handling, and reporting) in the Hawai'i and American Samoa longline fisheries, in order to improve management in those fisheries; satisfy NFMS' legal mandates under Executive Order 12866, the Magnuson-Stevens Conservation and Management Act (U.S.C. 1801 *et seq.*), the Regulatory Flexibility Act, the Endangered Species Act, and the National Environmental Policy Act; and quantify achievement of the performance measures in the NMFS Strategic Operating Plans. Respondents will include longline fishers, captains, crew, and owners in Hawai'i and American Samoa. Their participation will be voluntary. These data will be used to understand factors that may

result in noncompliance with regulations, ensure that regulations are written and implemented so as to be easy to follow and enforceable, and take into account fishermen's concerns. Data will be used to improve design of regulations and communication about them by fishery managers.

II. Method of Collection

Respondents will be interviewed in person.

III. Data

OMB Control Number: 0648–xxxx.

Form Number(s): None.

Type of Review: Regular submission (request for a new information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 448.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 224.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

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.

Dated: October 5, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–22099 Filed 10–10–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Integrated Drought Information System (NIDIS); Executive Council Meeting

AGENCY: Climate Program Office (CPO), Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: The National Integrated Drought Information System (NIDIS) Program Office will hold an organizational meeting of the NIDIS Executive Council on November 1, 2018.

DATES: The meeting will be held Thursday, November 1, 2018 from 9 a.m. EST to 4 p.m. EST. These times and the agenda topics are subject to change.

ADDRESSES: The meeting will be held at the Hall of the States, Room 383/385, 444 North Capitol St. NW, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Veva Deheza, NIDIS Executive Director, David Skaggs Research Center, Room GD102, 325 Broadway, Boulder, CO 80305. Email: *Veva.Deheza@noaa.gov;* or visit the NIDIS website at *www.drought.gov.*

SUPPLEMENTARY INFORMATION: The National Integrated Drought Information System (NIDIS) was established by Public Law 109–430 on December 20, 2006, and reauthorized by Public Law 113–86 on March 6, 2014, with a mandate to provide an effective drought early warning system for the United States; coordinate, and integrate as practicable, Federal research in support of a drought early warning system; and build upon existing forecasting and assessment programs and partnerships. *See* 15 U.S.C. 313d. The Public Law also calls for consultation with ''relevant Federal, regional, State, tribal, and local government agencies, research institutions, and the private sector'' in the development of NIDIS. 15 U.S.C. 313d(c). The NIDIS Executive Council provides the NIDIS Program Office with an opportunity to engage in individual consultation with senior resource officials from NIDIS's Federal partners, as well as leaders from state and local government, academia, nongovernmental organizations, and the private sector.

Status: This meeting will be open to public participation. Individuals interested in attending should register at *https://cpaess.ucar.edu/meetings/2018/fall-2018-nidis-executive-council-meeting.* Please refer to this web page for the most up-to-date meeting times and agenda. Seating at the meeting will be available on a first-come, first-served basis.

Special Accommodations: This meeting is physically accessible to people with disabilities. Requests for special accommodations may be directed no later than 12:00 p.m. on October 24, 2018, to Elizabeth Ossowski, Program Coordinator, David Skaggs Research Center, Room GD102, 325 Broadway, Boulder, CO 80305; Email: *Elizabeth.Ossowski@noaa.gov.*

Matters To Be Considered: The meeting will include the following topics: (1) NIDIS implementation updates and 2018 priorities, (2) Executive Council member updates and 2018 priorities, (3) Federal coordination around drought early warning, (4) the National Drought Resilience Partnership, (5) the U.S. Drought Monitor, (6) Drought development and current response in the Southwestern U.S., and U.S. Bureau of Reclamation's AgriMET System, and (7) Planning for the 2019 National Drought Forum.

Dated: September 28, 2018.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2018–22139 Filed 10–10–18; 8:45 am]

BILLING CODE 3510–KB–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 180821780–8780–01]

RIN 0660–XC043

Developing the Administration's Approach to Consumer Privacy

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice; extension of comment period.

SUMMARY: On September 26, 2018, the National Telecommunications and Information Administration (NTIA) on behalf of the U.S. Department of Commerce published a notice and request for public comments on ways to advance consumer privacy while protecting prosperity and innovation. Through this notice, NTIA is extending the deadline for comments from October 26, 2018, until November 9, 2018.

DATES: Comments must be received by 11:59 p.m. Eastern Standard Time on November 9, 2018.

ADDRESSES: Written comments may be submitted by email to *privacyrfc2018@ntia.doc.gov.* Comments submitted by email should be machine-searchable and should not be copy-protected. Written comments also may be submitted by mail to the National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4725, Attn: Privacy RFC, Washington, DC 20230. Responders should include the name of the person or organization filing the comment, as well as a page number, on each page of their submissions. All comments received are a part of the public record and will generally be posted to *http://www.ntia.doc.gov/privacyrfc2018* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NTIA will also accept anonymous comments.

FOR FURTHER INFORMATION CONTACT: Travis Hall, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4725, Washington, DC 20230; Telephone: (202) 482–3522; Email: *thall@ntia.doc.gov.* For media inquiries: Anne Veigle, Director, Office of Public Affairs, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4897, Washington, DC 20230; telephone: (202) 482–7002; email: *press@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION: On behalf of the U.S. Department of Commerce, the National Telecommunications and Information Administration (NTIA) published a notice seeking public comments on ways to advance consumer privacy while protecting prosperity and innovation. *See* NTIA, Developing the Administration's Approach to Consumer Privacy, Notice; Request for Public Comments, 83 FR 48600 (Sept. 26, 2018). The original deadline for submission of comments was October 26, 2018. With this notice, NTIA announces that the closing deadline for submission of comments is extended until November 9, 2018. All other information in the original notice remains unchanged.

Dated: October 4, 2018.

Kathy Smith,

Chief Counsel.

[FR Doc. 2018–22041 Filed 10–10–18; 8:45 am]

BILLING CODE 3510–60–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, October 17, 2018, 10:00 a.m.–12:00 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East-West Highway, Bethesda, MD.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED: *Decisional Matter:* Final Rule to Revise Current Fireworks Regulation.

A live webcast of the Meeting can be viewed at *https://www.cpsc.gov/live.*

CONTACT PERSON FOR MORE INFORMATION: Rockelle Hammond, Office of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, (301) 504–6833.

Dated: October 5, 2018.

Alberta E. Mills,

Secretary.

[FR Doc. 2018–22240 Filed 10–9–18; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Two-Year Extension of TRICARE Co-Pay Waiver at Captain James A. Lovell Federal Health Care Center Demonstration Project

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice of two-year extension of TRICARE co-pay waiver at Captain James A. Lovell Federal Health Care Center demonstration project.

SUMMARY: This notice is to advise interested parties of a two-year extension of a demonstration project entitled ''TRICARE Co-Pay Waiver at Captain James A. Lovell Federal Health Care Center (FHCC) Demonstration Project.'' The original waiver notice was published on September 27, 2010.

DATES: This two-year extension is effective from October 1, 2018 to September 30, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Bouchard, Director, DoD/VA Program Coordination Office, Defense Health Agency, Telephone 703–275–6300.

SUPPLEMENTARY INFORMATION:

A. Background

For additional information on the TRICARE co-pay waiver demonstration at the Captain James A. Lovell Federal Health Care Center (FHCC) demonstration project, please see 75 FR 59237–59238. Under this demonstration, there would be no deductibles, cost shares, or co-pays for eligible beneficiaries seeking care at the FHCC, under the authority of 10 U.S.C. 1092(a)(1)(B). The original demonstration notice explained that the co-pay waiver demonstration would be used to determine if increased utilization at FHCC actually occurred as a result of eliminated co-payments, which would in turn influence decisions regarding financial integration at future Department of Defense (DoD)/Department of Veterans Affairs (VA) models of this nature. A report on the demonstration project concluded that utilization increased at FHCC during the time of the co-pay waiver demonstration project. Admission and encounter utilization data from 2010 to 2014 shows that DoD utilization of FHCC increased significantly. This demonstration is integral to the success of the integration effort at FHCC; without it, FHCC would see a marked reduction in DoD beneficiaries.

B. Description of Extension of Demonstration Project

Under this demonstration, DoD has waived TRICARE co-payments for DoD beneficiaries seen at the FHCC. The National Defense Authorization Act (NDAA) for fiscal year (FY) 2010 Section 1701 requires a report to Congress evaluating the exercise of authorities in that title at FHCC. That report was delivered on July 26, 2016, and recommends continuation of the FHCC demonstration project. Therefore, DoD submitted a legislative proposal to amend section 1705 of NDAA 2010 to clarify language that access to care under section 1705 should apply to the entire joint facility and not limited to the DoD assets within the facility. If approved, this amendment would be a permanent solution that will negate the requirement for further extensions to the TRICARE co-pay waiver demonstration project.

In order to allow seamless continuation of services to DoD beneficiaries at FHCC, the TRICARE co-pay waiver is also extended through September 30, 2020 to align with modification of language to FY 2010

NDAA made in FY 2019 NDAA. This waiver applies to all inpatient, outpatient, and ancillary services, and all outpatient prescription drugs provided at FHCC. This waiver is consistent with current policies and procedures followed at all military treatment facilities. According to an Independent Government Cost Estimate (IGCE), the estimated two-year impact for the co-pay waiver in FY2019 and FY2020 is $305,985.

C. Evaluation

An independent evaluation was performed and determined that without this waiver, DoD beneficiary utilization of the FHCC in North Chicago would have significantly decreased. Since DoD and VA have recommended to Congress to continue the demonstration project, DoD will continue to pursue a permanent solution regarding DoD beneficiary co-pays that will ensure DoD beneficiaries are not levied cost shares, as FHCC represents the former Naval Hospital Great Lakes.

Dated: October 5, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–22184 Filed 10–10–18; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: The original notice for this meeting was published at 83 FR 50088 on October 4, 2018.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Tuesday, October 9, 2018, from 2:00 p.m. to 4:00 p.m.

CHANGES IN THE MEETING: This meeting will now occur on October 23, 2018, from 2:00 p.m. to 4:00 p.m.

CONTACT PERSON FOR MORE INFORMATION: Glenn Sklar, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

Dated: October 9, 2018.

Bruce Hamilton,

Chairman.

[FR Doc. 2018–22287 Filed 10–9–18; 4:15 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2018–ICCD–0103]

Agency Information Collection Activities; Comment Request; William D. Ford Federal Direct Loan Program General Forbearance Request

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before December 10, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0103. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Ian Foss, 202–377–3681.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: William D. Ford Federal Direct Loan Program General Forbearance Request.

OMB Control Number: 1845–0031.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 2,188,770.

Total Estimated Number of Annual Burden Hours: 175,102.

Abstract: The Department of Education is requesting an extension without change of the currently approved Direct Loan General Forbearance Request form information collection. The current form includes the Direct Loan, FFEL, and Perkins Loan programs making it easier for borrowers to request this action. There has been no change to the form, the underlying regulations, or anticipated usage.

Dated: October 5, 2018.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–22112 Filed 10–10–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2018–ICCD–0102]

Agency Information Collection Activities; Comment Request; Guaranty Agencies Security Self-Assessment and Attestation

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before December 10, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please

use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0102. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Guaranty Agencies Security Self-assessment and Attestation.

OMB Control Number: 1845–0134.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 24.

Total Estimated Number of Annual Burden Hours: 7,584.

Abstract: This is a request for an extension of the approved information collection used by Federal Student Aid (FSA) to ensure that all data collected and managed by Guaranty Agencies (GAs) in support federal student financial aid programs is secure. FSA initiated a formal assessment program for ensuring the GAs have security protocols in place to protect the confidentiality and integrity of data entrusted to FSA by students and families. This assessment is designed to identify security deficiencies based on the federal standards described in the National Institute of Standards and Technology publications.

Dated: October 5, 2018.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–22110 Filed 10–10–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–462]

Application to Export Electric Energy; Guzman Energy LLC

AGENCY: Office of Electricity, DOE.

ACTION: Notice of application.

SUMMARY: Guzman Energy LLC (Guzman Energy or Applicant) has applied for authority to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before November 13, 2018.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the United States Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 7172(f)), and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On September 27, 2018, DOE received an application from Guzman Energy for authority to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using existing international transmission facilities.

In its application, Guzman Energy states that it ''does not own or operate an integrated transmission or distribution system'' and ''is not a franchised public utility with a transmission or distribution system and does not have captive customers.'' The electric energy that Guzman Energy proposes to export to Mexico would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order No. 10,485, as amended by Executive Order No. 12,038, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC's) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five (5) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning Guzman Energy's application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–462. An additional copy is to be provided to both Robin Lunt, Guzman Energy LLC, 1125 17th Street, Suite 740, Denver, CO 80202 and Christopher Miller, 101 Aragon Avenue, Coral Gables, FL 33134.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action

will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Signed in Washington, DC, on October 4, 2018.

Christopher Lawrence,

Management and Program Analyst, Transmission Permitting and Technical Assistance, Office of Electricity.

[FR Doc. 2018–22198 Filed 10–10–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Grant Exclusive License

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice of intent To grant exclusive patent license.

SUMMARY: The Department of Energy (DOE) hereby gives notice that DOE intends to grant an exclusive license to practice the invention described and claimed in U.S. Patent Number 7,746,979 titled ''Methods for Assisting Recovery of Damaged Brain and Spinal Cord and Treating Various Diseases Using Arrays of X-Ray Microplanar Beams'' to The Research Foundation for The State University of New York, a nonprofit, educational corporation existing under the laws of the State of New York, having its principal place of business at Stony Brook, New York. The patent is owned by United States of America, as represented by DOE.

DATES: Written comments, objections, or nonexclusive license applications must be received at the address listed no later than October 26, 2018.

ADDRESSES: Comments, applications for nonexclusive licenses, or objections relating to the prospective exclusive license should be submitted to Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Room 6F–067, 1000 Independence Ave. SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Marianne Lynch, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Room 6F–067, 1000 Independence Ave. SW, Washington, DC 20585; Email: *marianne.lynch@hq.doe.gov;* and Phone: (202) 586–3815.

SUPPLEMENTARY INFORMATION: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). 35 U.S.C. 209(c) gives DOE the authority to grant exclusive or partially exclusive licenses in federally-owned inventions where a determination is made, among other things, that the desired practical application of the invention has not been achieved, or is not likely to be achieved expeditiously, under a nonexclusive license. The statute and implementing regulations (37 CFR 404) require that the necessary determinations be made after public notice and opportunity for filing written comments and objections.

The Research Foundation for The State University of New York has applied for an exclusive license to practice the inventions embodied in the patent and has plans for commercialization of the inventions.

Within 15 days of publication of this notice, any person may submit in writing to DOE's General Counsel for Intellectual Property and Technology Transfer Office (see contact information), either of the following, together with supporting documents:

(i) A statement setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or (ii) An application for a nonexclusive license to the invention, in which applicant states that it already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The prospective exclusive license complies with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license would be exclusive, subject to a license and other rights retained by the United States, and subject to a negotiated royalty. DOE will review all timely written responses to this notice, and will grant the licenses if, after expiration of the 15-day notice period, and after consideration of any written responses to this notice, a determination is made in accordance with 35 U.S.C. 209(c) that the licenses are in the public interest.

Brian Lally,

Assistant General Counsel for Technology Transfer and Intellectual Property.

[FR Doc. 2018–22212 Filed 10–10–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL19–4–000]

Tradewind Energy, Inc. v. Southern Company Services, Inc.; Notice of Complaint

Take notice that on October 2, 2018, pursuant to section 206 of the Federal Power Act and Rules 206 and 212 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure,[1] Tradewind Energy, Inc. (Tradewind or Complainant) filed a formal complaint against Southern Company Services, Inc. (Southern or Respondent) alleging that Southern has violated the terms of its Open Access Transmission Tariff (OATT) by unilaterally withdrawing two pending interconnection requests for Tradewind-affiliated generating projects from their interconnection queue without justification and in violation of their OATT and Commission requirements, all as more fully explained in the complaint.

Tradewind certifies that a copy of the Complaint were served on Southern and copies have been provided to the Florida Public Service Commission and the Georgia Public Service Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the eLibrary link and is available for electronic review in the Commission's Public

[1] 18 CFR 385.206 and 385.212.

Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 22, 2018.

Dated: October 4, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–22083 Filed 10–10–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP19–30–000.
Applicants: Cheniere Creole Trail Pipeline, L.P.
Description: Transportation Retainage Adjustment Informational Filing.
Filed Date: 10/1/18.
Accession Number: 20181001–5392.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–37–000.
Applicants: Viking Gas Transmission Company.
Description: § 4(d) Rate Filing: Amendments to Non-Conforming Agreements to be effective 11/1/2018.
Filed Date: 10/3/18.
Accession Number: 20181003–5010.
Comments Due: 5 p.m. ET 10/15/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 4, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–22064 Filed 10–10–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC19–3–000.
Applicants: Dominion Energy Fairless, LLC, Dominion Energy Manchester Street, Inc., Spade Facilities II, L.L.C.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Dominion Energy Fairless, LLC, et. al.
Filed Date: 10/2/18.
Accession Number: 20181002–5275.
Comments Due: 5 p.m. ET 10/23/18.

Docket Numbers: EC19–4–000.
Applicants: Stillwater Wind, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Stillwater Wind, LLC.
Filed Date: 10/4/18.
Accession Number: 20181004–5085.
Comments Due: 5 p.m. ET 10/25/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–914–002.
Applicants: Axpo U.S. LLC.
Description: Notice of Non-Material Change in Status of Axpo U.S. LLC.
Filed Date: 10/3/18.
Accession Number: 20181003–5154.
Comments Due: 5 p.m. ET 10/24/18.

Docket Numbers: ER18–1899–002.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2018–10–03_Amendment to Deficiency Response re Pro Forma Pseudo-Tie Agreement to be effective 8/29/2018.
Filed Date: 10/3/18.
Accession Number: 20181003–5117.
Comments Due: 5 p.m. ET 10/24/18.

Docket Numbers: ER19–46–000.
Applicants: NorthWestern Corporation.
Description: Tariff Cancellation: Cancellation of Tariff ID 28 to be effective 10/8/2018.
Filed Date: 10/3/18.
Accession Number: 20181003–5103.
Comments Due: 5 p.m. ET 10/24/18.

Docket Numbers: ER19–47–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2018–10–03_SA 3177 Heartland Wind-NSP GIA (J432) to be effective 9/28/2018.
Filed Date: 10/3/18.
Accession Number: 20181003–5110.
Comments Due: 5 p.m. ET 10/24/18.

Docket Numbers: ER19–48–000.
Applicants: Midcontinent Independent System Operator, Inc., ALLETE, Inc.
Description: § 205(d) Rate Filing: 2018–10–03_SA 3173 MP–GRE T–L IA (Carlton) to be effective 10/4/2018.
Filed Date: 10/3/18.
Accession Number: 20181003–5127.
Comments Due: 5 p.m. ET 10/24/18.

Docket Numbers: ER19–49–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA & CSA, SA Nos. 5210 & 5211; Cancel IISA, No. 5151; Queue No. AB2–134 to be effective 9/10/2018.
Filed Date: 10/4/18.
Accession Number: 20181004–5023.
Comments Due: 5 p.m. ET 10/25/18.

Docket Numbers: ER19–50–000.
Applicants: Midcontinent Independent System Operator, Inc., ALLETE, Inc.
Description: § 205(d) Rate Filing: 2018–10–04_SA 3172 MP–GRE T–L IA (Magnetation Tap) to be effective 10/5/2018.
Filed Date: 10/4/18.
Accession Number: 20181004–5048.
Comments Due: 5 p.m. ET 10/25/18.

Docket Numbers: ER19–51–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: Amendment to Interim Black Start Agreement (RS 234) to be effective 12/4/2018.
Filed Date: 10/4/18.
Accession Number: 20181004–5072.
Comments Due: 5 p.m. ET 10/25/18.

Docket Numbers: ER19–52–000.
Applicants: Duke Energy Florida, LLC.
Description: Notice of Termination of Standard Large Generator Interconnection Agreement (No. TF–183) of Duke Energy Florida, LLC.
Filed Date: 10/4/18.
Accession Number: 20181004–5106.
Comments Due: 5 p.m. ET 10/25/18.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES19–1–000.
Applicants: Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, Kansas

Gas and Electric Company, Westar Energy, Inc.

Description: Joint Application for Authorization Under FPA Section 204 to Issue Short-Term Debt Securities of Kansas City Power & Light Company, et al.

Filed Date: 10/3/18.

Accession Number: 20181003–5153.

Comments Due: 5 p.m. ET 10/24/18.

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: October 4, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–22065 Filed 10–10–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5038–001]

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions; Boise Project Board of Control

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of Conduit Exemption.

b. *Project No.:* 5038–001.

c. *Date filed:* May 10 and 17, 2018, September 17 and 24, 2018, and October 3, 2018.

d. *Applicant:* Boise Project Board of Control.

e. *Name of Project:* Main Canal No. 6 Hydroelectric Project.

f. *Location:* The project is located on the applicant's irrigation canal system, near the town of Kuna, in Ada County, Idaho. The project, in part, occupies federal lands administered by the U.S. Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Tim Page, Manager, Boise Project Board of Control, 2465 Overland Road, Boise, ID 83705, phone (208) 334–1141.

i. *FERC Contact:* Christopher Chaney, (202) 502–6778 or *christopher.chaney@ferc.gov.*

j. *Deadline for filing responsive documents:* Due to the small size of the proposed project, as well as the resource agency consultation letters filed with the application, the 60-day timeframe specified in 18 CFR 4.34(b) for filing all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions is shortened to 30 days from the issuance date of this notice. All reply comments must be filed with the Commission within 45 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–5038–001.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed amendment consists of the following changes to the previously authorized, but unconstructed project: (1) Increase the hydraulic capacity from 350 cubic feet per second (cfs) to 700 cfs; (2) increase the authorized installed capacity from 1,200 kilowatts (kW) to 2,300 kW; (3) move the intake structure approximately 400 feet downstream; (4) reduce the penstock length from 2,300 feet to 1,770 feet and increase its diameter from 72 inches to 120 inches; (5) move the powerhouse approximately 150 feet to the northeast; (6) decrease the number of units from three to two turbines connected to a single generator; and (7) excavating a tailrace and relocating the discharge point approximately 100 feet downstream.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number, P–5038, in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

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 deadline 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, MOTION TO INTERVENE, REPLY COMMENTS, RECOMMENDATIONS, TERMS AND CONDITIONS, or PRESCRIPTIONS; (2) set forth in the heading, the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary

basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. 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: October 4, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–22073 Filed 10–10–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2014–0067; FRL–9983–62–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Primary Copper Smelters (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Primary Copper Smelters (EPA ICR No. 1850.08, OMB Control No. 2060–0476), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through October 31, 2018. Public comments were previously requested via the **Federal Register** on June 29, 2017 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before November 13, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2014–0067, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Primary Copper Smelters (40 CFR part 63, subpart QQQ) apply to each existing and new copper concentrate dryer, smelting furnace, slag cleaning vessel, copper converter department, and the entire group of fugitive emission sources located at a primary copper smelter facility that is a major source of hazardous air pollutant (HAP) emissions. Major sources of HAP emissions are sites that emit, or have the potential to emit, any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAPs at a rate of 22.68 megagrams (25 tons) or more per year. New facilities include those that commenced construction or reconstruction after the date of proposal. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Form Numbers: None.

Respondents/affected entities: Primary copper smelters.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart QQQ).

Estimated number of respondents: 3 (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 9,440 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $999,000 (per year), which includes $8,220 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in the total estimated burden and cost as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. The change in the respondent labor hour estimates occurred because of a change in assumption. This ICR assumes all existing respondents will have to familiarize with the regulatory requirements each year. There is also a decrease of 3 responses due to a correction in the number of sources that submit initial compliance determination reports.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–22069 Filed 10–10–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA–04–2018–3756; FRL–9985–29–Region 4]

Notice of Settlement: Arkla Terra Property Suprfund Site, Thonotosassa, Hillsborough County, Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of settlement.

SUMMARY: Under 122(h) of the Comprehensive Environmental

Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement with Arkla Terra, Inc. concerning the Arkla Terra Property Superfund Site located in Thonotosassa, Hillsborough County, Florida. The settlement addresses recovery of CERCLA costs for a cleanup action performed by the EPA at the Site.

DATES: The Agency will consider public comments on the settlement until November 13, 2018. The Agency will consider all comments received and may modify or withdraw its consent to the proposed settlement if comments received disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from the Agency by contacting Ms. Paula V. Painter, Program Analyst, using the contact information provided in his notice. Comments may also be submitted by referencing the Site's name through one of the following methods:

Internet: https://www.epa.gov/aboutepa/about-epa-region-4-southeast#r4-public-notices.

- *U.S. Mail:* U.S. Environmental Protection Agency, Superfund Division, Attn: Paula V. Painter, 61 Forsyth Street SW, Atlanta, Georgia 30303.
- *Email: Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: September 5, 2018.

Maurice L. Horsey, IV,

Chief, Enforcement and Community Engagement Branch, Superfund Division.

[FR Doc. 2018–22164 Filed 10–10–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2011–0465; FRL–9984–51–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Water Quality Standards Regulation (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Water Quality Standards Regulation (EPA ICR Number 0988.13, OMB Control Number 2040–0049), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This extension of the Water Quality Standards Regulation ICR (approved through June 30, 2019) also consolidates the burden and costs from two related ICRs: The Water Quality Standards Regulatory Revisions ICR (OMB Control Number 2040–0286, currently approved through December 31, 2018), and the Revised Interpretation of Clean Water Act Tribal Provision ICR (OMB Control Number 2040–0289, currently approved through July 31, 2019). Public comments on this ICR renewal and consolidation were requested via the **Federal Register** on June 15, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of this ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before November 13, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OW–2011–0465, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

The EPA policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Tanyan Bailey, Office of Water, Office of Science and Technology, Standards and Health Protection Division, (4305T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–3133; fax number: 202–566–0409; email address: *bailey.tanyan@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about the EPA public docket, visit *http://www.epa.gov/dockets.*

Abstract: Water quality standards (WQS) are provisions of state, tribal, or federal law which consist of designated uses for waters of the United States, water quality criteria to protect those uses, and antidegradation requirements. WQS are established to protect public health or welfare, protect and enhance the quality of water, and serve the purposes of the Clean Water Act (CWA). Such standards serve the dual purposes of establishing the water quality goals for water bodies and serving as a regulatory basis for establishing water quality-based treatment controls and strategies beyond technology-based treatment required by CWA sections 301 and 306. The WQS regulation establishes the framework for states and authorized tribes to adopt standards, and for the EPA to review and approve or disapprove them. For the purposes of this ICR, the WQS regulation (or ''regulation'') consists of 40 CFR part 131 (Water Quality Standards), and the portions of 40 CFR part 132 (Water Quality Guidance for the Great Lakes System) that are related to WQS. This ICR is for information collections needed to implement the WQS regulation, required to obtain or retain benefits (*e.g.,* relaxed regulatory requirements) under the regulation, and to collect voluntary program information useful in administering WQS programs effectively and efficiently.

This ICR renews the WQS Regulation ICR, OMB Control Number 2040–0049, and consolidates the burden and costs associated with activities previously reported in the following two related ICRs: the WQS Regulatory Revisions ICR (OMB Control Number 2040–0286) and the Revised Interpretation of Clean Water Act Tribal Provision ICR (OMB Control Number 2040–0289) so that all WQS-related burden is covered by one ICR. Upon OMB approval, the remaining ICRs will be discontinued.

This ICR renewal and consolidation describes the estimated burden for states, authorized tribes and certain Great Lakes dischargers associated with the information collections related to: Implementation of the requirements of 40 CFR part 131 (WQS); implementation of the WQS portions of the 40 CFR part 132 (Water Quality Guidance for the Great Lakes System); tribal applications to be treated in a similar manner as a state (TAS) under CWA section 518(e);

and state or tribal requests for dispute resolution under CWA section 518(e). This ICR also covers periodic requests to states and tribes for voluntary WQS information, and for voluntary participation in workgroups, to ensure efficient and effective administration of the WQS program and further cooperative federalism.

Form Numbers: None.

Respondents/affected entities: States, the District of Columbia, territories, authorized tribes with EPA approved Water Quality Standards, tribal estimated to apply for TAS to administer the WQS program; and dischargers located in the Great Lakes watershed.

Respondent's obligation to respond: Mandatory, required to obtain or retain benefits pursuant to the WQS regulation or voluntary.

Estimated number of respondents: 376.

Frequency of response: Once every three years; on occasion; once.

Total estimated burden: 505,387 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $23,017,849 per year, including $22,754,329 of labor costs and $263,520 of annualized operation and maintenance costs.

Changes in the Estimates: There is a decrease of 235,640 hours in the total estimated respondent burden compared with the total burden currently approved by OMB for all three ICRs. This is due to adjustments made to the EPA burden estimates based on experience gained since the previous ICRs were approved (*e.g.,* using more realistic estimates of the number of WQS variance actions to be submitted annually).

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–22095 Filed 10–10–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2014–0082; FRL–9983–41–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Carbon Black, Ethylene, Cyanide and Spandex (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Carbon Black, Ethylene, Cyanide and Spandex (EPA ICR Number 1983.08, OMB Control Number 2060–0489), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2018. Public comments were previously requested via the **Federal Register** on June 29, 2017, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before November 13, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2014–0082, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Generic Maximum Achievable Control Technology (GMACT) Standards published at (40 CFR part 63, subpart YY) apply to existing and new carbon black (CB), cyanide (CY), ethylene (ET), and spandex (SP) facilities that would be subject to the major source provisions specified under the GMACT NESHAP. New facilities include those that commenced construction or reconstruction after the date of proposal. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Form Numbers: None.

Respondents/affected entities: Carbon black production, cyanide production, ethylene production, and spandex production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart YY).

Estimated number of respondents: 61 (total).

Frequency of response: Initially, occasionally, and semiannually.

Total estimated burden: 41,800 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $4,930,000 (per year), which includes $351,000 in annualized capital/startup and/or operation and maintenance costs.

Changes in the Estimates: There is an increase of 61 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. The adjustment increase in burden from the most-recently approved ICR is the addition of burden hours to account for the time spent by existing facilities to re-familiarize themselves annually with the rule requirements.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–22070 Filed 10–10–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9985–31–REGION 3]

Notice of Tentative Approval and Opportunity for Public Comment and Public Hearing for Public Water System Supervision Program Revision for Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval and solicitation of requests for public hearing.

SUMMARY: Notice is hereby given that the Commonwealth of Pennsylvania is revising its approved Public Water System Supervision Program. Pennsylvania has adopted drinking water regulations for the Revised Total Coliform Rule. The U.S. Environmental Protection Agency (EPA) has determined that Pennsylvania's Revised Total Coliform Rule meets all minimum federal requirements, and that it is no less stringent than the corresponding federal regulation. Therefore, EPA has tentatively decided to approve the State program revisions.

DATES: Comments or a public hearing must be submitted by November 13, 2018. This determination shall become final and effective on November 13, 2018. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, and if no comments are received which cause EPA to modify its tentative approval.

ADDRESSES: Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch, Water Protection Division, U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
- Bureau of Safe Drinking Water, Pennsylvania Department of Environmental Protection, P.O. Box 2063, Harrisburg, Pennsylvania 17105–2063.

FOR FURTHER INFORMATION CONTACT: Kelly Moran, Drinking Water Branch (3WP21) at the Philadelphia address given above, via email at *moran.kelly@epa.gov,* or telephone (215) 814–2331 or fax (215) 814–2302.

SUPPLEMENTARY INFORMATION: All interested parties are invited to submit written comments on this determination and may request a hearing. All comments will be considered, and if necessary EPA will issue a response. Frivolous or insubstantial requests for a hearing will be denied by the Regional Administrator. If a substantial request for a public hearing is made by November 13, 2018, a public hearing will be held. A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: September 24, 2018.

Cosmo Servidio,

Regional Administrator.

[FR Doc. 2018–22166 Filed 10–10–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2018–0130; FRL–9984–94–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Hazardous Waste Combustors (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Hazardous Waste Combustors (EPA ICR Number 1773.12, OMB Control Number 2050–0171), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through October 31, 2018. Public comments were previously requested via the **Federal Register** on July 3, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before November 13, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2018–0130, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Hazardous Waste Combustors (40 CFR part 63, subpart EEE) apply to the following types of new and existing combustion units that burn hazardous waste: Incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers, and hydrochloric acid production facilities. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/

operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Form Numbers: None.

Respondents/affected entities: Owners and operators of hazardous waste combustors.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart EEE).

Estimated number of respondents: 180 (total).

Frequency of response: Initially, occasionally, semiannually, and quarterly.

Total estimated burden: 62,500 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $9,560,000 (per year), which includes $2,890,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an adjustment decrease in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. The adjustment decrease in burden is due to a decrease in the number of respondents based on more accurate estimates of the number of existing and new respondents as provided by the Agency and industry consultations. The decrease in burden is also a result of the removal of burden items related to requirements that are not associated with the standard, testing and installation activities that are not information collection activities, submittal of certain conditional or optional information that is not required by the rule, and one-time activities that have been completed. These changes are further discussed below. These changes also result in an adjustment decrease in the number of responses. The number of responses also reflects updates to clarify those responses related to reporting and that related to recordkeeping activities where reports are not submitted.

There is an adjustment increase in the total capital and O&M costs based on the revised estimates of the number of new respondents. As discussed below, because this ICR assumes one new HWC unit per year, we have included capital and O&M costs for CO and O_2 CEMS, PM CEMS, COMs, and CMS. These items were not included in the previously approved ICR because it was assumed that existing sources had the equipment required to meet the standard already installed.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–22067 Filed 10–10–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0971; FRL–9982–83–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; National Volatile Organic Compound Emission Standards for Aerosol Coatings (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), National Volatile Organic Compound Emission Standards for Aerosol Coatings (EPA ICR No. 2289.04, OMB Control No. 2060–0617), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). This is a proposed extension of the ICR, which is currently approved through October 31, 2018. Public comments were previously requested via the **Federal Register** on April 18, 2018, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before November 13, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2006–0971, to (1) EPA online using *https://www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Ms. Kaye Whitfield, Sector Policies and Programs Division (Mail Code D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2509; fax number: (919) 541–4991; email address: *whitfield.kaye@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https.www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about the EPA's public docket, visit *https://www.epa.gov/dockets.*

Abstract: The EPA is required under section 183(e) of the Clean Air Act (CAA) to regulate volatile organic compound (VOC) emissions from the use of consumer and commercial products. Pursuant to CAA section 183(e)(3), the EPA published a list of consumer and commercial products and a schedule for their regulation (60 FR 15264). Aerosol coatings are included on the list, and the standards for such coatings are codified at 40 CFR part 59, subpart E. The reports required under the standards enable the EPA to identify coating formulations manufactured, imported, or distributed in the United States, and to determine the product-weighted reactivity. The ICR addresses the burden for activities conducted in 3-year increments after promulgation of the National VOC Emission Standards for Aerosol Coatings. Regulated entities read instructions to determine how they are affected by the rule. They are required to submit initial notifications when an aerosol coating is manufactured and notification of changes in the initial report, to report formulation data and exemptions claimed, and to maintain records. In addition, regulated entities are required to submit triennial reports that include formulation data and VOC usage.

Form Numbers: None.

Respondents/affected entities: Manufacturers, distributors, and importers of aerosol coatings (North American Industry Classification

System (NAICS) Code 32551, ''Paint and Coating Manufacturing,'' and NAICS Code 325998, ''All Other Miscellaneous Chemical Production and Preparation Manufacturing'').

Respondent's obligation to respond: Mandatory under 40 CFR part 59, subpart E.

Estimated number of respondents: 65 (total).

Frequency of response: Annual, triennial.

Total estimated burden: 12,259 hours (per year). Burden is defined at 5 CFR 1320.03(b).

T*otal estimated cost:* $855,113 (per year), includes no annualized capital or operation and maintenance costs.

Changes in Estimates: There is a decrease of 6 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to addressing calculation errors in the previously approved ICR.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–22071 Filed 10–10–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 7, 2018.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23219. Comments can also be sent electronically to *Comments.applications@rich.frb.org:*

1. *Carolina Trust Bancshares, Inc., Lincolnton, North Carolina;* to acquire 100 percent of the voting shares of Clover Community Bankshares, Inc., and thereby indirectly acquire Clover Community Bank, both of Clover, South Carolina.

Board of Governors of the Federal Reserve System, October 5, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018–22105 Filed 10–10–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0043; Docket No. 2018–0003; Sequence No. 8]

Submission for OMB Review; Delivery Schedules

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning delivery schedules.

DATES: Submit comments on or before November 13, 2018.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0043, Delivery Schedules''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0043, Delivery Schedules'' on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0043, Delivery Schedules.

Instructions: Please submit comments only and cite Information Collection 9000–0043, Delivery Schedules, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Federal Acquisition Policy Division, GSA 202–208–4949 or via email at *michaelo.jackson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The time of delivery or performance is an essential contract element and must be clearly stated in solicitations and contracts. The contracting officer may set forth a required delivery schedule or may allow an offeror to propose an alternate delivery schedule, for other than those for construction and architect-engineering, by inserting in solicitations and contracts a clause substantially the same as either FAR 52.211–8, Time of Delivery, or FAR 52.211–9, Desired and Required Time of Delivery. These clauses allow the contractor to fill in their proposed delivery schedule. The information is needed to assure supplies or services are obtained in a timely manner.

B. Annual Reporting Burden

Respondents: 21,410.
Responses per Respondent: 1.
Annual Responses: 21,410.
Hours per Response: .167.

Total Burden Hours: 3,575.

C. Public Comments

A 60-day notice published in the **Federal Register** at 83 FR 15571 on April 11, 2018. No comments were received.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0043, Delivery Schedules, in all correspondence.

Dated: October 3, 2018.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2018–22029 Filed 10–10–18; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0107; Docket No. 2018–0003; Sequence No. 22]

Information Collection; Federal Acquisition Regulation Part 23 Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the FAR Council invites the public to comment upon a renewal concerning FAR part 23 requirements.

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

ADDRESSES: The FAR Council invites interested persons to submit comments on this collection by either of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0107, Federal Acquisition Regulation Part 23 Requirements.

Instructions: All items submitted must cite Information Collection 9000–0107, Federal Acquisition Regulation Part 23 Requirements. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, at *http://www.regulations.gov.* Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail). This information collection is pending at the FAR Council. The Council will submit it to OMB within 60 days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, at telephone 703–605–2868, or email *mahruba.uddowla@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Overview of Information Collection

Description of the Information Collection

1. *Type of Information Collection:* Revision/Renewal of a currently approved collection.
2. *Title of the Collection*—Federal Acquisition Regulation Part 23 Requirements.
3. *Agency form number, if any:* — None.

Solicitation of Public Comment

Written comments and suggestions from the public should address one or more of the following four points:

(1) Evaluate 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) 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 submission of responses.

B. Purpose

This information collection requirement, OMB Control No. 9000–0107, currently titled ''Notice of Radioactive Materials,'' is proposed to be retitled ''Federal Acquisition Regulation Part 23 Requirements'' due to consolidation with currently approved information collection requirements OMB Control No. 9000–0101, Drug-Free Workplace; 9000–0191, High Global Warming Potential Hydrofluorocarbons; 9000–0194, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation; 9000–0147, Pollution Prevention and Right-to-Know Information; 9000–0134, Environmentally Sound Products; and 9000–0180, Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

This information collection requirement pertains to information that a contractor must submit in response to a number of requirements from FAR Part 23, which are as follows:

1. *Notice of Radioactive Materials.* The Atomic Energy Act of 1954, (42 U.S.C. 2011), as amended, establishes requirements for protecting radioactive materials. The requirements of this Act are implemented in the FAR at clause 52.223–7, Notice of Radioactive Materials. This clause requires contractors to notify the Government prior to delivery of items containing radioactive materials.

2. *Drug-Free Workplace.* As mandated in Public Law 100–690, the Drug-Free Workplace Act of 1988, and as enacted in Public Law 111–350, which recodifies Title 41—Public Contracts of the United States Code: (1) Government contractor employees are required to notify their employer of any criminal drug statute conviction for a violation occurring in the workplace; and (2) Government contractors, after receiving notice of such conviction, must notify the Government contracting officer. FAR clause 52.223–6, Drug-Free Workplace, implements the Act.

3. *High Global Warming Potential Hydrofluorocarbons.* FAR clauses 52.223–11, Ozone-Depleting Substances, and 52.223–12, Refrigeration Equipment and Air Conditioners, address high global warming potential (GWP) hydrofluorocarbons (HFCs). For equipment and appliances that normally contain 50 or more pounds of HFCs or

HFC blends, the clauses include requirements to track by type, equipment/application, contract, agency, and location, the amount in pounds of HFCs or HFC blends—

i. Contained in such equipment and appliances delivered to the Government; or

ii. Added or taken out of such equipment and appliances that will be maintained, repaired, or disposed under the contract.

The contractor is required to report the HFC information annually to a centralized Government website.

4. *Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation.* FAR provision 52.223–22 contains an annual representation for vendors to indicate if and where they publicly disclose greenhouse gas emissions and greenhouse gas reduction goals or targets. Public disclosure of greenhouse gas emission management is increasingly becoming standard practice in many industries, because an inventory of this information provides insight into operations, spurs innovation, and helps identify opportunities for efficiency and savings, outcomes which can translate into both environmental and financial benefits. Executive Order (E.O.) 13693, Planning for Federal Sustainability in the Next Decade, March 25, 2015, serves as the legal underpinning for this collection of information, as it prescribes the continuation of the Federal policy that agencies shall increase their efficiency and improve their environmental performance, including the reduction of greenhouse gas emissions across Federal operations and the Federal supply chain (*e.g.,* Federal contractors).

5. *Pollution Prevention and Right-to-Know Information.* The Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001–11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101–13109), require that Federal facilities maintain reports on hazardous materials and toxic chemicals and pollution prevention efforts. In keeping with these mandates, FAR clause 52.223–5, Pollution Prevention and Right-to-Know Information, requires Federal contractors performing at a Federal facility to provide sufficient information to the Government to ensure that the facility is compliant with the PPA and EPCRA. This information pertains to the Toxic Release Inventory and PPA reports; other reports required by the EPCRA; implementation of Environmental Management Systems; and completion of Facility Compliance Audits.

6. *Environmentally Sound Products.* Section 6002 of the Resource Conservation and Recovery Act (RCRA), Public Law 94–580, (42 U.S.C. 6962), requires Federal agencies to develop affirmative procurement programs to ensure that items composed of recovered materials will be purchased to the maximum extent practicable. Each agency's affirmative procurement program must provide estimates of the total percentage of recovered materials used in the performance of a contract, certification of minimum recovered material content actually used, where appropriate, and reasonable verification procedures for estimates and certifications. The minimum recovered material content standards are designated by the Environmental Protection Agency (EPA). These standards are grouped into eight categories—

(i) Construction products;
(ii) Landscaping products;
(iii) Non-paper paper office supplies;
(iv) Paper and paper products;
(v) Park and recreation products;
(vi) Transportation products;
(vii) Vehicular products; and
(viii) Miscellaneous products.

FAR clause 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items, was created to assist agencies with compliance with section 6002. Clause 52.223–9 requires a contractor, on completion of the contract that is for or specifies the use of EPA-designated items containing recovered materials, to (a) estimate the percentage of the total recovered material content delivered or used in performance of the contract, including, if applicable, the percentage of post-consumer material content and (b) submit an estimate to the contracting agency.

Although section 6002 requires that agencies develop these estimates whenever an acquisition sets forth minimum percentages of recovered materials, when the price of the item exceeds $10,000, or when the aggregate amount paid for the item or functionally equivalent items in the preceding fiscal year was $10,000 or more, the clause at 52.223–9 is only used in solicitations and contracts exceeding $150,000. Acquisitions of commercially available off-the-shelf (COTS) items are excluded from this requirement.

7. *Affirmative Procurement of Biobased Products Under Service and Construction Contracts.* FAR clause 52.223–2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, requires prime contractors to report annually the product types and dollar values of U.S. Department of Agriculture (USDA)—designated biobased products purchased. The information reported by prime contractors enables Federal agencies to report annually to the Office of Federal Procurement Policy (OFPP) concerning actions taken to implement and measure progress in carrying out the preference for biobased products required under section 9002 of the Farm Security and Rural Investment Act of 2002, codified at 7 U.S.C. 8102.

C. Annual Reporting Burden

1. Notice of Radioactive Materials

Respondents: 500.
Responses per Respondent: 5.
Total Annual Responses: 2,500.
Hours per Response: 1.
Total Burden Hours: 2,500.

2. Drug-Free Workplace

Respondents: 205.
Responses per Respondent: 1.
Total Annual Responses: 205.
Hours per Response: 0.5.
Total Burden Hours: 102.5.

3. High Global Warming Potential Hydrofluorocarbons

Respondents: 2,337.
Responses per Respondent: 1.
Total Annual Responses: 2,337.
Hours per Response: 8.
Total Burden Hours: 18,696.

4. Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation

Respondents: 7,740.
Responses per Respondent: 1.
Total Annual Responses: 7,740.
Hours per Response: 0.25.
Total Burden Hours: 1,935.

5. Pollution Prevention and Right-to-Know Information

Respondents: 3,148.
Total Annual Responses: 4,713.
Hours per Response: 3.9622.
Total Burden Hours: 18,674.

6. Environmentally Sound Products

Respondents: 585.
Responses per Respondent: 1.
Total Annual Responses: 585.
Hours per Response: 0.5.
Total Burden Hours: 292.5.

7. Affirmative Procurement of Biobased Products Under Service and Construction Contracts

Respondents: 29,612.
Responses per Respondent: 5.
Total Annual Responses: 148,060.
Hours per Response: 5.
Total Burden Hours: 740,300.

8. Summary

Respondents: 44,127.

Total Annual Responses: 166,140.
Total Burden Hours: 782,520.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: Variable, depending on the collection.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0107, Federal Acquisition Regulation Part 23 Requirements, in all correspondence.

Dated: October 3, 2018.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2018–22030 Filed 10–10–18; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3343]

Advisory Committee; Dermatologic and Ophthalmic Drugs Advisory Committee, Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Dermatologic and Ophthalmic Drugs Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Dermatologic and Ophthalmic Drugs Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until October 7, 2020.

DATES: Authority for the Dermatologic and Ophthalmic Drugs Advisory Committee will expire on October 7, 2018, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: LaToya Bonner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, email: *DODAC@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services pursuant to 45 CFR part 11 and by the General Services Administration, FDA is announcing the renewal of the Dermatologic and Ophthalmic Drugs Advisory Committee (the Committee). The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner.

The Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

The Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of dermatologic and ophthalmic disorders and makes appropriate recommendations to the Commissioner.

The Committee shall consist of a core of nine voting members including two Chairpersons. Members and the Chairpersons are selected by the Commissioner or designee from among authorities knowledgeable in the fields of dermatology, ophthalmology, internal medicine, pathology, immunology, epidemiology or statistics, and other related professions. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting member who is identified with industry interests.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/DermatologicandOphthalmicDrugsAdvisoryCommittee/ucm094782.htm* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**).

In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please check *https://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: October 4, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–22183 Filed 10–10–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2018–N–0341; FDA–2012–N–0115; FDA–2018–N–1011; FDA–2010–N–0110; FDA–2012–N–0547; FDA–2014–N–2347; FDA–2016–D–2285; FDA–2016–D–1307; FDA–2016–D–4318; FDA–2016–N–0407; and FDA–2018–N–0270]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at *https://www.reginfo.gov/public/do/PRAMain.* 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.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB control number	Date approval expires
New Animal Drugs for Investigational Use	0910–0117	8/31/2021
Guidance for Industry and FDA Staff, Class II Special Controls: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle	0910–0594	8/31/2021
Petition to Request an Exemption from 100 Percent Identity Testing of Dietary Ingredients: Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements	0910–0608	8/31/2021
Prescription Drug Advertisements	0910–0686	8/31/2021
Survey of the Occurrence of Foodborne Illness Risk Factors in Selected Retail and Foodservice Facility Types	0910–0744	8/31/2021
Permanent Discontinuation or Interruption in Manufacturing of Certain Drug and Biological Products	0910–0759	8/31/2021
Food and Cosmetic Export Certificate Applications Process	0910–0793	8/31/2021
Guidance for Industry: Medical Product Communications That are Consistent With the Food and Drug Administration Required Labeling—Questions and Answers	0910–0856	8/31/2021
Guidance for Industry: Drug and Device Manufacturer Communications with Payors, Formulary Committees, and Similar Entities Questions and Answers	0910–0857	8/31/2021
Guidance for Industry: Compounding and Repackaging of Radiopharmaceuticals by State-Licensed Nuclear Pharmacies, Federal Facilities, and Certain Other Entities	0910–0858	8/31/2021
Drug Supply Chain Security Act Pilot Program	0910–0859	8/31/2021
Survey on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional and Retail Food Stores and Facility Types (2015–2025)	0910–0799	9/30/2021

Dated: October 4, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–22101 Filed 10–10–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3323]

Advisory Committee; Antimicrobial Drugs Advisory Committee, Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Antimicrobial Drugs Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Antimicrobial Drugs Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until October 7, 2020.

DATES: Authority for the Antimicrobial Drugs Advisory Committee will expire on October 7, 2018, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Lauren Tesh, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, email: *AMDAC@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services pursuant to 45 CFR part 11 and by the General Services Administration, FDA is announcing the renewal of the Antimicrobial Drugs Advisory Committee. The committee is a discretionary Federal advisory committee established to provide advice to the Commissioner.

The Antimicrobial Drugs Advisory Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which the Food and Drug Administration has regulatory responsibility.

The Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders and makes appropriate recommendations to the Commissioner of Food and Drugs.

The Committee shall consist of a core of 13 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of infectious disease, internal medicine, microbiology, pediatrics, epidemiology or statistics, and related specialties. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting member who is identified with industry interests.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/Anti-InfectiveDrugsAdvisoryCommittee/ucm094132.htm* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please check *https://www.fda.gov/AdvisoryCommittees/default.htm*.

Dated: October 4, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–22098 Filed 10–10–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Charter Renewal of the Secretary's Advisory Committee on Human Research Protections

AGENCY: Office of the Assistant Secretary for Health, Office of the

Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services (HHS) is hereby giving notice that the charter for the Secretary's Advisory Committee on Human Research Protections (SACHRP) has been renewed.

FOR FURTHER INFORMATION CONTACT: Julia Gorey, J.D., Designated Federal Official, Executive Director, SACHRP, U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852; telephone: 240–453–8141; fax: 240–453–6909; email address: *SACHRP@hhs.gov.* Additional information is available on the SACHRP website at *https://www.hhs.gov/ohrp/sachrp-committee/index.html.*

SUPPLEMENTARY INFORMATION: SACHRP is a discretionary advisory committee established under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, to provide expert advice and recommendations to the Secretary of Health and Human Services, through the Assistant Secretary for Health, on issues and topics pertaining to or associated with the protection of human research subjects within the authority of HHS.

SACHRP is authorized to establish subcommittees to provide assistance for accomplishing its mission and currently maintains two subcommittees. The Subpart A Subcommittee (SAS) was established by SACHRP in October 2006 and is charged with developing recommendations for consideration by SACHRP regarding the application of subpart A of 45 CFR part 46 in the current research environment. The Subcommittee on Harmonization (SOH) was established by SACHRP at its July 2009 meeting and charged with identifying and prioritizing areas in which regulations and/or guidelines for human subjects research adopted by various agencies or offices within HHS would benefit from harmonization, consistency, clarity, simplification and/or coordination.

On September 25, 2018, the Secretary approved renewal of the Committee's charter. The new charter was effected and filed with the appropriate Congressional committees and the Library of Congress on October 1, 2018. Renewal of the Committee's charter gives the Committee authorization to operate until October 1, 2020.

A copy of the Committee's charter is available on the Committee's website at *https://www.hhs.gov/ohrp/sachrp-committee/charter/index.html.*

A copy of the charter can also be obtained by accessing the Federal Advisory Committee Act database that is managed by the Committee Management Secretariat under the General Services Administration. The website for the FACA database is *https://facadatabase.gov.*

Dated: September 28, 2018.

Julia G. Gorey,

Executive Director, Secretary's Advisory Committee on Human Research Protections.

[FR Doc. 2018–22167 Filed 10–10–18; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Clinical and Basic Science Review Committee.

Date: October 25–26, 2018.

Time: 10:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Keith A Mintzer, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924, 301–827–7949, *mintzerk@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 4, 2018.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–22087 Filed 10–10–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging, Special Emphasis Panel; NIA Clinical Trials.

Date: November 13, 2018.

Time: 12:01 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maurizio Grimaldi, MD, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C218, Bethesda, MD 20892, 301–496–9374, *grimaldim2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 4, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–22085 Filed 10–10–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; PsychENCODE.

Date: November 2, 2018.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Vinod Charles, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Advanced Laboratories for Accelerating the Reach and Impact Research Centers (P50).

Date: November 5, 2018.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Karen Gavin-Evans, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6153, MSC 9606, Bethesda, MD 20892, 301–451–2356, *gavinevanskm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: October 4, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–22072 Filed 10–10–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of R34 Clinical Trial Planning Grants.

Date: November 13, 2018.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, RM 3AN18, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brian R. Pike, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–3907, *pikbr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: October 4, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–22076 Filed 10–10–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; High Impact, Interdisciplinary Science in NIDDK Research Areas: Kidney Disease (RC2 Clinical Trial Optional).

Date: November 19, 2018.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7119, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 4, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–22079 Filed 10–10–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 18–732: Reducing Stigma to Improve HIV/AIDS Care in Low- and-Middle-Income Countries.

Date: October 24, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shalanda A. Bynum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206,

Bethesda, MD 20892, 301–755–4355, *bynumsa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: Topics in Computational Biosciences.

Date: October 30–31, 2018.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joseph D. Mosca, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 435–2344, *moscajos@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Addictions, Depression, Bipolar Disorder and Schizophrenia.

Date: October 31, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Kristin Kramer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5205, MSC 7846, Bethesda, MD 20892, (301) 437–0911, *kramerkm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Innovative Immunology Research.

Date: November 2, 2018.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Andrea Keane-Myers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, Bethesda, MD 20892, 301–435–1221, *andrea.keane-myers@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurobiology of Neurodegenerative Diseases.

Date: November 2, 2018.

Time: 3:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7846, Bethesda, MD 20892–7846, 301–827–7238, *zhaow@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Integrated Metabolism Topics.

Date: November 2, 2018.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Antonello Pileggi, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, Bethesda, MD 20892–7892, (301) 402–6297, *pileggia@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 4, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–22090 Filed 10–10–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Frederick National Laboratory Advisory Committee to the National Cancer Institute.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will also be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

Name of Committee: Frederick National Laboratory Advisory Committee to the National Cancer Institute.

Date: October 29, 2018.

Time: 9:30 a.m. to 4:30 p.m.

Agenda: Ongoing and new activities at the Frederick National Laboratory for Cancer Research.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Conference Room TE406, Rockville, MD 20850.

Contact Person: Caron A. Lyman, Ph.D., Executive Secretary, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 7W–126, Bethesda, MD 20892, 240–276–6348, *lymanc@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NCI Shady Grove has instituted stringent procedures for entrance into the NCI Shady Grove building. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/fac/fac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 4, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–22088 Filed 10–10–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; National Research Mentoring Network (NRMN) U01 Applications.

Date: November 8–9, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Rebecca H. Johnson, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical

Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: October 4, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–22075 Filed 10–10–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Macromolecular Structure and Function B Study Section, October 22, 2018, 08:00 a.m. to October 23, 2018, 05:00 p.m., Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on September 28, 2018, 83 FR 49113.

The meeting will be held on October 22, 2018, starting at 8:00 a.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 4, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–22091 Filed 10–10–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIGMS Initial Review Group; Training and Workforce Development Subcommittee—B Review of Predoctoral Training Grant Applications.

Date: November 29–30, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Cambria Hotel and Suites Rockville, 1 Helen Heneghan Way, Rockville, MD 20815.

Contact Person: Lisa A. Newman, SCD, Scientific Review Officer, Office of Scientific Review, National Institutes of General Medical Sciences, 45 Center Drive, RM 3AN18A, Bethesda, MD 20814 (301) 435–0965, *newmanla2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research, Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: October 4, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–22077 Filed 10–10–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIGMS Initial Review Group; Training and Workforce Development Subcommittee—A Review of T32 Applications.

Date: December 3–4, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The St. Regis Washington, DC, 923 16th & K St. NW, Washington, DC 20006.

Contact Person: John J. Laffan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301–594–2773, *laffanjo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: October 4, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–22078 Filed 10–10–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; National Centers for Translational Research in Reproduction and Infertility.

Date: November 5–6, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dennis E. Leszczynski, Ph.D., Scientific Review Officer, Division of

Scientific Review National Institute of Child Health And Human Development, NIH, 6710B Rockledge Drive, Bethesda, MD 20892, (301) 435–6884, *leszczyd@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Population Dynamics Centers Research Infrastructure Program FY 2019 (P2C).

Date: November 6, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Minki Chatterji, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Rm. 2121D, Bethesda, MD 20892–7501, 301–827–5435, *minki.chatterji@nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Using Archived Data and Specimen Collections to Advance Maternal and Pediatric HIV/AIDS Research (R21—Clinical Trial Not Allowed).

Date: November 26, 2018.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Teleconference, 6710 B Rockledge Drive, Bethesda, MD 20817.

Contact Person: Rita Anand, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Bethesda, MD 20892, 301–496–1487, *anandr@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; T32 Training Grant Applications Review.

Date: November 29–30, 2018.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Bethesda, MD 20892, 301–435–6878, *wedeenc@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 4, 2018.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–22080 Filed 10–10–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings of the NHLBI Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Physician Scientists—Research Award for Early Stage Investigator.

Date: November 1, 2018.

Time: 9:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Lindsay M. Garvin, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Suite 7189, Bethesda, MD 20892, 301–827–7911, *lindsay.garvin@nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Mentored Career Development Awards—K23 and K24.

Date: November 5, 2018.

Time: 2:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lindsay M. Garvin, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Suite 7189, Bethesda, MD 20892, 301–827–7911, *lindsay.garvin@nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Grant Review for Biostatistics Education.

Date: November 6, 2018.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Melissa E. Nagelin, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA National Heart, Lung, and Blood Institute 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892, 301–435–0297, *nagelinmh2@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 4, 2018.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–22086 Filed 10–10–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Extension; DERT Extramural Grantee Data Collection (NIEHS)

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: Dr. Kristianna Pettibone, Evaluator, Program Analysis Branch, NIEHS, NIH, 530 Davis Dr., Room 3064, Morrisville, NC 20560, or call non-toll-free number 984–287–3303 or email your request, including your address to: *pettibonekg@niehs.nih.gov*.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal**

Register on May 1, 2018, Volume 83, Number 50, page 19073–19074 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is make public aware that this submission is being converted to a Common Form to include the Environmental Protection Agency (EPA) and allow an additional 30 days for public comment.

The National Institute of Environmental Health Sciences (NIEHS), 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: DERT Extramural Grantee Data Collection, 0925–XXXX, Expiration Date XX/XX/XXXX–NEW, National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

Need and Use of Information Collection: NIEHS is converting ICR OMB #0925–0657 to a Common Form to add the Environmental Protection Agency (EPA). In order to make informed management decisions about its research programs and to demonstrate the outputs, outcomes and impacts of its research programs NIEHS will collect, analyze and report on data from extramural grantees who are currently receiving funding or who have received funding in the past on topics such as: (1) Key scientific outcomes achieved through the research and the impact on the field of environmental health science; (2) Contribution of research findings to program goals and objectives; (3) ; Satisfaction with the program support received; (4) Challenges and benefits of the funding mechanism used to support the science; and (5) Emerging research areas and gaps in the research.

Information gained from this primary data collection will be used in conjunction with data from grantee progress reports and presentations at grantee meetings to inform internal programs and new funding initiatives. Outcome information to be collected includes measures of agency-funded research resulting in dissemination of findings, investigator career development, grant-funded knowledge and products, commercial products and drugs, laws, regulations and standards, guidelines and recommendations, information on patents and new drug applications and community outreach and public awareness relevant to extramural research funding and emerging areas of research. Satisfaction information to be collected includes measures of satisfaction with the type of funding or program management mechanism used, challenges and benefits with the program support received, and gaps in the research. *Frequency of Response:* Once per grantee, per research portfolio. *Affected Public:* Current or past grantees from:

- *Eunice Kennedy Shriver* National Institute of Child Health and Human Development (NICHD);
- National Institute on Deafness and Other Communication Disorders (NIDCD);
- National Institute of Mental Health (NIMH);
- National Institute of Neurological Disorders and Stroke (NINDS);
- National Institute of Environmental Health Sciences (NIEHS); and
- National Cancer Institute (NCI)

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 700.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
NICHD Grantee	200	1	30/60	100
NIDCD Grantee	200	1	30/60	100
NIMH Grantee	200	1	30/60	100
NINDS Grantee	200	1	30/60	100
NCI Grantee	400	1	30/60	200
NIEHS Grantee	200	1	30/60	100
Total	1400	1400		700

Dated: October 3, 2018.

Jane M. Lambert,

Project Clearance Liaison, NIEHS, NIH.

[FR Doc. 2018–22038 Filed 10–10–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Language and Communication.

Date: October 29, 2018.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–500–5829, *sechu@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–17–

339: Science Education Partnership Awards (SEPA).

Date: November 5–6, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Grand, 2350 M Street NW, Washington, DC 20037.

Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Pilot Clinical Trials for the Spectrum of Alzheimer's Disease.

Date: November 5, 2018.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Wind Cowles, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3172, Bethesda, MD 20892, 301–437–7872, *cowleshw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Eukaryotic Parasites and Vectors.

Date: November 6–7, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Fouad A. El-Zaatari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Radiation Therapy and Biology.

Date: November 6–7, 2018.

Time: 8:00 a.m. to 11:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Bacterial Pathogenesis.

Date: November 6, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Richard G. Kostriken, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 240–519–7808, *kostrikr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Diabetes.

Date: November 6, 2018.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Liliana N. Berti-Mattera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4215, Bethesda, MD 20892, 301–827–7609, *liliana.berti-mattera@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular Hematology.

Date: November 6, 2018.

Time: 12:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Katherine M. Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0912, *Katherine_Malinda@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 4, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–22089 Filed 10–10–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2017–0894]

RIN 1625–ZA37

Update to the 2016 National Preparedness for Response Exercise Program (PREP) Guidelines; Correction

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: On October 2, 2018, the Coast Guard published a notice of availability of the 2016.1 PREP Guidelines. In the **DATES** section of the Notice of availability, the effective date of the 2016.1 PREP Guidelines is October 1, 2018. However, in Section 1.3, page 1–2, of the 2016.1 PREP Guidelines, the effective date is ''60 days after the date of publication in the **Federal Register**.'' The Coast Guard has corrected Section 1.3 of the 2016.1 PREP Guidelines to reflect the effective date is ''October 1, 2018.'' A corrected version of the 2016.1 PREP Guidelines has been uploaded to the USCG Homeport site at the following link: *https://homeport.uscg.mil/missions/incident-management-and-preparedness/contingency-exercises/port-level-exercises/port-level-exercises-general-information.*

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Smith, Office of Marine Environmental Response Policy, U.S. Coast Guard, 202–372–2675.

SUPPLEMENTARY INFORMATION: On page 1–2 of the 2016.1 PREP Guidelines, in Section 1.3, the ''Effective Date'' is corrected to read: ''The 2016.1 PREP Guidelines are effective on October 1, 2018. The PREP Guidelines follow the calendar year (January 1–December 31).'' A corrected version of the 2016.1 PREP Guidelines has been uploaded to the Coast Guard Homeport site and can be accessed at *https://homeport.uscg.mil/missions/incident-management-and-preparedness/contingency-exercises/port-level-exercises/port-level-exercises-general-information.*

Dated: October 4, 2018.

Ricardo M. Alonso,

Captain, U.S. Coast Guard, Chief, Office of Marine Environmental Response and Policy.

[FR Doc. 2018–22214 Filed 10–10–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of determination.

SUMMARY: The Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations, and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border of the United States in Hidalgo County in the State of Texas.

DATES: This determination takes effect on October 11, 2018.

SUPPLEMENTARY INFORMATION: Important mission requirements of the Department

of Homeland Security (''DHS'') include border security and the detection and prevention of illegal entry into the United States. Border security is critical to the nation's national security. Recognizing the critical importance of border security, Congress has mandated DHS to achieve and maintain operational control of the international land border. Secure Fence Act of 2006, Public Law 109–367, § 2, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1701 note). Congress defined ''operational control'' as the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband. *Id.* Consistent with that mandate from Congress, the President's Executive Order on Border Security and Immigration Enforcement Improvements directed executive departments and agencies to deploy all lawful means to secure the southern border. Executive Order 13767, § 1. In order to achieve that end, the President directed, among other things, that I take immediate steps to prevent all unlawful entries into the United States, including the immediate construction of physical infrastructure to prevent illegal entry. Executive Order 13767, § 4(a).

Congress has provided to the Secretary of Homeland Security a number of authorities necessary to carry out DHS's border security mission. One of those authorities is found at section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (''IIRIRA''). Public Law 104–208, Div. C, 110 Stat. 3009–546, 3009–554 (Sept. 30, 1996) (8 U.S.C 1103 note), as amended by the REAL ID Act of 2005, Public Law 109–13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (8 U.S.C. 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109–367, § 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110–161, Div. E, Title V, § 564, 121 Stat. 2090 (Dec. 26, 2007). In section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In section 102(b) of IIRIRA, Congress mandated the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

Determination and Waiver

Section 1

The United States Border Patrol's Rio Grande Valley Sector is an area of high illegal entry. For the last several years, the Rio Grande Valley Sector has seen more apprehensions of illegal aliens than any other sector of the United States Border Patrol (''Border Patrol''). For example, in fiscal year 2017 alone, Border Patrol apprehended over 137,000 illegal aliens. In that same year Border Patrol seized approximately 260,000 pounds of marijuana and approximately 1,200 pounds of cocaine.

In order to satisfy the need for additional border infrastructure in the Rio Grande Valley Sector, DHS will take action to construct barriers and roads. DHS will construct barriers and roads within various segments of the border in the Rio Grande Valley Sector. The segments of the border within which such construction will occur are referred to herein as the ''project area'' and are more specifically described in Section 2 below.

Section 2

I determine that the following areas in the vicinity of the United States border, located in Hidalgo County in the State of Texas, within the United States Border Patrol's Rio Grande Valley Sector, are areas of high illegal entry (the ''project area''):

- Starting approximately a quarter mile west of the location where the levee intersects Goodwin/Abram road and running east in proximity to the International Boundary and Water Commission (''IBWC'') levee to approximately a quarter mile east of Anzalduas Dam Road, a total distance of approximately eight (8) miles.
- Starting at the eastern boundary of the Santa Ana National Wildlife Refuge and running east in proximity to the IBWC levee approximately two and four-tenths (2.4) miles to the western boundary of the Monterrey Banco Tract of the Lower Rio Grande Valley National Wildlife Refuge.
- Starting at the eastern boundary of the Monterrey Banco Tract of the Lower Rio Grande Valley National Wildlife Refuge and running south and east in proximity to the IBWC levee for approximately one and one-half (1.5) miles.
- Starting at the eastern boundary of the La Coma Tract of the Lower Rio Grande Valley National Wildlife Refuge and running east in proximity to the IBWC levee for approximately two and one-half (2.5) miles.
- Starting where South International Boulevard crosses the IBWC levee and running west and east in proximity to the IBWC levee approximately one-half (0.5) of a mile in both directions.
- Starting approximately one-quarter (0.25) of a mile west of the western boundary of the Mercedes Settling Basin and running northeast in proximity to the IBWC levee approximately two and one-half (2.5) miles.

There is presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project area. In order to ensure the expeditious construction of the barriers and roads in the project area, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.

Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of roads and physical barriers (including, but not limited to, accessing the project area, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors) in the project area, all of the following statutes, including all federal, state, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended: The National Environmental Policy Act (Pub. L. 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*)); the Endangered Species Act (Pub. L. 93–205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 *et seq.*)); the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (33 U.S.C. 1251 *et seq.*)); the National Historic Preservation Act (Pub. L. 89–665, 80 Stat. 915 (Oct. 15, 1966), as amended, repealed, or replaced by Public Law 113–287 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 470 *et seq.,* now codified at 54 U.S.C. 100101 note and 54 U.S.C. 300101 *et seq.*)); the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*); the Migratory Bird Conservation Act (16 U.S.C. 715 *et seq.*); the Clean Air Act (42 U.S.C. 7401 *et seq.*); the Archeological Resources Protection Act (Pub. L. 96–95 (16 U.S.C.

470aa *et seq.*)); the Paleontological Resources Preservation Act (16 U.S.C. 470aaa *et seq.*); the Federal Cave Resources Protection Act of 1988 (16 U.S.C. 4301 *et seq.*); the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*); the Noise Control Act (42 U.S.C. 4901 *et seq.*); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*); the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*); the Archaeological and Historic Preservation Act (Pub. L. 86–523, as amended, repealed, or replaced by Pub. L. 113–287 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 469 *et seq.,* now codified at 54 U.S.C. 312502 *et seq.*)); the Antiquities Act (formerly codified at 16 U.S.C. 431 *et seq.,* now codified 54 U.S.C. 320301 *et seq.*); the Historic Sites, Buildings, and Antiquities Act (formerly codified at 16 U.S.C. 461 *et seq.,* now codified at 54 U.S.C. 3201–320303 & 320101–320106); the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*); the Coastal Zone Management Act (Pub. L. 92–583 (16 U.S.C. 1451, *et seq.*)); the Federal Land Policy and Management Act (Pub. L. 94–579 (43 U.S.C. 1701 *et seq.*)); the National Wildlife Refuge System Administration Act (Pub. L. 89–669, 16 U.S.C. 668dd–668ee); National Fish and Wildlife Act of 1956 (Pub. L. 84–1024 (16 U.S.C. 742a, *et seq.*)); the Fish and Wildlife Coordination Act (Pub. L. 73–121 (16 U.S.C. 661 *et seq.*)); the Administrative Procedure Act (5 U.S.C. 551 *et seq.*); the River and Harbors Act of 1899 (33 U.S.C. 403)); the Eagle Protection Act (16 U.S.C. 668 *et seq.*); the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*); and the American Indian Religious Freedom Act (42 U.S.C. 1996).

This waiver does not revoke or supersede the previous waiver published in the **Federal Register** on April 8, 2008 (73 FR 19077), which shall remain in full force and effect in accordance with its terms. I reserve the authority to execute further waivers from time to time as I may determine to be necessary under section 102 of IIRIRA.

Dated: October 4, 2018.

Kirstjen M. Nielsen,

Secretary of Homeland Security.

[FR Doc. 2018–22063 Filed 10–10–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5994–N–04]

Operations Notice for the Expansion of the Moving to Work Demonstration Program; Republication and Extension of Comment Period

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: HUD is republishing the Operations Notice published in the **Federal Register** on October 5, 2018, which omitted the Appendix. This Notice includes the Appendix and the public comment period is extended accordingly.

The Public Housing/Section 8 Moving to Work (MTW) demonstration program was first established under Section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 to provide statutory and regulatory flexibility to participating public housing agencies (PHAs) under three statutory objectives. Those three statutory objectives are: To reduce cost and achieve greater cost effectiveness in Federal expenditures; to give incentives to families with children whose heads of household are either working, seeking work, or are participating in job training, educational or other programs that assist in obtaining employment and becoming economically self-sufficient; and to increase housing choices for low-income families. This Operations Notice for the Expansion of the MTW Demonstration Program (Operations Notice) establishes requirements for the implementation and continued operation of the MTW demonstration program pursuant to the 2016 MTW Expansion Statute.

DATES: *Comment Due Date:* November 26, 2018.

ADDRESSES:

Electronic Submission of Comments. HUD strongly encourages interested persons to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Submission of Comments by Mail. Alternatively, interested persons may submit comments regarding this Notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the Notice.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 1–800–877–8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Marianne Nazzaro, Director, Moving to Work Demonstration Program, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 4130, Washington, DC 20410; email address *mtw-info@hud.gov.*

SUPPLEMENTARY INFORMATION: This republication of the October 5, 2018 Operations Notice, originally published at 83 FR 50387, includes an Appendix that was omitted.

I. Background

Section 239 of the Fiscal Year 2016 Appropriations Act, Public Law 114–113 (2016 MTW Expansion Statute), signed by the President in December 2015, authorizes HUD to expand the MTW demonstration program from the current size of 39 agencies to an additional 100 agencies over a period of 7 years. This Notice was originally published on January 23, 2017, in the **Federal Register**, entitled ''Operations Notice for the Expansion of the Moving to Work Demonstration Program

Solicitation of Comment.'' On May 4, 2017, the Notice was republished with three technical revisions and an extension of the comment period. HUD took all comments received into consideration.

Changes to this Notice have been made to incorporate feedback from the two previous publications and to reflect policy decisions. The primary changes are as follows:

- The term of participation has been set at 12 years from the year of designation in response to public comments for the term to be at least 10 years from the year of designation.
- In response to public comments, the Department removed the General Waivers and Conditional Waivers categories and replaced them with a singular MTW Waivers category, which MTW agencies may implement without further approval from HUD.
  - ○ In restructuring the MTW Waivers, the Notice now includes safe harbors, which are defined as the additional requirements, beyond those specified in the activity description, that the agency must follow in implementing activities without further HUD approval.
  - ○ MTW Waivers now include specific guidance on impact analyses, hardship policies, and applicability of waivers to elderly/disabled families.
  - ○ An additional MTW Waiver was added: ''Increase Elderly Age,'' which allows agencies to amend the definition of an elderly person to be an individual who is at least sixty-five.
  - ○ The Homeownership Waiver was removed. Upon reviewing this waiver, the Department determined that the activities provided to agencies under the waiver were already available under the Section 32 Homeownership Program.
- The 90 percent voucher utilization requirement was removed. The MTW Housing Assistance Payment (HAP) Renewal Formula has been revised to use as a base, all prior-year MTW-eligible Housing Choice Voucher (HCV) funding expenses paid from HAP, including HAP expenses plus non-HAP expenses.
- For a prospective agency to be eligible for selection to the MTW demonstration, it must be a high performer in either the Public Housing Assessment System (PHAS) or the Section Eight Management Assessment Program (SEMAP).
- Regionalization was removed from the MTW Operations Notice and will be implemented through a separate forthcoming notice.
- Agencies will formalize their MTW status with an amendment to their Annual Contributions Contract.
- The monitoring of the requirement that an MTW agency designated pursuant to the 2016 MTW Expansion Statute continues to assist substantially the same number of families has been simplified. Compliance will be determined using a baseline ratio of total public housing and HCV HAP funding to families served.

MTW Demonstration Program

The MTW demonstration program was first established under Section 204 of Title II of section 101(e) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104–134, 110 Stat. 1321–281; 42 U.S.C. 1437f note (1996 MTW Statute) [1] to provide statutory and regulatory flexibility [2] to participating PHAs under three statutory objectives. Those three statutory objectives are to:

- Reduce cost and achieve greater cost effectiveness in Federal expenditures;
- Give incentives to families with children where the head of household is working, seeking work, or is preparing for work by participating in job training, educational programs, or programs that assist people to obtain employment and become economically self-sufficient; and
- Increase housing choices for eligible low-income families.

To achieve these objectives, PHAs selected for participation in the MTW demonstration are given exemptions from many existing public housing and HCV rules and offered more flexibility with how they use their Federal funds. MTW agencies use this opportunity presented by the MTW demonstration to better address local housing needs. HUD learns from the experience of MTW agencies to develop new housing policy recommendations that can positively impact assisted housing delivery for PHAs nationwide.

In addition to statutory and regulatory relief,[3] MTW agencies have the flexibility to apply fungibility among three core funding programs' funding streams—public housing Operating Funds, public housing Capital Funds, and HCV assistance (to include both HAP and Administrative Fees)—hereinafter referred to as ''MTW Funding.'' [4] These flexibilities do not negate the need for both the PHA and HUD to be able to account for the funding from its original source to the date of its ultimate eligible use [5] by the PHA, to comply with Federal grant and financial management requirements, and to use funds effectively and efficiently for their eligible purposes. As the Department continues to implement program-specific financial management policies in its core housing programs, MTW agencies will be subject to the same requirements and procedures as non-MTW agencies. Therefore, the requirements and procedures described in this Notice may change as new financial management policies are implemented over time.

Throughout participation in the MTW demonstration program, MTW agencies must continue to meet five statutory requirements established under the 1996 MTW Statute. The five statutory requirements are:

- At least 75 percent of the families assisted by participating demonstration public housing authorities shall be very low-income families, as defined in section 3(b)(2) of the United States Housing Act of 1937;
- Establishing a reasonable rent policy, which shall be designed to encourage employment and self-sufficiency by participating families, consistent with the purpose of this demonstration, such as by excluding some or all of a family's earned income for purposes of determining rent;
- Continuing to assist substantially the same total number of eligible low-income families as would have been served had the amounts not been combined;
- Maintaining a comparable mix of families (by family size) as would have been provided had the amounts not been used under the demonstration; and
- Assuring that housing assisted under the demonstration program meets housing quality standards established or approved by the Secretary.

[1] PHAs currently operating an MTW demonstration program include PHAs with an active MTW agreement as of December 15, 2015. PHAs currently operating an MTW program do not include PHAs that previously participated in the MTW demonstration and later left the demonstration.

[2] The MTW demonstration program may only provide certain flexibilities under the 1937 Act. For more information on the history of the MTW demonstration program, please go to: *www.hud.gov/mtw.*

[3] For more information about the MTW demonstration program and the specific activities of existing MTW agencies, please refer to the MTW website at *www.hud.gov/mtw.*

[4] Funds awarded under Sections 8(o), 9(d), and 9(e) of the 1937 Act are eligible for expanded uses pursuant to MTW fungibility, with the exception of funds provided for specific non-MTW HCV sub-programs. Other funds a PHA may receive (*i.e.,* grant funds under another obligating document) are likewise not covered by MTW flexibilities and must be tracked and reported under the applicable rules and requirements.

[5] The date of the ''ultimate eligible use'' means the date of disbursement by the PHA for an eligible purpose, which would remove the funding from the PHA's account and the PHA's control.

Currently, there are 39 agencies [6] participating in the MTW demonstration program. The administrative structure for these 39 agencies is outlined in the Standard MTW Agreement, a contract between each existing MTW agency and HUD. The 2016 MTW Expansion Statute extended the term of the Standard MTW Agreement through each of the existing MTW agencies' 2028 fiscal year.

2016 Expansion of the MTW Demonstration Program

As the 2016 MTW Expansion Statute directs, HUD is authorized to expand the MTW demonstration program from the current level of 39 agencies to an additional 100 agencies over a period of 7 years, ending in 2023. In expanding the MTW demonstration, HUD intends to build on the successes and lessons learned from the demonstration thus far. The vision for the MTW expansion is to learn from MTW interventions to improve the delivery of Federally assisted housing and promote self-sufficiency for low-income families across the Nation. Through the expansion, HUD will extend flexibility to a broader range of PHAs both in terms of size and geographic diversity and will balance the flexibility inherent in MTW with the need for measurement, evaluation, and prudent oversight.

HUD will select the additional 100 PHAs in cohorts, with applications for each cohort to be sought via PIH Notice. For each cohort of agencies selected, the 2016 MTW Expansion Statute requires HUD to direct all the agencies within the cohort to implement one specific policy change, which HUD will evaluate rigorously. MTW agencies may implement policy changes in addition to the policy change directed by HUD as long as those policy changes do not conflict or interfere with the cohort study. As required by the 2016 MTW Expansion Statute, the HUD-appointed MTW Research Advisory Committee, described further below, advised HUD on the policy changes to be tested through the new cohorts of MTW agencies and the methods of research and evaluation.

The 2016 MTW Expansion Statute also includes a provision allowing the Secretary to designate an MTW agency as a regional MTW agency—at the request of said agency—should the Secretary determine that unified administration of assistance ''under sections 8 and 9 of the United States Housing Act of 1937 (42 U.S.C. 1437f and g)'' by that agency across multiple jurisdictions will lead to (a) efficiencies and to (b) greater housing choice for low-income persons in the region. HUD will issue separate guidance regarding how an MTW agency may be designated as a regional MTW agency.

Eligibility and Selection for the Expansion of the MTW Demonstration

The 2016 MTW Expansion Statute provides that the 100 MTW agencies selected must be high performers in either HUD's Public Housing Assessment System (PHAS) or its Section Eight Management Assessment Program (SEMAP) at the time of application to the demonstration, and represent geographic diversity across the country. Further, the 2016 MTW Expansion Statute states that of these 100 PHAs:

- No less than 50 PHAs shall administer 1,000 or fewer aggregate housing voucher and public housing units;
- No less than 47 PHAs shall administer 1,001–6,000 aggregate housing voucher and public housing units;
- No more than 3 PHAs shall administer 6,001–27,000 aggregate housing voucher and public housing units;
- No PHA shall be granted MTW designation if it administers more than 27,000 aggregate housing voucher and public housing units; and
- Five of the PHAs selected shall be agencies with a Rental Assistance Demonstration (RAD) portfolio award.

HUD will issue separate PIH Notices, by cohort, soliciting applications from eligible PHAs for participation in the MTW demonstration. These Notices, when issued, will outline the specific application submission requirements, evaluation criteria, and process HUD will use when selecting PHAs for MTW designation.

The PHA sizes eligible for participation in the MTW demonstration are statutory and were defined by Congress; therefore, HUD is unable to waive or modify those size restrictions.

MTW Research Advisory Committee

The 2016 MTW Expansion Statute required HUD to form and consult with a Federal MTW Research Advisory Committee (the Committee), established in May 2016. The Committee is governed by the Federal Advisory Committee Act (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees. The purpose of the Committee is to provide independent advice with respect to the policies to be studied through the MTW expansion and the related methods of research and evaluation. The Committee is charged with advising HUD on the following:

- Policy proposals and evaluation methods for the MTW demonstration to inform the one specific policy change required for each cohort of agencies;
- Rigorous research methodologies to measure the impact of policy changes studied;
- Policy changes adopted by MTW agencies that have proven successful and can be applied more broadly to all PHAs; and
- Statutory and/or regulatory changes (specific waivers and associated activities, and program and policy flexibility) necessary to implement policy changes for all PHAs.

The Committee has no role in reviewing or selecting the 100 PHAs to participate in the expansion of the MTW demonstration.

The Committee members were appointed to a two-year term in June 2016 by the HUD Secretary and chosen to ensure balance, diversity, and a broad representation of ideas.[7] In May 2018, HUD extended the Committee and the members' appointments for another two-year term. As required by the 2016 MTW Expansion Statute, the Committee includes program and research experts from HUD; a representation of MTW agencies, including current and former residents; and independent subject matter experts in housing policy research.

Based on the advice of the Committee, HUD will study, by cohort of MTW

[6] The 39 agencies are: Alaska Housing Finance Corporation; Atlanta Housing Authority; Housing Authority of the City of Baltimore; Boulder Housing Partners; Cambridge Housing Authority; Housing Authority of Champaign County; Charlotte Housing Authority; Chicago Housing Authority; Housing Authority of Columbus, Georgia; District of Columbia Housing Authority; Delaware State Housing Authority; Fairfax County Redevelopment and Housing Authority; Holyoke Housing Authority; Keene Housing; King County Housing Authority; Lawrence-Douglas County Housing Authority; Lexington-Fayette Urban County Housing Authority; Lincoln Housing Authority; Louisville Metropolitan Housing Authority; Massachusetts Department of Housing and Community Development; Minneapolis Public Housing Authority; Housing Authority of the City of New Haven; Oakland Housing Authority; Orlando Housing Authority; Philadelphia Housing Authority; Housing Authority of the City of Pittsburgh; Portage Metropolitan Housing Authority; Home Forward (Portland, OR); Housing Authority of the City of Reno; San Antonio Housing Authority; Housing Authority of the County of San Bernardino; San Diego Housing Commission; Housing Authority of the County of San Mateo; Housing Authority of the County of Santa Clara/City of San Jose; Seattle Housing Authority; Tacoma Housing Authority; Housing Authority of Tulare County; and Vancouver Housing Authority.

[7] For more information on the establishment, purpose, members, and meeting content of the MTW Research Advisory Committee, please go to: *https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/mtw/expansion/rac.*

agencies, the following four policies (which are in no particular order except for the first two cohorts):

• *Impact of MTW Flexibility on Small and Medium PHAs:* In this first cohort, HUD will evaluate the overall effects of MTW flexibility on a PHA and the residents it serves. The Committee recommended that PHAs with under 1,000 aggregate public housing and voucher units be included in this cohort. To date, only one of the existing MTW agencies has less than 1,000 aggregate units, while the majority of PHAs nationwide fit into this size category.

• *Rent Reform:* In this second cohort, HUD will evaluate different rent reform models. Rent reform models may be income based and may include tiered rents and/or stepped-up rents.

• *Work Requirements:* In this cohort, HUD will evaluate work requirements for residents/participants who are non-elderly, non-disabled, and at least 18 years old.

• *Landlord Incentives:* In this cohort, HUD will evaluate how to improve landlord participation in the HCV program through incentives such as participation payments, vacancy payments, alternate inspection schedules and other methods.

Operations Notice for the Expansion of the MTW Demonstration

Through the MTW expansion, HUD seeks to design and test new approaches to providing and administering housing assistance and then to apply the lessons-learned nationwide, all within a framework of simplifying program administration. This is laid out in HUD's guiding principles for the expansion, which are: (1) Simplify; (2) learn; and (3) apply. The Operations Notice is an embodiment of this vision. The Operations Notice describes a framework for the MTW demonstration that streamlines and simplifies HUD's implementation of MTW status and the associated flexibilities of participating MTW agencies while providing for the rigorous evaluation of specific policy changes. This framework would apply to all PHAs designated as an MTW agency pursuant to the 2016 MTW Expansion Statute and to any previously-designated MTW agencies that agree to operate under the framework of the Operations Notice. These PHAs are referred to in the Operations Notice as ''MTW agencies.'' Participation in the MTW Expansion will be formalized by an amendment to the PHA's Consolidated Annual Contributions Contract, which is called the MTW CACC Amendment.[8]

The Operations Notice is organized into 11 sections as follows:

1. *Purpose and Applicability*
2. *Waivers*
   a. MTW Waivers
   b. Agency-Specific Waiver Requests
   c. Cohort-Specific Waivers
3. *Term of Participation*
4. *MTW Funding Flexibilities and Financial Reporting*
   a. MTW Funding Flexibility
   b. Calculation of Funding
   c. Financial Reporting and Auditing
5. *Evaluation*
   a. Program-wide Evaluation
   b. Cohort-Specific Evaluation
   c. Ad-hoc Evaluation
6. *Program Administration and Oversight*
   a. Planning and Reporting
   b. Performance Assessment
   c. Monitoring and Oversight
7. *Rental Assistance Demonstration Program*
8. *Applying MTW Flexibilities to Special Purpose Vouchers*
   a. HUD-Veterans Affairs Supportive Housing
   b. Family Unification Program
   c. Non-Elderly Persons with Disabilities Vouchers
   d. Enhanced Vouchers and Tenant Protection Vouchers
9. *Applicability of Other Federal, State, and Local Requirements*
10. *MTW Agencies Admitted Prior to 2016 MTW Expansion Statute*
11. *Sanctions, Terminations, and Default*

II. Operations Notice

1. Purpose and Applicability

The Operations Notice establishes requirements for the implementation and continued operation of the expansion of the MTW demonstration program pursuant to the 2016 MTW Expansion Statute. The Operations Notice also applies to all PHAs designated as MTW pursuant to the 2016 MTW Expansion Statute and to any previously-designated MTW agency that elects to operate under the terms of this Notice.

Through the MTW CACC Amendment, an MTW agency agrees to abide by the program structure, flexibilities, and terms and conditions detailed in the Operations Notice for the term of the agency's participation in MTW demonstration. Any significant updates to the Operations Notice by HUD will be preceded by a public comment period. HUD may supplement the Operations Notice with PIH Notices providing more detailed guidance, including with respect to implementing future appropriations act provisions and revisions to financial policies and procedures. Additionally, HUD will develop informational materials to address various program elements, which HUD will post on the MTW website.

Unless otherwise provided in the Operations Notice, an agency's MTW program applies to all of the agency's public housing units (including agency-owned properties and units comprising a part of mixed-income, mixed finance communities, tenant-based HCV assistance, project-based HCV assistance under Section 8(o), and Homeownership units developed using Section 8(y) HCV assistance. This Operations Notice *does not* apply to HCV assistance that is required: (i) To make payments to other PHAs under HCV portability billing procedures; (ii) to meet particular purposes for which HUD has expressly committed the assistance to the agency;[9] or (iii) to meet existing contractual obligations of the agency to a third party (such as Housing Assistance Payment (HAP) contracts with owners under the agency's HCV program), unless a third party agrees to Project-Based Voucher (PBV) activities implemented under the MTW program with the agency.

PHAs are reminded that the MTW demonstration program does not permit waivers related to statutes outside of the 1937 Act or regulations promulgated under authority outside of the 1937 Act, including any waivers to fair housing, nondiscrimination, labor standards, or environmental requirements. Other subject matter prohibited from waivers or restricted with respect to waivers is discussed elsewhere in this Notice.

2. Waivers

Pursuant to the 1996 MTW Statute and 2016 MTW Expansion Statute, the Appendix of this Notice provides waivers of certain provisions of the 1937 Act as well as the implementing requirements and regulations. These waivers and associated activities afford MTW agencies the opportunity to use their MTW authority to pursue locally-driven policies, procedures, and programs in order to further the goals of the demonstration. In implementing MTW activities, agencies will ensure assisted families are made aware of the impacts the activity(s) may have to their tenancy. The following are the three categories of waivers that MTW agencies may pursue: (a) MTW Waivers; (b)

[8] The MTW Consolidated ACC Amendment amends the ACCs and the CACCs for the Public Housing and Section 8 Voucher programs.

[9] Mainstream Vouchers, Moderate Rehabilitation Renewals, HUD-Veterans Affairs Supportive Housing (HUD–VASH) Vouchers, Non-Elderly Disabled (NED) Vouchers, and Family Unification Program (FUP) Vouchers are not part of the MTW demonstration program.

Agency-Specific Waiver Requests; and (c) Cohort-Specific Waivers. MTW agencies may conduct any permissible activity in the MTW Waivers category within the provided safe harbors, as detailed in the Appendix, without additional approval from HUD. Agencies may make an Agency-Specific Waiver Request to implement additional activities not contained in the MTW Waivers, request to waive a statutory or regulatory requirement not waived in the MTW Waivers, and/or request to expand the safe harbors of an MTW Waivers activity. Agencies may also be provided with Cohort-Specific Waivers if they are necessary to allow for the implementation of the required cohort study.

a. MTW Waivers

The Appendix contains the available waivers and associated activities that MTW agencies may implement after they have been included in the MTW Supplement (described in Section 6 of this Notice) of an approved PHA Plan. The Appendix includes the waiver name, waiver description, statutes and regulations waived, permissible activities, and safe harbors. The waiver description defines the authorization provided to the MTW agency, subject to the terms of this Notice. The list of statutes and regulations waived details the citations of the 1937 Act requirements that may be waived by an MTW agency in order to implement an activity. The list of waivers and list of activities are organized by program type. The safe harbors section contains the additional requirements (beyond those specified in the activity description) that the agency must satisfy in implementing activities without further HUD approval. If an MTW agency wishes to implement additional activities not contained in the MTW Waivers, request to waive a statutory or regulatory requirement, and/or request the ability to go beyond an MTW activity's safe harbor(s), the MTW agency must submit an Agency-Specific Waiver Request for approval from HUD as explained further in Section 2.b of this Notice.

MTW agencies may implement any activity contained in the Appendix as long as it is included in the MTW Supplement of an approved PHA Plan and implemented within the associated safe harbor(s). The MTW agency will update the MTW Supplement annually, as described in Section 6 of this Notice, to reflect the new activities it plans to implement in the coming fiscal year and ongoing activities it has implemented in the prior year, which includes estimated costs/savings for planned activities that have a cost implication. While MTW activities are listed by specific waiver name, MTW agencies may use the MTW Supplement to combine activities together to create more comprehensive initiatives at the local level.

The MTW Waivers only waive certain provisions of the 1937 Act and its implementing regulations. The five statutory requirements established under the 1996 MTW Statute cannot be waived. Other applicable Federal, state, and local requirements shall continue to apply even in the event of a conflict between such a requirement and a waiver or activity granted by this Notice. Accordingly, HUD and the MTW agencies may not waive or otherwise deviate from compliance with Fair Housing and Civil Rights laws and regulations. Additionally, in implementing activities, MTW agencies remain subject to all other terms, conditions, and obligations under this Notice, and all other Federal requirements applicable to the public housing program, the HCV program, Federal funds, and PHAs. To the extent any MTW activity conflicts with any of the five statutory requirements or other applicable requirements, HUD reserves the right to require the MTW agency to discontinue the activity or to revise the activity to comply with this Notice, and the other applicable Federal requirements. HUD also reserves the right to require an MTW agency to discontinue any activity derived from a waiver should it have significant negative impacts on families or the agency's operation of its assisted housing programs using Section 8 and 9 funds, as determined by HUD.

b. Agency-Specific Waiver Requests

Pursuant to the exceptions in Section 9 of this Notice, HUD understands that MTW agencies may wish to request Agency-Specific Waivers to implement activities, waive statutory or regulatory requirements that are not in the Appendix, and/or expand the safe harbor(s) of an activity included in the MTW Waivers. There are two categories of Agency-Specific Waiver Requests: (1) A request to waive a statutory or regulatory requirement, or to implement an activity, not provided for in the Appendix; and (2) a request to expand an activity that is in the Appendix outside of the listed safe harbor (or multiple safe harbors). The MTW agency must obtain explicit written approval from HUD for each Agency-Specific Waiver Request prior to implementation. Agency-Specific Waiver Requests are optional and made at the discretion of the MTW agency.

To submit an Agency-Specific Waiver Request(s), an MTW agency will first share the specifics and details of the proposed waiver in the MTW Supplement to the Annual PHA Plan, indicating which of the two categories of Agency-Specific Waiver Requests is being sought. The MTW Supplement form, when finalized, will provide a comprehensive explanation of the elements required to submit an Agency-Specific Waiver Request.

The approval of the Annual PHA Plan and MTW Supplement during this stage does not constitute an approval of the Agency-Specific Waiver Request. Rather, the public comment and review period affords the MTW agency's Resident Advisory Board (RAB), community, and residents the opportunity to provide input on the proposed waiver prior to its submission to HUD.

Once the MTW agency obtains approval of its Annual PHA Plan and MTW Supplement containing the Agency-Specific Waiver Request information, the agency will then submit a letter to its local HUD field office requesting final approval of the Agency-Specific Waiver Request(s). This letter is sent and reviewed outside of the Annual PHA Plan and MTW Supplement process. It must include: A good cause justification that relates to one or more of the three MTW statutory objectives; the statute, regulation, and/or MTW Waiver safe harbor which the MTW agency seeks to waive and its justification for doing so; a copy of the approval letter for the Annual PHA Plan and MTW Supplement containing the proposed waiver; a description of the initiative; the implementation timeline; and any other information requested by HUD. Depending on the nature of the request, HUD may ask for an associated hardship policy, impact analysis, and/or other information necessary to understand the waiver and its possible effects. Agency-Specific Waiver Requests may not conflict with the agency's cohort-specific evaluation.

If the Agency-Specific Waiver is approved by HUD and the changes between the Agency-Specific Waiver Request and the Waiver that HUD ultimately approves do not constitute a ''significant amendment'' to the Annual PHA Plan, as defined by the agency, then the Agency-Specific Waiver may be implemented once the MTW Agency receives HUD's explicit written approval. The MTW Agency will need to submit a narrative description of the Agency Specific Waiver in its subsequent MTW Supplement.

If the Agency-Specific Waiver is approved by HUD with changes

between the Agency-Specific Waiver Request and the Waiver that HUD ultimately approves that constitute a ''significant amendment'' to the Annual PHA Plan, as defined by the agency, then the MTW agency must re-submit the Agency-Specific Waiver Request through the Annual PHA Plan and MTW Supplement public comment process a second time. Once the Annual PHA Plan and MTW Supplement are approved this second time, the MTW agency may implement its Agency-Specific Waiver.

To the extent a policy in an Agency-Specific Waiver Request conflicts with any of the five statutory requirements, the cohort-specific evaluation, or other applicable requirements, HUD shall require the MTW agency to discontinue the policy or to revise the policy to comply with this Notice and the other applicable federal requirements. HUD also reserves the right to require an MTW agency to discontinue any policy derived from a waiver should it have significant negative impacts on families or the agency's operation of its assisted housing programs using Section 8 and 9 funds, as determined by HUD.

c. Cohort-Specific Waivers

Pursuant to the 2016 MTW Expansion Statute, at the time of designation as an MTW agency, each agency will be selected into an evaluative cohort that seeks to test a specific policy change, as specified in that cohort's Selection Notice. Cohort-Specific Waivers include statutory and/or regulatory waivers and associated activities that are unique to a specific cohort to allow them to complete their required cohort study. Depending upon the cohort's study, there is a possibility that HUD restricts certain activities within the MTW Waivers or provides additional waivers that are not included in the Appendix. It is also possible that the specific policy changes to be tested through a given cohort would not need any Cohort-Specific Waivers. Any MTW activities that would impact or conflict with the cohort-specific policy change will be identified in the respective Selection Notice so that the MTW agency is aware of this potential restriction on its use of waivers before it enters the MTW demonstration program. Cohort-Specific Waivers and the associated MTW activities may only be used to the extent allowed under the applicable evaluative framework provided by HUD in the applicable Selection Notice.

In determining the Cohort-Specific Waivers that will be included in the Selection Notices, HUD will remove and/or add waivers and associated activities based on whether a waiver and its associated activity would impact or conflict with the specific policy(s) to be studied in the MTW agency's cohort group. The addition or removal of any waivers and associated activities would only apply within the confines of the cohort study. For instance, if the study focuses on rent models as it relates to the voucher program, then an agency's public housing program would not be affected by the addition or removal of any such waivers and associated activities. If the MTW Waiver(s) and associated activity(s) are not provided to a cohort, or some portion of the agency's portfolio within the cohort, to allow the cohort to test a specific policy change, the agencies within that cohort study will not be able to conduct that activity(s) until the evaluation of the specific policy change has concluded.

3. Term of Participation

The term of each agency's MTW designation will be 12 years (PHA Fiscal Years) starting from the time of its designation as an MTW agency. All waivers and associated activities provided through the Operations Notice expire at the end of the agency's term of participation. However, Cohort-Specific Waivers provided to enable a cohort-specific policy change may be extended beyond the agency's term of participation with HUD's specific approval if HUD determines that additional time is needed to evaluate the policy change, subject to continued statutory authority for the MTW demonstration.

Once an MTW agency has implemented an activity pursuant to the authority of the Operations Notice, the agency may continue to implement that activity throughout the term of its participation in the demonstration, subject to the other terms and conditions of this Notice. The MTW agency must end all activities requiring MTW-specific waivers upon expiration of MTW participation, as HUD cannot guarantee that it will be able to extend any waivers and associated activities beyond that point. For this reason, when entering into contracts with third-parties that draw upon MTW flexibility, the agency should disclose that such flexibility is only available during the term of the agency's participation in the MTW demonstration as permitted in this Notice. An exception is third-party contracts that relate to the cohort-specific policy change and associated waiver(s). If HUD determines that additional time beyond the end of the agency's MTW term is needed to evaluate a cohort-specific policy change, HUD may approve an extension of any cohort-specific waiver(s).

4. MTW Funding Flexibility and Financial Reporting

During the term of the demonstration, subject to appropriations, HUD will provide an MTW agency with public housing Operating Fund Program grants, public housing Capital Fund Program (CFP) grants, and/or HCV HAP and Administrative Fee assistance as detailed in this Notice. CFP grants may include Formula grants; Demolition or Disposition Transitional Funding (DDTF), which are included in regular Formula grants; and/or funds from older Replacement Housing Factor (RHF) grants (a program later superseded by DDTF). The funding amount for MTW agencies may be increased by additional allocations of vouchers that the agency is awarded over the term of its participation in the MTW demonstration. MTW Funding provided to an MTW agency, including public housing Operating Fund Program grants, public housing CFP grants, and HCV HAP and Administrative Fee assistance, is subject to any future laws and appropriations. If a future law or appropriations bill conflicts with this Operations Notice, the law or appropriations bill shall be implemented, and no breach of contract claim, or any claim for monetary damages, may result from the conflict or implementation of the conflicting law or regulation.

a. MTW Funding Flexibility

MTW agencies will have the flexibility to apply fungibility among public housing Operating Fund, public housing Capital Fund, and HCV HAP and Administrative Fee assistance. These flexibilities expand the eligible uses of each covered funding stream, but do not negate the need for both the PHA and HUD to be able to account for the funding from its original source to the date of its ultimate eligible use [10] by the PHA, comply with Federal grant and financial management requirements, and use funds effectively and efficiently for their eligible purposes. As the Department continues to implement program-specific financial management policies in its core housing programs, MTW agencies will be subject to the same requirements and procedures as non-MTW agencies. Therefore, the requirements and procedures described in this Notice may change as new financial management policies are implemented over time. HUD will update existing guidance and issue new

[10] The date of the ''ultimate eligible use'' means the date of disbursement by the PHA for an eligible purpose, which would remove the funding from the PHA's account and the PHA's control.

reporting requirements, as appropriate, to allow HUD to meet its monitoring and oversight responsibilities while ensuring MTW agencies fully utilize and benefit from the flexibilities established by Congress for these funds pursuant to the MTW demonstration and the 2016 MTW expansion. HUD will also update existing guidance and issue new reporting requirements, as appropriate, to ensure compliance with 2 CFR part 200, including with respect to Federal financial management.

An agency participating in the MTW demonstration program may flexibly use public housing Operating and Capital Funds provided under Sections 9(d) and 9(e) of the 1937 Act and HCV HAP and Administrative Fee program funds provided under Section 8 of the 1937 Act, referred to collectively as MTW Funding. Certain provisions of Sections 8 and 9 of the 1937 Act and 24 CFR 982 are waived as necessary to implement this flexibility. Once the agency receives its MTW designation through the execution of the MTW CACC Amendment, this flexibility in the use of MTW Funding does not require prior HUD approval.

The agency may use MTW Funding covered by MTW flexibility for any eligible activity under Sections 9(d)(1), 9(e)(1) and Section 8(o) of the 1937 Act and for the local, non-traditional activities specified in this Notice, including in the Appendix. Any reserves the MTW agency has accumulated prior to signing an MTW CACC Amendment (including public housing Operating and Capital Reserves and HCV HAP and Administrative Fee Reserves) must be used for their originally appropriated purposes and may not be used flexibly for any eligible MTW activity described in the Appendix. All MTW PHA expenditures, including for local, non-traditional activities, must be consistent with the PHA's charter, approved 5-Year and Annual PHA Plans, and the approved MTW Supplement to the Annual PHA Plan.

i. Calculation of Funding

(a) Public Housing Operating Grants

(1) The calculation of an MTW agency's Operating Fund subsidy grant eligibility will continue in accordance with operating subsidy formula law, regulations, and appropriations act requirements. As these programmatic and financial requirements are updated, MTW agencies will be affected by and shall comply with these changes.

(2) The agency may use these funds for any eligible activity permissible under Section 9(e)(1) of the 1937 Act or, if the agency proposes to use the funding under its MTW flexibility, it may also use these funds for any eligible activity permissible under Section 8(o), Section 9(d)(1), and for the local, non-traditional activities specified in this Notice, including in the Appendix.

(3) For Operating Fund grant funding, the MTW agency has accumulated prior to signing an MTW CACC Amendment, the agency may not use such funds for eligible MTW purposes other than the originally appropriated purpose of the funds (*i.e.,* these funds may not be used as flexible MTW Funding).

(b) Public Housing Capital Fund Formula and Grants

(1) The agency's public housing Capital Fund formula characteristics and grant amounts, including DDTF and Replacement Housing Factor (RHF), will continue to be calculated in accordance with public housing law, regulations, and appropriations act requirements.

(2) MTW agencies must continue to follow the immediate need requirements applicable to all Capital funds and may not accelerate their drawdown of Capital funds for the purpose of funding reserves or for any other purpose. All Capital funds, including funds in BLI 1410 (Administrative Costs) and Budget Line Item (BLI) 1492 (MTW), must be drawn down only when funds are due and payable.

(3) The agency may use these funds for any eligible activity permissible under Section 9(d)(1) of the 1937 Act or, if the agency proposes to use the funding under its MTW flexibility, it may also use these funds for any eligible activity permissible under Section 8(o), Section 9(e)(1), and for the local, non-traditional activities specified in this Notice, including in the Appendix. Capital Fund Program (CFP) funds used for activities under section 9(d)(1) are subject to all requirements relevant to non-MTW agency CFP funding, including eligible activities and cost limits.

(4) For Capital Funds the MTW agency has accumulated prior to signing an MTW CACC Amendment, the agency may not use such funds for eligible MTW purposes other than the originally appropriated purpose of the funds (*i.e.,* these funds may not be used as flexible MTW Funding).

(5) In requisitioning Capital Fund grant funds, the MTW agency will request funds using traditional Capital Fund Budget Line Items (BLIs) for funds to be used for activities under section 9(d) and using the available MTW Budget Line (BLI 1492) items for activities under section 9(e), section 8(o), or local, non-traditional activities. MTW agencies shall not use the Transfer to Operations Budget Line (BLI 1406) since funds for all non-section 9 activities shall be included in the MTW Budget Line (BLI 1492). The agency will provide to HUD information on all capital activities funded by the MTW Funding as necessary to ensure compliance with requirements outside the scope of MTW, including environmental review requirements and Energy and Performance Information Center (EPIC) reporting requirements.

(6) The agency remains subject to the requirements of Section 9(j) of the 1937 Act with respect to Capital Fund grants. Section 9(d) funds remain subject to the obligation and expenditure deadlines and requirements provided in Section 9(j) despite the fact that they may be in the MTW Single Fund. Capital Funds awarded to MTW agencies must be obligated within 2 years and expended within 4 years of award. Funds not obligated or expended within those timeframes will be subject to recapture. As with all agencies, an MTW agency may requisition CFP funds from HUD only when such funds are due and payable, unless HUD approves another payment schedule.

(c) Housing Choice Voucher Funding.

(1) *Funding for the Initial MTW Year.* For the calendar year (CY) after the MTW agency joins the MTW demonstration (the ''Initial MTW Year''), the MTW agency's HCV HAP renewal funding will be calculated in accordance with the same HAP renewal funding formula used for non-MTW HCV agencies in the applicable FY appropriations act. The HAP renewal formula is customarily based on the previous CY's HAP expenses reported in the Voucher Management System (VMS), adjusted by any applicable inflation factor and national proration.

Example:

- If an MTW Agency signs its MTW CACC Amendment in July 2018, CY 2019 will be the Initial Year in the MTW demonstration. The MTW Agency's CY 2019 HAP renewal funding will be calculated based on the Agency's CY 2018 HAP expenses, adjusted by inflation and proration (assuming this is the formula in the 2019 Appropriations Act).

(2) *Funding for Subsequent MTW Years.* As is the case for non-MTW PHAs under current appropriations law, the HAP renewal funding eligibility for subsequent MTW years will be calculated based on the MTW agency's actual expenses for the previous calendar year (known as the re-benchmark year). Unique to MTW agencies, however, the MTW agency's

actual expenses are: (i) The previous CY's HAP expenses reported in Voucher Management System (VMS,) and (ii) the previous CY's eligible non-HAP MTW expenses reported in VMS. For both HAP and non-HAP MTW expenses, the reported expenses must have been paid from an eligible source of funds as described in section 4(c) below in order to be included in the HAP renewal funding formula. In addition, MTW HAP renewal funding is subject to an MTW Renewal Eligibility Cap derived from the number of units authorized under the agency's ACC, as described in paragraph (d) on the following page. The lower of the total combined HAP/non-HAP expenses or the MTW Renewal Eligibility Cap will then be adjusted by an applicable inflation factor and any national proration that applies to the HCV renewal appropriation to determine the MTW agency's actual CY HAP renewal funding.

Example:

• In CY 2019, an MTW Agency expended $3,600,000 on HAP and $400,000 on eligible non-HAP MTW expenses. The agency's HCV HAP renewal funding for CY 2020 will be $4 million (assuming the HAP Renewal Eligibility Cap is greater than $4 million), adjusted by an inflation factor and any applicable national proration.

(3) *HAP Renewal Sources of Funds.* The only HAP and non-HAP MTW expenses that will be included in the MTW HAP renewal formula are those paid for with the same sources of funds that would be included in the non-MTW HAP renewal formula for a non-MTW agency (see PIH Notice 2013–28 and any future successor notices). Accordingly, HAP expenses and non-HAP MTW expenses must be paid from the following sources of funds to be included in the HAP renewal formula calculation:

• Housing Choice Voucher (HCV) budget authority,

• HUD-held HAP reserves (undisbursed budget authority),

• PHA-held HAP reserves (*i.e.,* Restricted Net Position (RNP)),

• Any funds from the HAP Set-aside (if available after PHA application and approval), and

• Administrative Fee reserves (*i.e.,* Unrestricted Net Position (UNP)).

HAP expenses or non-HAP MTW expenses that were covered by any other funding source (for example, public housing Operating Funds and Capital Funds, and current year HCV Administrative Fee funds) will not be included in the MTW PHA's HCV renewal funding calculation.

(4) *HAP Renewal Eligibility Cap.* The MTW PHA's renewal eligibility for all MTW Years will be limited by the HAP Renewal Eligibility Cap. The calculation multiplies (1) the MTW PHA's total number of MTW-eligible ACC authorized units [11] in the re-benchmark year (the CY immediately preceding the CY for which the PHA's renewal eligibility is being calculated) [12] by (2) the PHA's pre-MTW monthly per-unit cost (PUC) inflated to the re-benchmark year.

• For (1), the number of MTW-eligible ACC authorized units is measured in unit months available (UMAs).[13]

• For (2), the inflated pre-MTW PUC is projected using, as a base, the monthly PUC for the CY in which the agency signed its MTW CACC Amendment. HUD applies an inflation factor to this base PUC to estimate what the PHA's HCV PUC would be, had the PHA not joined the MTW program, as of the re-benchmark year.

After the calculation of the HAP Renewal Eligibility Cap, it is compared with the MTW PHA's actual total combined HAP/non-HAP expenses. The lower of these two amounts—(1) the HAP Renewal Eligibility Cap or (2) the MTW PHA's actual total combined HAP/non-HAP expenses—is then adjusted by the inflation factor and any national proration factor to determine the MTW PHA's CY renewal funding.

Example:

• If an MTW Agency signs its MTW CACC Amendment in July 2018, CY 2019 will be the Initial Year in the MTW demonstration. In the Initial CY (CY 2019) the MTW Agency's renewal formula is the same formula that is used for non-MTW PHAs. In calculating the MTW Agency's HCV renewal funding for CY 2020, the following information applies:

○ The MTW PHA's average monthly PUC for CY 2018 was $700.

○ The CY 2019 inflation rate is 2 percent.

○ The number of MTW-eligible ACC authorized units during CY 2019 is 800 units. (In this example all units were under ACC as of January 1, 2019, so the number of unit months available (UMAs) is simply 800 units multiplied by 12 months, or 9,600 UMAs).

• The HAP Renewal Eligibility Cap for CY 2020 is calculated by first determining the estimated PUC for CY 2019, which is $714 (the monthly PUC for CY 2018 inflated for CY 2019, or $700 × 1.02). The estimated PUC for CY 2019 is then multiplied by the MTW PHA's CY 2019 MTW-eligible ACC authorized UMAs[14] ($714 × 9,600 UMAs) to determine the HAP Renewal Eligibility Cap, which is $6,854,400.

• The HAP Renewal Eligibility Cap ($6,854,400) is then compared to the MTW Agency's total combined HAP/non-HAP expenses for the re-benchmark year that originated from the eligible funding sources described earlier in this Notice. If the total combined HAP/non-HAP expenses do not exceed $6,854,400, the MTW Agency's CY 2020 renewal funding will be the total combined HAP/non-HAP expenses adjusted by an inflation factor and any national proration. If the total combined HAP/non-HAP expenses exceed $6,854,400, the MTW Agency's CY 2020 renewal funding will be $6,854,400, adjusted by an inflation factor and any national proration.

(5) *Financial Management Requirements Apply.* The same financial management requirements that apply to non-MTW agencies also apply to MTW agencies. Accordingly, all undisbursed HAP funds, including HAP-originated reserve funds, will be retained as HUD-held reserves per Office of Management and Budget cash management requirements and can be requested by the MTW agency when immediate need exceeds the scheduled HAP monthly disbursements, but only after consideration of available MTW agency-held Restricted Net Position (RNP).

(6) *Administrative Fees.* The Administrative Fee rates used to calculate fee eligibility for MTW agencies shall be established according to the same methodology used to establish Administrative Fee rates for all agencies, including non-MTW agencies. As is the case for all agencies under current appropriations law,

[11] "MTW-eligible ACC authorized units" means the PHA's number of ACC authorized units, regardless of whether the units are leased, after *excluding* the number of authorized units that would not be subject to the MTW renewal formula. In other words, special purpose vouchers that are renewed separately and are not part of the MTW HAP renewal formula are not included in the formula used to calculate the HAP Renewal Eligibility Cap. See Section 8 of this Notice for further information on these special purpose vouchers that are renewed separately outside the MTW renewal formula.

[12] As noted above, the re-benchmark year is also the source year for the actual expense data used in the MTW PHA's HAP renewal formula.

[13] Authorized units in the HCV program context are measured in terms of unit months available. For example, if an authorized unit is under CACC as of January 1, the authorized unit equals 12 unit months available for that CY. On the other hand, if the authorized unit was added to the CACC under a new funding increment effective July 1, the authorized unit is equal to 6 unit months available for that CY.

[14] As noted earlier, these are the MTW PHA's CY 2019 UMAs that are subject to the MTW renewal formula. UMAs attributable to special purpose vouchers such as HUD–VASH and FUP that are renewed separately are not included in this count.

administrative fees will be calculated on the basis of units leased as of the first day of each month; this data will be extracted from Voucher Management System (VMS) at the close of each reporting cycle. Administrative fees for MTW agencies are also subject to the national proration factor and any other appropriations act requirements.

(7) *Adjustments for the First-Time Renewal of Certain Vouchers.* If the MTW agency receives incremental HCV vouchers and funding (including tenant protection vouchers) other than special purpose vouchers, renewal funding for those vouchers will be included in the MTW HCV renewal funding eligibility calculation for the following year. (See Section 8 of this Notice for further discussion of tenant protection and other special purpose vouchers.) The renewal amount for the following year is based on HAP costs reported for these increments in VMS in the prior year, which will be adjusted by the inflation factor. Should the initial increment(s) be funded for less than 12 months due to lack of appropriations, HUD will adjust for the missing months upon renewal, by selecting the higher of the funded PUC for the initial increment, or the MTW per unit cost (PUC) times the number of units,[15] then adjusted by the inflation factor. The aggregate renewal eligibility is always subject to the national proration factor.

(8) *Applicable Inflation Factor and Proration.* The same applicable inflation factor that applies to non-MTW agencies will be applied each CY to determine the MTW agency's HAP funding renewal eligibility. Likewise, the MTW agency's HAP funding renewal eligibility is subject to the same national proration as non-MTW agencies' renewal eligibility.

(9) *Prior Year Reserves.* For HCV HAP and Administrative Fee funding provided in years prior to the designation of the agency as an MTW agency, the agency may not use any accumulated HCV reserves for eligible MTW purposes other than the originally appropriated purpose of the funds (*i.e.,* these funds may not be used as flexible MTW Funding).

(10) *Rental Assistance Demonstration (RAD).* Any vouchers received as part of a RAD Component I conversion shall be added to the ACC for the remainder of the CY in which they are awarded. HUD will issue a new increment of voucher funding in support of those vouchers for the first full CY following a RAD Component I conversion. In subsequent years, voucher funding for RAD-converted units will be renewed under the MTW HCV renewal funding calculation, plus inflation factor and the applicable proration factor. Tenant protection vouchers provided for RAD Component II conversions are renewed in accordance with section 4.v, Adjustment for the first-time renewal of certain vouchers, above. Administrative fees for RAD vouchers will be calculated based on the same methodology used to establish administrative fees for non-MTW agencies. Fees for RAD vouchers will be prorated at the same level that applies to all non-MTW agencies.

(11) *Voucher Programs Not Included in MTW Program.* Vouchers and funding provided for the following special purpose vouchers, or any new special purpose vouchers provided in future appropriations acts, whether for new allocations or renewal of existing increments, shall not be included in the HCV MTW renewal calculation: Mainstream, HUD-Veterans Affairs Supportive Housing (HUD–VASH), Non-Elderly Disabled (NED), and Family Unification Program (FUP). These vouchers will be renewed under the regular voucher renewal requirements as provided under the appropriations acts. Special purpose vouchers are discussed in more detail in Section 8 of this Notice. In addition, funding provided for the Section 8 Moderate Rehabilitation Program is not part of the MTW program and may not be used for MTW activities.

b. Financial Reporting and Auditing

MTW agencies must submit year-end unaudited financial information to the Department no later than 2 months after their fiscal year end using the Financial Data Schedule (FDS) contained in the Real Estate Assessment Center's (REAC) Financial Assessment Subsystem (FASS–PH), or its successor system. Current financial reporting requirements for MTW agencies are posted on the REAC website at *https://www.hud.gov/sites/documents/DOC_11833.PDF.* These requirements may be updated in the future.

MTW agencies are also required to electronically submit their audited financial information, if applicable, to the Department no later than 9 months after their fiscal year end. MTW agencies must include public housing project level financial information in the FDS and must follow the Asset Management guidelines established in Public and Indian Housing (PIH) Notice 2007–9 Supplement to Financial Management Handbook Office of Public and Indian Housing (PIH) Revised April 2007, and any subsequent updates to this Handbook or PIH Notice. MTW agencies will conform to the cost requirements of 2 CFR part 200 and any HUD implementation thereof.

MTW agencies must procure an Independent Public Accountant (IPA) to perform an annual audit pursuant to Federal requirements at 2 CFR part 200 and 24 CFR 990.190, or successor, as well as any audit compliance supplements developed specifically for use with the MTW demonstration.

Completed IPA audits must be submitted to HUD in accordance with current HUD regulations. HUD will review IPA audits of MTW agencies to determine appropriate action relative to any findings, prepare recommendations for audit finding resolution, and follow up with MTW agencies to assure finding closure. If there are audit findings related to the MTW program itself, HUD will monitor the resolution of all audit findings.

5. Evaluation

As a condition of participating in the MTW demonstration, MTW agencies agree to cooperate fully with HUD and its contractors in the monitoring and evaluation of the MTW demonstration. MTW agencies shall keep records and submit reports and other information as required by HUD. This includes any data collection required for the use of waivers and associated activities, for the uses of MTW funds within and across funding streams, and any evaluation efforts that HUD undertakes for the cohort-specific policy changes.

MTW is a demonstration that provides PHAs flexibilities to innovate and try different approaches to housing assistance in order to achieve at least one of the three statutory objectives laid out in the 1996 MTW Statute. At its core, the demonstration is an opportunity for PHAs, participants, HUD, stakeholders, and the general public to learn from different approaches to providing Federal housing assistance to low-income families. This includes learning from approaches that are effective and produce desired outcomes, and from approaches that are less effective than anticipated and where results may have unintended consequences.

Because MTW agencies can use different flexibilities calling on multiple activities within the MTW Waivers to serve local populations in various parts of the country, interpreting PHA-reported performance data on the effects of an individual MTW activity can be

[15] The MTW PUC is equal to MTW HAP expenses divided by the number of MTW units leased. (Non-HAP MTW expenses are not included in the MTW PUC calculation). HUD may further adjust the MTW PUC calculation for PHAs administering RAD project-based vouchers to exclude RAD Rehab payments so the MTW PUC only reflects expenses attributable to actual housing assistance payments.

challenging. Consequently, and while adhering to the guiding principles for the expansion—to simplify, learn, and apply—HUD will create and develop an evaluation system that will document and consider the MTW demonstration through the lens of the three statutory objectives relating to cost effectiveness, self-sufficiency, and housing choice.

HUD envisions three types of evaluation: Program-wide evaluation, cohort-specific evaluation, and ad hoc evaluation.

a. Program-Wide Evaluation

Program-wide evaluation would seek to assess whether or not, and to what extent, MTW agencies use Federal dollars more efficiently, help residents find employment and become self-sufficient, and/or increase housing choices for low-income families. HUD intends to develop a method for program-wide evaluation that is based, to the extent possible, on information already being collected through existing HUD administrative data systems. HUD may determine and require that additional reporting is necessary to effectively evaluate MTW.

b. Cohort-Specific Evaluation

The 2016 MTW Expansion Statute requires HUD to direct all the agencies in a cohort to implement one specific policy change and to conduct a rigorous evaluation of the one specific policy change. The MTW Research Advisory Committee has considered input from the public and advised HUD on the policy changes to be tested through the new cohorts of MTW agencies and on the methods of research and evaluation.

The cohort-specific policy change and evaluation methods will be described in the applicable Selection Notice so that the MTW agency is aware, in advance of application to the MTW demonstration program, of the policy it will be required to implement and the evaluation requirements. The specific evaluation methods and requirements for participating MTW agencies will vary based on the policy changes to be tested. For example, some cohorts of MTW agencies may be required to participate in randomized control trials, while others may be required to participate in detailed process studies or ethnographic research. HUD's Office of Policy Development and Research (PD&R) will take the lead on evaluating cohort-specific policy changes, and funds have been appropriated by Congress for this evaluation. In all cases, the purpose of the evaluation will be to measure the outcomes associated with the specific policy change(s) in order to offer policy recommendations for implementing the policy change(s) across all PHAs.

HUD will determine the length and timeframe for the evaluation, which will be informed by feedback provided by the MTW Research Advisory Committee. In some cases, the evaluation timeframe may extend beyond the agency's term of MTW participation. The MTW agency is required to participate in the evaluation for the full timeframe designated by HUD. HUD may extend waivers and associated activities beyond the agency's term of participation to the extent that those waivers and associated activities are needed to support the evaluation of the specific policy change and HUD determines whether additional time is needed to evaluate the policy change.

c. Ad Hoc Evaluation

HUD reserves the right to request, and the MTW agency agrees to provide, any additional information required by law or required for the sound administration or evaluation of the MTW agency.

6. Program Administration and Oversight

In general, MTW agencies will be subject to the same planning and reporting protocols as non-MTW agencies, including the PHA Plan (5-Year Plan and Annual PHA Plan) and Capital Fund planning. MTW agencies must also report data into HUD data systems, as required.

New protocols and instruments will be developed for assessing an MTW agency's performance and will be incorporated into PHAS and SEMAP, or successor assessment systems, or an alternative assessment system developed by HUD, explained further in Section 6.b. of this Operations Notice. In addition, HUD will employ standard program compliance and monitoring approaches including assessment of relative risk and on-site monitoring conducted by HUD or by entities contracted by HUD.

a. Planning and Reporting

i. The Annual PHA Plan

MTW agencies must adhere to Annual PHA Plan regulations at 24 CFR part 903, any implementing HUD Notices and guidance, as well as any succeeding regulations. The Annual PHA Plan consists of the 5-Year Plan that a PHA must submit to HUD once every five PHA fiscal years and the Annual PHA Plan that the PHA must submit to HUD for each PHA fiscal year. Any HUD assistance that the agency is authorized to use under the MTW demonstration must be used in accordance with the Annual PHA Plan, as applicable.

Annual and 5-Year Plans must be submitted in a format prescribed by HUD. Currently, submission format requirements are outlined in Notice PIH 2015–18 (HA), issued October 23, 2015, which is effective until amended, superseded, or rescinded.

ii. MTW Supplement to the Annual PHA Plan (Under Development)

As an MTW agency, all Annual PHA Plan information must be provided in the context of the agency's participation in the MTW demonstration. This includes taking into account the MTW Waiver(s) and associated activity(s) afforded to the MTW agency. To this end, the MTW agency will submit an MTW Supplement to the Annual PHA Plan, in a format to be developed by HUD. Prior to submitting to HUD, the MTW Supplement must go through a public process along with the Annual PHA Plan. This will allow the agency to inform the community of any programmatic changes and give the public an opportunity to comment. Details about this requirement are elaborated later in this section. New MTW agencies will not be required to submit the Annual MTW Plan or Annual MTW Report (*i.e.,* Form 50900), which are required for existing MTW agencies.

The MTW Supplement form has not been finalized at the time of publishing of this Operations Notice. The MTW Supplement will be made available for public review and comment, per Paperwork Reduction Act requirements, prior to finalizing the form. At this time, HUD plans to require MTW agencies to use the MTW Supplement to the Annual PHA Plan to:

- Describe how the MTW agency seeks to address the three MTW statutory objectives during the coming fiscal year, in a narrative format;
- Indicate the MTW activities that the agency plans to implement in the Annual PHA Plan year that utilize the activities contained in the MTW Waivers (Appendix), and ongoing activities the agency has implemented in the prior year, using a check-box or other simple format;
- Indicate the estimated costs/savings per year for planned activities that have a cost implication;
- Indicate the reason(s) why any previously approved MTW activities were not implemented in the previous year;
- Indicate any changes in the MTW activities and associated waivers, including safe harbors, that have

changed from the previous Annual PHA Plan year;

- Describe any Agency-Specific Waiver Requests that the MTW agency seeks to implement in PHA fiscal year, if applicable;
- Indicate the MTW activities that the agency will undertake in the Annual PHA Plan year that require Cohort-Specific Waivers (as applicable and identified in each cohort's Selection Notice), and the Cohort-Specific Waivers to be used, using a check-box or other simple, non-narrative format;
- Certify to HUD that all MTW activities being implemented by the agency fall within the safe harbors outlined in the Appendix;
- Submit data or information required for the ongoing use of any activities within the MTW Waivers; and
- Submit data required for HUD's verification of the MTW agency's compliance with the five statutory requirements established under the 1996 MTW Statute.

Non-MTW PHAs that are qualified under 24 CFR 903.3(c) and that are not designated as troubled under PHAS and that do not have a failing score under SEMAP are exempt from the requirement to submit the Annual PHA Plan. Per this Operations Notice, while MTW agencies that are qualified under 24 CFR 903.3(c) are not required to submit the Annual PHA Plan, they are required to submit the MTW Supplement to the Annual PHA Plan on an annual basis.

During the agency's initial year of participation in the MTW demonstration, an agency may implement MTW activities once they have been included in an approved MTW Supplement, either during the next regularly scheduled submission of the Annual PHA Plan and MTW Supplement or through an amendment to the Annual PHA Plan, which would include the MTW Supplement. Agency-Specific Waiver Requests and activities may only be implemented after explicit written approval from HUD.

MTW agencies must submit to HUD the Annual PHA Plan, including any required attachments, and the MTW Supplement no later than seventy-five (75) days prior to the start of the agency's fiscal year. Before submission to HUD, the agency must have at least a 45-day public review period of its plan, after publishing a notice informing the public of its availability and conducting reasonable outreach to encourage participation in the plan process, followed by a public hearing. MTW agencies must consider, in consultation with the RABs, all of the comments received at the public hearing. The recommendations received by the public and RABs must be submitted by the agency as a required attachment to the Plan. MTW agencies must also include a narrative describing their analysis of the recommendations and the decisions made on these recommendations. Agencies must also obtain the proper signed certifications and board certification.

HUD will notify the MTW agency in writing if HUD objects to any provisions or information in the Annual PHA Plan or the MTW Supplement. When the MTW agency submits its Plan seventy-five (75) days in advance of its fiscal year, HUD will respond to the MTW agency within 75 days.

Reviews of the Annual PHA Plan and the MTW Supplement will be conducted by the local field office, in consultation with the MTW Office.

iii. Admissions and Continued Occupancy Policy (ACOP) and Administrative Plan

The MTW agency must update its ACOP and Administrative Plan to be consistent with the MTW activities and related waivers that it implements. The agency may not implement an MTW activity or waiver until the relevant sections of the ACOP and/or Administrative Plan are updated. MTW agencies must provide HUD with electronic versions of the ACOP and Administrative Plan upon request. If the MTW agency implements an activity using the local, non-traditional uses of funds waiver, the MTW agency must create and update an implementing document specifically for such activity.

iv. Capital Planning and Reporting

MTW agencies must adhere to CFP regulations at 24 CFR part 905, any implementing HUD Notices and guidance, as well as any successor regulations. As noted previously, MTW agencies are funded in accordance with CFP regulations and formula funds are calculated and distributed in the same manner as non-MTW agencies.

MTW agencies have the authority and flexibility to utilize their CFP funds for expanded uses as part of their MTW funding flexibility. HUD will award Capital Fund grants to MTW agencies in keeping with the standard process for all PHAs. The Field Office will distribute funds in Line of Credit Control System (LOCCS) to the MTW agencies in accordance with the standard process. As with all PHAs, an MTW agency may draw down Capital Funds from HUD only when such funds are due and payable, unless HUD approves another payment schedule. To the extent that the MTW agency plans to use CFP funding for other MTW-eligible (non-CFP) activities, the CFP funding would be recorded on BLI 1492 (Moving to Work) on Form HUD–50075.1. CFP funds entered on BLI 1492 would not need to be broken out and itemized in the part II supporting pages of the HUD–50075.1. However, regardless of the BLI utilized, funds may not be drawn down until the PHA has an immediate need for the funds. An MTW agency may not accelerate drawdowns of funds in order to fund reserves or to otherwise increase locally held amounts, as discussed in 4(a)(i)(b)(2) of this Notice.

An MTW agency is not required to use all or any portion of its CFP grant for non-CFP activities. To the extent that the MTW agency wishes to dedicate all or a portion of its CFP grant to specific capital improvements, the agency shall record CFP funding on the appropriate BLI(s) on Form HUD–50075.1 (other than BLI 1492) as in the standard program.

v. Inventory Management System/PIH Information Center Reporting

Data from HUD's Inventory Management System (IMS) and Public and Indian Housing (PIH) Information Center (PIC), or successor systems, is critical to all aspects of program administration, including HUD monitoring and tracking of MTW agency progress in meeting the MTW statutory objectives. IMS/PIC data is used to establish funding eligibility levels for both Operating Subsidy Fund and Capital Fund grants. Further, HUD relies on IMS/PIC data to provide a thorough and comprehensive view of PHA program performance and compliance.

MTW agencies are required to submit the following information to HUD via IMS/PIC (or its successor system):

- Family data to IMS/PIC using Form HUD–50058 MTW (or successor forms) or Form HUD–50058 and in compliance with HUD's 50058 MTW or standard 50058 submission requirements for MTW agencies. MTW agencies must report information on all families receiving some form of tenant-based or project-based housing assistance, either directly or indirectly, as well as all public housing families, to be current to at least a 95 percent level.
- Current building and unit information in the development module of IMS/PIC (or successor system).
- Basic data about the PHA (address, phone number, email address, etc.).

HUD will monitor MTW agency reporting to IMS/PIC (or successor system) to ensure compliance and provide technical assistance to MTW agencies as needed.

vi. Voucher Management System Reporting

MTW agencies are required to report voucher utilization in the Voucher Management System (VMS), or its successor system. There are several areas in which VMS reporting is different for MTW agencies. These areas are highlighted in the VMS User's Manual (*http://portal.hud.gov/hudportal/documents/huddoc?id=instructions.pdf*), which details the VMS reporting requirements.

HUD will monitor each MTW agency's VMS reporting to ensure compliance and provide technical assistance to MTW agencies as needed.

vii. General Reporting Requirement

In addition to the reporting requirements outlined in this Operations Notice, MTW agencies are required to comply with any and all HUD reporting requirements not specifically waived by HUD for participation in the MTW demonstration program, including the requirement (discussed in Section 5) to comply with HUD's evaluation of the specific-policy changes being implemented by cohort.

b. Performance Assessment

Assessing the performance of PHAs (both MTW and non-MTW) helps with the delivery of services in the public housing and voucher programs and enhances trust among PHAs, public housing participants, HUD, and the general public. To facilitate this effort, HUD will provide management tools for effectively and fairly assessing the performance of a PHA in essential housing operations and program administration.

Currently, HUD uses PHAS and SEMAP to assess risk and identify underperforming PHAs in the traditional public housing and voucher programs. However, since some of the MTW flexibilities make it difficult to accurately assess the performance of MTW agencies under the existing systems, HUD will develop an alternative, MTW-specific assessment system, which may be incorporated into PHAS and SEMAP (or successor assessment system(s)). MTW agencies may not opt out of the MTW-specific successor system(s). Until the successor system is implemented, HUD will monitor MTW agency performance through PHAS sub-scores.

i. Public Housing Assessment System

MTW agencies are scored in PHAS, however, agencies can elect not to receive the overall score (MTW agencies continue to receive PHAS sub-scores even if they elect not to receive the overall score). If an MTW agency elects to receive its overall PHAS score, the agency must continue to be scored for the duration of the demonstration, or until the agency is assessed under the alternative, MTW-specific assessment system(s), whichever comes first. Once developed, all MTW agencies, including MTW agencies that elect not to receive an overall PHAS score, must be assessed under the MTW-specific assessment system(s).

Per the 1996 MTW statute, when providing public housing, the MTW agency must ensure that the housing is safe, decent, sanitary, and in good repair, according to the physical inspection protocols established and approved by HUD. Thus, MTW agencies continue to be subject to HUD physical inspections. To the extent that HUD physical inspections reveal deficiencies, the MTW agency must continue to address these deficiencies in accordance with existing physical inspection requirements. If an MTW agency does not maintain public housing adequately, as evidenced by the physical inspection performed by HUD and is determined to be troubled in this area, HUD will determine appropriate remedial actions. The actions to be taken by HUD and the agency will include actions statutorily required and such other actions as may be determined appropriate by HUD. These actions may include developing and executing a Memorandum of Agreement (MOA) with the MTW agency, suspension or termination of the MTW CACC Amendment in accordance with the provisions therein, or such other actions legally available to the Department.

MTW agencies must continue to submit year-end financial information into the Financial Data System (FDS) or successor system, as discussed earlier.

ii. Section 8 Management Assessment Program

MTW agencies are not scored in SEMAP but they can elect to be scored if they choose to opt in. If an MTW agency elects to receive its overall SEMAP score, the agency must continue to be scored for the duration of the demonstration, or until the agency is assessed under the MTW-specific assessment system, whichever comes first. Once developed, all MTW agencies, including MTW agencies that opt out of SEMAP, must be assessed under the MTW-specific assessment system(s).

c. Monitoring and Oversight

MTW agencies remain subject to the full range of HUD monitoring and oversight efforts including, but not limited to, annual risk assessments, on-site monitoring reviews, monitoring reviews relating to VMS reporting and rent reasonableness, review of the accuracy of data reported into HUD data systems, and use of HUD data systems to assess agency program performance, among other activities.

i. MTW Statutory Requirements

Throughout participation in the MTW demonstration program, all MTW agencies must continue to meet five statutory requirements established under the 1996 MTW Statute. Implementation, monitoring and enforcement of the five statutory requirements will be discussed in greater detail in the final version of this Operations Notice, and specific enforcement processes will be included in the MTW CACC Amendment (see also, section 11 of this Notice). HUD will monitor and determine MTW agencies' compliance with these five requirements as follows:

(a) MTW agencies must ensure that at least 75 percent of the families assisted are very low-income families, in each fiscal year, as defined in section 3(b)(2) of the 1937 Act.

(i) HUD Verification Approach: Initial household certification data recorded in PIC will be used for both the public housing and HCV programs for compliance monitoring purposes. The initial certification is comprised only of new admissions in the agency's given fiscal year. Initial household certification data for families housed through local, non-traditional activities (in accordance with the Appendix) will be provided in a manner specified by the Department. An agency's portfolio will then be weighted with respect to the number of households being served by each housing program type (*i.e.,* PH, HCV, Local, Non-Traditional).

(b) MTW agencies must establish a reasonable rent policy which shall be designed to encourage employment and self-sufficiency by participating families, consistent with the purpose of this demonstration, such as by excluding some or all of a family's earned income for purposes of determining rent.

(i) HUD Verification Approach: HUD defines rent reform as any change in the regulations on how rent is calculated for a household. Upon designation into the MTW demonstration, agencies are to submit their planned policy to implement a reasonable rent policy in the MTW Supplement. All activities falling under the Tenant Rent Policies category, detailed in the Appendix, meet the definition of a reasonable rent

policy. An MTW agency must implement one or multiple reasonable rent policies during the term of its MTW designation (MTW agencies in the rent reform cohort may have prescribed deadlines to implement their reasonable rent policies).

(c) MTW agencies must continue to assist substantially the same total number of eligible low-income families as would have been served had the amounts not been combined.

(i) HUD Verification Approach: HUD continues to consider the best approach to monitor the MTW statutory requirement that MTW agencies serve substantially the same number of families absent the demonstration. The main themes and principles for this effort include a Substantially the Same (STS) methodology that: Ensures substantially the same number of families are housed; allows for local flexibility; is responsive to changing budgetary climates; is feasible for HUD to administer; is easy for MTW agencies to predict compliance; is straight forward to understand; is calculated each year; and has publicly available results. First, the STS methodology would establish a baseline ratio of dollars the agency expends and families housed. Before an agency enters the MTW demonstration, the public housing funding and the HCV HAP funding spent by the agency in the prior CY would be divided by the current number of families housed in each program. This calculation would yield how many families the agency houses per $100,000 of funding in both the public housing and HCV programs. Each year during an agency's participation in the MTW demonstration, the baseline number of total families housed per $100,000 of funding in both the public housing and HCV programs would be applied to the agency's actual funding for that calendar year. So, for example, the agency would know that if it is appropriated ''x number of dollars,'' it would be required to house ''y number of families.'' Depending on the specific circumstances of the agency, a dip below the baseline year number would be allowed. HUD is exploring methods to ensure that the ratio of families housed per $100,000 in the baseline year continues to be an accurate measure of ''substantially the same'' service levels in future years of the MTW designation. There would also be opportunities for PHAs to request adjustments of the baseline ratio to account for changes in costs due to special circumstances.

The following is an example of the STS baseline ratio calculation:

Baseline Year (Calendar Year Before Agency Enters MTW)

- Agency expends $800,000 in HCV HAP funds and houses 100 HCV families. Agency then houses 12.5 HCV families per $100,000 of HCV funds.
- Agency expends $500,000 in public housing funds and houses 75 public housing families. Agency then houses 15 public housing families per $100,000 public housing funds.

First Year in MTW Demonstration

- MTW agency receives $900,000 in HCV HAP funds and $300,000 in public housing funds.
- MTW agency must house 112.5 families for the HCV share and 45 families for the public housing share. Therefore, in this example, the MTW agency is required to house 157 total families flexibly with its MTW funds (this may be in the public housing program, the HCV program, a local, non-traditional rental subsidy program, or a local, non-traditional development program [16]).

(d) MTW agencies must maintain a comparable mix of families (by family size) as would have been provided had the amounts not been used under the demonstration.

(i) HUD Verification Approach: In order to establish a comparable mix baseline, the Department will pull data, by family size, for occupied public housing units and leased vouchers at the time of entry into the demonstration. The Department will rely upon agency-reported data into HUD systems (*i.e.,* PIC, VMS). This information will be used to establish baseline percentages, by family size, to which the agency is measured by for the remainder of participation. Following entry into the demonstration, agencies will provide comparable mix data and, if applicable, associated justifications in the MTW Supplement. The Department deems an acceptable level of variation to be no more than 5 percent from the baseline. Justifications or explanations for fluctuations greater than 5 percent are required and subject to the Department's review.

(e) MTW agencies must ensure that housing assisted under the demonstration meets housing quality standards established or approved by the Secretary.

(i) HUD Verification Approach: In order to demonstrate that the MTW agency meets housing quality standards, HUD will verify compliance for each housing program type as follows:

- HCV—Program regulations at 24 CFR part 982 set forth basic housing quality standards (HQS) for housing assisted under the HCV program. These housing quality standards, or its successor regulations, are the standards used to determine if the agency is fulfilling its responsibilities to ensure owners are maintaining the units in accordance with HQS in the evaluation of an agency. Agencies with an HCV program must certify in the MTW Supplement that they have fulfilled their responsibilities to comply with and ensure enforcement of HQS under this requirement.
- Public Housing—HUD will verify this requirement through its review of PHAS Physical Assessment Subsystem (PASS) scores, or successor assessment system. Scores falling below 24 out of 40 will be identified as non-compliant with the statutory requirement.
- Local, Non-Traditional—In the MTW Supplement, MTW Agencies must certify that local, non-traditional units meet housing quality standards as required in PIH Notice 2011–45, or successor notice.

ii. Income Integrity and Enterprise Income Verification System (EIV) Reviews

MTW agencies are required to comply with the final rule regarding EIV issued December 29, 2009, and utilize EIV for all income verifications. EIV has been modified for MTW agencies so that family information submitted in PIC will not expire for 40 months, in order to accommodate agencies choosing to extend recertification periods for up to three years.

MTW agencies are subject to HUD review to ensure compliance with EIV requirements as well as monitor the accuracy and integrity of the MTW agencies' income and rent determination policies, procedures, and outcomes.

iii. MTW Site Visit

HUD will periodically conduct site visits to provide guidance, discuss the MTW agency's MTW activities, and offer any needed technical assistance regarding its program. The purpose of a

[16] MTW agencies may use their MTW Funding to develop affordable housing units that are outside of the traditional public housing and HCV programs. Such local, non-traditional development allows for the creation of important affordable housing resources, which must be balanced with the existing and immediate needs of families waiting for housing assistance. It is therefore necessary to relate the amount of the MTW agency's total available MTW Funding investment to the number of affordable units developed. To that end, HUD will divide the MTW agency's total available MTW Funding in the local, non-traditional development by the HUD-published Total Development Cost (TDC). The resulting number of units would then count as families housed for the length of time the units remained affordable.

site visit will be to confirm reported agency MTW activities, to review the status and effectiveness of the agency's MTW strategies, provide technical assistance, and to identify and resolve outstanding MTW related issues.

The MTW agency shall give HUD access, at reasonable times and places, to all requested sources of information, including access to files, access to units, and an opportunity to interview agency staff and assisted participants.

Where travel funding or staff resources are not available to facilitate in-person site visits, HUD may exercise the option to conduct remote site visits via telephone, videoconference, or webinar.

To the extent possible, HUD will coordinate the MTW site visit with other site visits to be conducted by HUD.

iv. Housing Choice Voucher Utilization

HUD will monitor HCV utilization at MTW agencies and will ensure that HCV funds are utilized in accordance with Section 4(a)(i)(c) and Section 6(c)(i)(c) of this Notice. Where leasing levels are inconsistent with the requirements of this Notice, HUD may take appropriate actions to work with the MTW agency to increase leasing and utilization.

v. Public Housing Occupancy

HUD will monitor public housing occupancy rates for MTW agencies. In instances where the MTW agency's public housing occupancy rate falls below 96 percent, HUD may require, at its discretion, that the MTW agency enter into an Occupancy Action Plan to address the occupancy issues. The Occupancy Action Plan will include the cause of the occupancy issue, the intended solution, and reasonable timeframes to address the cause of the occupancy issue.

vi. Additional Monitoring and Oversight

HUD may, based on the MTW agency's risks and at HUD's discretion, conduct management, programmatic, financial, or other reviews of the MTW agency. The MTW agency shall respond to any findings with appropriate corrective action(s).

In addition, HUD will make use of all HUD data systems and available information to conduct ongoing remote monitoring and oversight actions for MTW agencies, consistent with the results of the PIH risk assessment.

7. Rental Assistance Demonstration Program

MTW agencies converting public housing program units to Section 8 assistance under the Rental Assistance Demonstration (RAD) program are able to retain MTW regulatory and statutory flexibilities in the management of those units, subject to RAD requirements, if the conversion is to Project Based Voucher (PBV) assistance. MTW agencies converting projects under RAD to PBV may continue to undertake flexibilities except to the extent limited by RAD, as described in the RAD Notice, PIH 2012–32, REV–3, or its successor Notice.[17]

8. Applying MTW Flexibilities to Special Purpose Vouchers

Special Purpose Vouchers (SPVs) are specifically provided for by Congress in line item appropriations, which distinguish them from regular vouchers. Except for enhanced vouchers and tenant-protection vouchers (described below), SPVs are not part of the MTW demonstration and are not part of the MTW agency's total available flexible MTW Funding. The funding is renewed outside of the MTW HAP renewal formula and the funding (both the initial increment and renewal funding) for the SPVs may only be used for eligible SPV purposes. There are no additional MTW flexibilities around using MTW funds to cover SPV shortfalls. MTW PHAs may use non-HAP sources to cover shortfalls, following the procedures outlined in Notice PIH 2013–28. PHAs already have the ability to use HAP reserve funds to address SPV instances of shortfalls, where the SPVs are under the same appropriations allocation for renewal as their Section 8 vouchers.[18]

a. HUD-Veterans Affairs Supportive Housing

HUD-Veterans Affairs Supportive Housing (HUD–VASH) vouchers have separate operating requirements and must be administered in accordance with the requirements listed at *www.hud.gov/program_offices/public_indian_housing/programs/hcv/vash.* The operating requirements waive and alter many of the standard HCV statutes and regulations at 24 CFR part 982. Unless stated in the HUD–VASH operating requirements, however, the regulatory requirements at 24 CFR part 982 and all other HUD directives for the HCV program are applicable to HUD–VASH vouchers. Agencies may submit a request to HUD to operate HUD–VASH vouchers in accordance with MTW administrative flexibilities.

b. Family Unification Program

The Family Unification Program (FUP) NOFA language allows vouchers to be administered in accordance with MTW operations, unless MTW provisions are inconsistent with the appropriations act or requirements of the FUP NOFA. In the event of a conflict between the Operations Notice and the appropriations act or FUP NOFA language, the act and NOFA govern.

c. Non-Elderly Persons With Disabilities Vouchers

The Non-Elderly Persons with Disabilities (NED) NOFA language allows vouchers to be administered in accordance with MTW operations unless MTW provisions are inconsistent with the appropriations act or requirements of the NED NOFA. In the event of a conflict between the Operations Notice and the appropriations act or FUP NOFA language, the act and NOFA govern.

d. Enhanced Vouchers and Tenant Protection Vouchers

Enhanced and tenant protection voucher funds become fungible once the initial funding increment is renewed. The agency must continue to provide rental assistance to enhanced voucher families and tenant protection voucher families after the initial funding increment is renewed.

The statutory enhanced voucher requirements under Section 8(t) of the 1937 Act (*e.g.,* the HAP calculation) apply to an enhanced voucher family until the family either moves from the project or leaves the HCV tenant-based program for any reason. MTW agencies must follow the procedures described in Notice PIH 2013–27, or its successor Notice, for a recipient of an enhanced voucher to voluntarily agree to relinquish their tenant-based assistance in exchange for PBV assistance. When an enhanced voucher family moves from the project, either after initially receiving the voucher or anytime thereafter, the Section 8(t) enhanced voucher requirements no longer apply. The voucher is then administered in accordance with the regular HCV program requirements, as modified by the agency's individual MTW waivers and MTW policies for its tenant-based HCV program.

Regular tenant protection vouchers (*i.e.,* tenant protection vouchers that are not enhanced vouchers) are always administered in accordance with the normally applicable HCV program requirements, as modified by the agency's individual MTW waivers and MTW policies for its tenant-based HCV

[17] Notices and laws related to RAD can be found at *http://portal.hud.gov/hudportal/HUD?src=/RAD/library/notices.*

[18] *https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_10495.pdf.*

program, regardless of whether the family stays or moves from the project.

9. Applicability of Other Federal, State, and Local Requirements

Notwithstanding the MTW Waivers and associated activities provided in this Operations Notice, the following provisions of the 1937 Act continue to apply to MTW agencies and the assistance received pursuant to the 1937 Act:

i. The terms ''low-income families'' and ''very low-income families'' shall continue to be defined by reference to Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2));

ii. Section 12 of the 1937 Act (42 U.S.C. 1437j), as amended, shall apply to housing assisted under the demonstration, other than housing assisted solely due to occupancy by families receiving tenant-based assistance;

iii. Section 18 of the 1937 Act (42 U.S.C. l437p, as amended by Section 1002(d) of Pub. L. 104–19, Section 201(b)(1) of Pub. L. 104–134, and Section 201(b) of Pub. L. 104–202), governing demolition and disposition, shall continue to apply to public housing notwithstanding any use of the housing under MTW; and

iv. Section 8(r)(1) of the 1937 Act on HCV portability shall continue to apply unless provided as a cohort-specific waiver and associated activity(s) in an evaluative cohort as necessary to implement comprehensive rent reform and occupancy policies. Such a cohort-specific waiver and associated activity(s) would contain, at a minimum, exceptions for requests to port due to employment, education, health and safety, and reasonable accommodation.

Notwithstanding any requirement contained in this Notice or any MTW Waiver and associated activity granted herein, other Federal, state and local requirements applicable to public housing or HCV assistance will continue to apply. The MTW CACC Amendment will place in HUD the authority to determine if any future law or future regulation conflicts with any MTW-related agreement or Notice. If a future law conflicts, the law shall be implemented, and no breach of contract claim, or any claim for monetary damages, may result from the conflict or implementation of the conflicting law or regulation.

If any non-1937 Act requirement applicable to PHAs, public housing, or HCV assistance contains a provision that conflicts or is inconsistent with any MTW Waiver and associated activity granted by HUD, the agency remains subject to the terms of that non-1937 Act requirement. Such requirements include, but are not limited to:

• Requirements for Federal Funds: Notwithstanding the flexibilities described in this Notice, the public housing and voucher funding provided to MTW agencies remain Federal funds and are subject to any and all other Federal requirements outside of the 1937 Act (*e.g.,* including, but not limited to, competitive HUD NOFAs under which the MTW agency has received an award, state and local laws, Federal statutes other than the 1937 Act (including appropriations acts), and OMB Circulars and requirements), as modified from time to time. The MTW agency's expenditures must comply with 2 CFR part 200 and other applicable Federal requirements, which provide basic guidelines for the use of Federal funds, including the requirements of this Notice.

• National Environmental Policy Act (NEPA): MTW agencies must comply with NEPA, 24 CFR part 50 or Part 58, as applicable, and other related Federal laws and authorities identified in 24 CFR. Part 50 or Part 58, as applicable. Information and guidance on the environmental review process and requirements is provided in PIH Notice 2016–22, or successor notice.

• Fair Housing and Equal Opportunity: As with the administration of all HUD programs and all HUD-assisted activities, fair housing, and civil rights issues apply to the administration of MTW demonstration programs. This includes actions and policies that may have a discriminatory effect on the basis of race, color, sex, national origin, religion, disability, or familial status (see 24 CFR part 1 and Part 100 subpart G) or that may impede, obstruct, prevent, or undermine efforts to affirmatively further fair housing. Annual PHA Plans must include a civil rights certification required by Section 5A of the 1937 Act and implemented by regulation at 24 CFR 903.7(o) and 903.15, as well as a statement of the PHA's strategies and actions to achieve fair housing goals outlined in an approved Assessment of Fair Housing (AFH) consistent with 24 CFR 5.154. If the PHA does not have a HUD-accepted AFH, it must still provide a civil rights certification and statement of the PHA's fair housing strategies, which would be informed by the corresponding jurisdiction's AFH and the PHA's assessment of its own operations.

All PHAs, including MTW agencies, are obligated to comply with non-discrimination and equal opportunity laws and implementing regulation, including those in 24 CFR 5.105. Specific laws and regulations must be viewed in their entirety for full compliance, as this Operations Notice does not incorporate a complete discussion of all legal authorities. For example, PHAs, including MTW agencies, are required to comply with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Architectural Barriers Act of 1968, Executive Order 11063: Equal Opportunity in Housing, Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency, HUD's Equal Access Rule (24 CFR 5.105(a)(2), Age Discrimination Act of 1975, and Title IX of the Education Amendments Act of 1972, as well as HUD and government-wide regulations implementing these authorities. PHAs should review PIH Notice 2011–31 for more details.

• Court Orders and Voluntary Compliance Agreements: MTW agencies must comply with the terms of any applicable court orders or Voluntary Compliance Agreements that are in existence or may come into existence during the term of the MTW CACC Amendment. The PHA must cooperate fully with any investigation by the HUD Office of Inspector General or any other investigative and law enforcement agencies of the U.S. Government.

10. MTW Agencies Admitted Prior to 2016 MTW Expansion Statute

The 39 MTW agencies that entered the MTW demonstration prior to the 2016 MTW Expansion Statute adhere to an administrative structure outlined in the Standard MTW Agreement, a contract between each current agency and HUD. The 2016 MTW Expansion Statute extended the term of the Standard MTW Agreement for these existing MTW agencies through each agency's 2028 fiscal year.

Some agencies that entered the MTW demonstration prior to the 2016 MTW Expansion Statute may wish to opt out of their Standard MTW Agreement and administer their MTW program pursuant to the MTW Expansion and the requirements in this MTW Operations Notice. HUD will support an existing MTW agency's request to join the MTW Expansion provided that the agency:

• Makes the change at the end of its fiscal year, so that it does not have part of a fiscal year under the Standard Agreement and part under the Operations Notice;

• Follows the same public comment and Board resolution process as would

be required for amending the Standard MTW Agreement;

- Executes its MTW CACC Amendment to authorize participation in the MTW demonstration consistent with the Operations Notice; and
- Agrees to all the terms and conditions that apply to MTW agencies admitted pursuant to the 2016 MTW Expansion Statute, including all of the provisions of this Operations Notice and the accompanying MTW CACC Amendment.

Should an existing MTW agency elect to administer its MTW program pursuant to the framework described in this Operations Notice, it will not be required to implement the cohort-specific policy change associated with any of the MTW cohorts and it will not be required to participate in the evaluation of that specific policy change. All other requirements in this Operations Notice will apply.

11. Sanctions, Terminations, and Default

If the MTW agency violates any of the requirements outlined in this Notice, HUD is authorized to take any corrective or remedial action permitted by law. Sanctions, terminations, and default are covered in the agency's MTW CACC Amendment.

III. Environmental Impact

1. Purpose and Applicability

A Finding of No Significant Impact (FONSI) with respect to the environment was made for a previous version of this Notice in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is applicable to the current version of the Notice because there were no significant changes to the provisions of the Notice. The FONSI will be available for public inspection on *www.regulations.gov.*

Dated: October 4, 2018.

Robert E. Mulderig,

Acting Deputy Assistant, Secretary for Public Housing Investments.

Appendix—MTW Waivers

The Appendix contains the Moving to Work (MTW) Waivers and their associated MTW activities. The Appendix includes the waiver name, waiver description, statutes and regulations waived, permissible activities, and safe harbors. The waiver description defines the authorization provided to the MTW agency, subject to the terms of this Notice. The statutory and regulatory citations that may be waived by an MTW agency in order to implement an activity are included below the activity. The list of waivers and list of activities are organized by program type. The safe harbors contain the additional requirements (beyond those specified in the activity description) the agency must follow in order to implement the activity without additional HUD approval. If an MTW agency wishes to implement additional activities, request additional waivers, or request the ability to go beyond an MTW activity's safe harbor(s), the MTW agency must submit an agency-specific waiver request for approval from HUD as explained further in Section 2.b of the MTW Operations Notice.

Specific guidelines for safe harbors on impact analyses, applicability to elderly/disabled families and hardship policies are provided at the end of this appendix. Information on impact analyses is denoted with a ''*'', information on elderly/disabled families is denoted with a ''**'' and information on hardship policies is denoted with a ''***.''

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1. Tenant Rent Polices

The agency is authorized to adopt and implement the activities listed below for setting tenant rents in public housing, including but not limited to: Establishing definitions of income and adjusted income that differ from those in the current 1937 Act and its implementing regulations. The agency is authorized to adopt and implement the activities listed below to establish total tenant payments (TTP) [1] in the HCV program, and/or tenant rents for tenant-based and project-based voucher assistance that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. The agency is authorized to adopt and implement the activities listed below to calculate the tenant portion of the rent that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. The agency must determine initial eligibility in accordance with 24 CFR 5.609 and must comply with Section 3(b)(2) of the Act. For voucher activities, the Department will develop a standard rider to the HAP contract that reflects any MTW authorizations that amend the current requirements of the HAP contract.

1.a.,1.b. Income Bands

Activity	1.a. *Income Bands (PH)*—The agency may implement changes to the tenant rent calculation to create a system based upon income bands. Such rent policies are structured using two variables: (1) Income bands, or ranges, that assign dollar increments that have been determined locally by the agency, and (2) bedroom size. In a table, the y-axis lists the income bands and the x-axis lists the various bedroom sizes. In creating this system, the agency may also adopt a flat rent policy within each income band instead of calculating rent based on adjusted or gross income. The income bands may result in total tenant payment being no more than 35% gross income.	1.b. *Income Bands (HCV)*—The agency may implement changes to the TTP calculation to create a system based upon income bands. This type of rent policy is structured using two variables: (1) Income bands, or ranges, that assign dollar increments that have been determined locally by the agency, and (2) bedroom size. In a table, the y-axis lists the income bands and the x-axis lists the various bedroom sizes. In creating this system, the agency may also adopt a flat TTP policy within each income band instead of calculating TTP based on adjusted or gross income. The income bands may not result in TTP exceeding 35% of gross income.
Statutes and Regulations Waived.	*Income Bands (PH):* Certain provision of sections 3(a)(1)–(2) of the 1937 Act and 24 CFR 5.628, 5.634(b), and 960.253.	*Income Bands (HCV):* Certain provision of sections 8(o)(2)(A)–(C) of the 1937 Act and 24 CFR 5.628.
Safe Harbor(s)	1.a. and 1.b. • The income bands must be set in accordance with bedroom size. • Agency must conduct an impact analysis.* • Agency must exclude elderly and disabled families from rent policy.** • Agency must implement a hardship policy.***	

1.c.,1.d. Stepped Rent

Activity	1.c. *Stepped Rent (PH)*—The agency may create a stepped rent model that increases the family's rent payment on a fixed schedule in both frequency and amount. The fixed schedule/stepped rent model may be disaggregated from family income.	1.d. *Stepped Rent (HCV)*—The agency may create a stepped rent model that increases the family's TTP on a fixed schedule in both frequency and amount. The fixed schedule/stepped rent model may be disaggregated from family income.
Statutes and Regulations Waived.	*Stepped Rent (PH)*: Certain provisions of section 3(a)(1)–(2) of the 1937 Act and 24 CFR 5.628, 5.634(b) and 960.253.	*Stepped Rent (HCV):* Certain provisions of sections 8(o)(2)(A)–(C) of the 1937 Act and 24 CFR 5.628.
Safe Harbor(s)	1.c. • Rent increases may not occur more than once per year. • Agency must conduct an impact analysis.* • Agency must exclude elderly and disabled families from rent policy.** • Agency must implement a hardship policy.*** • Services, or referrals to services, must be made available by the agency or a partner organization to support preparing families for the termination of assistance. • At the Department's request, the agency shall make available the method used to determine that rents charged to families are reasonable when compared to similar unassisted units in the market area.	1.d. • TTP increases may not occur more than once per year. • Agency must conduct an impact analysis.* • Agency must exclude elderly and disabled families from rent policy.** • Agency must implement a hardship policy.*** • Agency must implement a grace period policy for HCV families that reach zero HAP through this activity. The grace period would allow families to receive zero HAP for at least six months before being transitioned off the HCV program. • Services, or referrals to services, must be made available by the agency or a partner organization to support preparing families for the termination of assistance. • At the Department's request, the agency shall make available the method used to determine that rents charged by owners to voucher participants are reasonable when compared to similar unassisted units in the market area.

1.e.,1.f. Minimum Rent

Activity	1.e. *Minimum Rent (PH)*—The agency may set a minimum rent that is higher than allowed under current statute and regulation.	1.f. *Minimum Rent (HCV)*—The agency may set a minimum rent that is higher than allowed under current statute and regulation.

Statutes and Regulations Waived.	*Minimum Rent (PH):* Certain provisions of sections 3(a)(1)–2) and 3(a)(3)(A) of the Act and 24 CFR 5.628 and 5.630.	*Minimum Rent (HCV):* Certain provisions of sections 3(a)(3)(A) and 8(o)(2)(A)–(C) of the Act and 24 CFR 5.628 and 5.630.
Safe Harbor(s)	1.e. and 1.f. • Minimum rent may not exceed $250 per month for non-elderly/non-disabled families. • Minimum rent may not exceed $100 for elderly and disabled families. • Agency must conduct an impact analysis.* • Agency must implement a hardship policy.***	
1.g.,1.h. TTP as a Percentage of Gross Income		
Activity	1.g. *TTP as a Percentage of Gross Income (PH)*—The agency may calculate TTP as a percentage of gross income that does not include income deductions and/or exclusions.	1.h. *TTP as a Percentage of Gross Income (HCV)*—The agency may calculate TTP as a percentage of gross income that does not include income deductions and/or exclusions.
Statutes and Regulations Waived.	*TTP as a Percentage of Gross Income (PH):* Certain provision of sections 3(a)(1)–(2) and 3(b)(4)–(5) of the 1937 of the Act and 24 CFR 5.609, 5.611, 960.253 and 960.255.	*TTP as a Percentage of Gross Income (HCV):* Certain provision of sections 3(b)(4)–(5) and 8(o)(2)(A)–(C) of the 1937 Act and 24 CFR 5.609, 5.611, and 982.516.
Safe Harbor(s)	1.g. and 1.h. • The TTP in PH and the TTP in HCV may not exceed 35% of gross income calculation for non-elderly/non-disabled families and 30% for elderly and disabled households. • Agency must conduct an impact analysis.* • Agency must implement a hardship policy.***	
1i.,1.j. Alternative Utility Allowance		
Activity	1i. *Alternative Utility Allowance (PH)*—The agency may create a utility schedule(s) for all units based upon bedroom size, the property location and/or the types of utilities paid by resident. The agency may not include items in the utility schedule that are excluded under HUD regulations.	1j. *Alternative Utility Allowance (HCV)*—The agency may create a utility schedule(s) for all HCV units based upon bedroom size, the unit location and/or the types of utilities paid by resident. The agency may establish a site-based utility allowance in PBV. The agency may not include items in the utility schedule that are excluded under HUD regulations.
Statutes and Regulations Waived.	*Alternative Utility Allowance (PH):* Certain provisions of 24 CFR 965.503–506.	*Alternative Utility Allowance (HCV):* Certain provision of section 8(o)(2)(D)(i) of the 1937 Act and 24 CFR 982.517 and 983.301(f)(2)(ii).
Safe Harbor(s)	1.i. and 1.j. • Agency must conduct an impact analysis.* • The agency must review its schedule of utility allowances each year, and revise its allowance for a utility category if there has been a change of 10 percent or more from the prior year. The agency must maintain information supporting its annual review of utility allowances and any revisions made in its utility allowance schedule.	
1.k,1.l. Fixed Rents/Subsidies		
Activity	1.k. *Fixed Rents (PH)*—The agency may establish flat rents based on bedroom size. Tenant rent under this activity may not exceed 35% of gross income for non-elderly/non-disabled families and 30% for elderly and disabled households.	1.l. *Fixed Subsidy (HCV)*—The agency may establish a fixed subsidy based on bedroom size. Under this model, the family pays the difference between the gross rent for the unit and the fixed subsidy. However, if the gross rent for the unit is at or below 90% of the applicable FMR the fixed subsidy may not result in a non-elderly/non-disabled family paying more than 35% of gross income or an elderly and disabled household paying more than 30% of gross income.
Statutes and Regulations Waived.	*Fixed Rents (PH):* Certain provision of sections 3(a)(1)–(2) and 3(a)(3)(A) of the 1937 Act and 24 CFR 5.628, 5.634(b) and 960.253.	*Fixed Subsidy (HCV):* Certain provisions of sections 8(o)(2)(A)–(C) of the 1937 Act and 24 CFR 5.628 and 5.630.
Safe Harbor(s)	1.k. and 1.l. • Agency must implement an impact analysis.* • Agency must implement a hardship policy.***	
1.m.,1.n. Utility Reimbursements		
Activity	1.m. *Utility Reimbursements (PH)*—The agency may eliminate utility reimbursement payments in the PH program when the utility allowance is greater than the total tenant payment.	1.n. *Utility Reimbursements (HCV)*—The agency may eliminate utility reimbursement payments in the HCV program when the utility allowance is greater than the total tenant payment.
Statutes and Regulations Waived.	*Utility Reimbursements (PH):* Certain provisions of section 3(a)(1) of the 1937 Act and 24 CFR 5.632.	*Utility Reimbursements (HCV):* Certain provisions of sections 8(o)(2)(A)–(C) of the 1937 Act and 24 CFR 982.514 and 983.353(d).
Safe Harbor	1.m. and 1.n. • Agency must implement an impact analysis.*	

	• Agency must implement a hardship policy.***	
1.o. Initial Rent Burden (HCV only)		
Activity		1o. *Initial Rent Burden (HCV)*—The agency may waive the maximum family share at initial occupancy of 40% of the family's adjusted monthly income.
Statutes and Regulations Waived.		*Initial Rent Burden (HCV):* Certain provisions of section 8(o)(4) of the 1937 Act and 24 CFR982.508.
Safe Harbor(s)		1.o. • Agency must implement an impact analysis * • Agency must implement a hardship policy.***
1.p.,1.q. Imputed Income		
Activity	1.p. *Imputed Income (PH)*—Agency may base rent on an assumed number of hours worked per week, not to exceed 30 hours worked each week per non-elderly/disabled adult household member, at either the local, State or Federal minimum wage.	1.q. *Imputed Income (HCV)*—Agency may base TTP on an assumed number of hours worked per week, not to exceed 30 hours worked each week per non-elderly/disabled adult household member, at either the local, State or Federal minimum wage.
Statutes and Regulations Waived.	*Imputed Income (PH):* Certain provisions of section 3(a)(1) of the 1937 Act and 24 CFR 5.609, 5.611, 5.628, 960.255, 960.253 and 960.257.	*Imputed Income (HCV):* Certain provisions of sections 8(o)(2)(A)–(C) of the 1937 Act and 24 CFR 5.609, 5.611, 5.628, and 982.516.
Safe Harbor	1.p. and 1.q. • Agency must conduct an impact analysis.* • Agency must exclude elderly and disabled families from rent policy.** • Agency must implement a hardship policy.***	
1.r.,1.s. Elimination of Deduction(s)		
Activity	1.r. *Elimination of Deduction(s) (PH)*—The agency may eliminate one, some, or all deductions.	1.s. *Elimination of Deduction(s) (HCV)*—The agency may eliminate one, some, or all deductions.
Statutes and Regulations Waived.	*Elimination of Deduction(s) (PH):* Certain provisions of section 3(a)(1) of the 1937 Act and 24 CFR 5.611, 960.253, 960.255 and 960.257.	*Elimination of Deduction(s) (HCV):* Certain provisions of sections 8(o)(2)(A)–(C) of the 1937 Act and 24 CFR 5.611 and 982.516.
1.t.,1.u. Standard Deductions		
Activity	1.t. *Standard Deductions (PH)*—The agency may replace existing deduction(s) with a standard deduction(s).	1.u. *Standard Deductions (HCV)*—The agency may replace existing deduction(s) with a standard deduction(s).
Statutes and Regulations Waived.	*Standard Deductions (PH):* Certain provisions of section 3(a)(1) of the 1937 Act and 24 CFR 5.611, 960.253, 960.255 and 960.257.	*Standard Deductions (HCV):* Certain provisions of sections 3(a)(1) and 8(o)(2)(A)–(C) of the 1937 Act and 24 CFR 5.611 and 982.516.
1.v.,1.w. Alternate Income Inclusions/Exclusions		
Activity	1.v. *Alternate Income Inclusions/Exclusions (PH)*—The agency may establish alternate policies to include or exclude certain forms of participant income during the income review and rent calculation process.	1.w. *Alternate Income Inclusions/Exclusions (HCV)*—The agency may establish alternate policies to include or exclude certain forms of participant income during the income review and rent calculation process.
Statutes and Regulations Waived.	*Alternate Income Inclusions/Exclusions (PH):* Certain provisions of sections 3(a)(1) and 3(b)(4)–(5) of the 1937 Act and 24 CFR 5.609, 5.611, 960.253, 960.255, and 960.257.	*Alternate Income Inclusions/Exclusions (HCV):* Certain provisions of sections 3(b)(4)–(5) and 8(o)(2)(A)–(C) of the 1937 Act and 24 CFR 5.609, 5.611, and 982.516.
Safe Harbor(s)	1.v. and 1.w. • Agency must conduct an impact analysis.* • Agency must implement a hardship policy.*** • Agency must exclude elderly and disabled individuals from rent policy.	
2. Payment Standards and Rent Reasonableness		
The agency is authorized to adopt and implement any reasonable policy to establish payment standards or rent reasonableness that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. For voucher activities, the Department will develop a standard rider to the HAP contract that reflects any MTW authorizations that amend the current requirements of the HAP contract.		
2.a. Payment Standards		
Activity	2.a. *Payment Standards (Tenant Based Assistance)*—The agency is authorized to adopt and implement any reasonable policy to establish payment standards up to 150% of the Small Area FMR (SAFMR). This may include setting payment standards outside of the basic range, and creating multiple payment standards based on conditions in the local rental market.	
Statutes and Regulations Waived.	*Payment Standards (Tenant Based Assistance):* Certain provisions of section 8(o)(1)(B) of the 1937 Act and 24 CFR 982.503–505 and 983.301.	

Safe Harbor	2.a. • Agency must implement an impact analysis.* • Agency must implement a hardship policy.***

2.b. Rent Reasonableness

Activity	2.b. *Rent Reasonableness (HCV)*—The agency is authorized to develop a local process to determine rent reasonableness that differs from the currently mandated program requirements in the 1937 Act and its implementing regulations.
Statutes and Regulations Waived.	*Rent Reasonableness (HCV):* Certain provisions of 24 CFR 982.507 and 983.303.
Safe Harbor(s)	2.b. • At the Department's request, the agency shall make available the method used to determine that rents charged by owners to voucher participants are reasonable when compared to similar unassisted units in the market area. • Agency must obtain the services of a third-party entity to determine rent reasonableness for PHA-owned units.

3. Increase PBV Rent to Owner

The agency is authorized to establish the initial and re-determined rent to owner that differs from currently mandated program requirements in the 1937 Act and its implementing regulations. For voucher activities, the Department will develop a standard rider to the HAP contract that reflects any MTW authorizations that amend the current requirements of the HAP contract.

3. Increase Rent to Owner

Activity	3. *Increase Rent to Owner (PBV):* The agency is authorized to develop a local process to determine the initial and re-determined rent to owner.
Statutes and Regulations Waived.	Increase Rent to Owner (PBV): Certain provisions of section 8(o)(13)(H) of the 1937 Act and 24 CFR 983.301–302.
Safe Harbor(s)	3. • Agency must implement an impact analysis.* • Agency must implement a hardship policy.***

4. Reexaminations

The agency is authorized to implement a reexamination program that differs from the reexamination program currently mandated in the 1937 Act and its implementing regulations. The terms ''low-income families'' and ''very low-income families'' shall continue to be defined by reference to Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). MTW agencies must continue to determine the initial eligibility of the family in accordance with provisions of 24 CFR 5.609.

4.a, 4.b. Alternate Reexamination Schedule for Households

Activity	4.a. *Alternate Reexamination Schedule for Households (PH)*—The agency may establish an alternate reexamination schedule for households.	4.b. *Alternate Reexamination Schedule for Households (HCV)*—The agency may establish an alternate reexamination schedule for households.
Statutes and Regulations Waived.	*Reexaminations (PH):* Certain provisions of sections 3(a)(1) and 3(a)(2)(E) of the 1937 Act and 24 CFR 960.257(a)–(b).	*Reexaminations (HCV):* Certain provisions of section 8(o)(5) of the 1937 Act and 24 CFR 982.516 (a)(1) and 982.516(c)(2).
Safe Harbor(s)	4.a. and 4.b. • Reexaminations must occur at least every three years. • Must allow at least one interim adjustment per year at the request of the household, if the household gross income has decreased 10% or more. • Agency must include a hardship policy.***	

4.c., 4.d. Self-Certification of Assets

Activity	4.c. *Self-Certification of Assets (PH)*—At reexam the agency may allow the self-certification of assets up to $10,000.	4.d. *Self-Certification of Assets (HCV)*—At reexam the agency may allow the self-certification of assets up to $10,000.
Statutes and Regulations Waived.	*Reexaminations (PH):* Certain provisions of sections 3(a)(1) and 3(a)(2)(E) of the 1937 Act and 24 CFR 960.259(c)(2).	*Reexaminations (HCV):* Certain provisions of section 8(o)(5) of the 1937 Act and 24 CFR 982.516 (a)(3).

5. Voucher Leasing Incentives

The agency is authorized to determine a damage claim and/or vacancy loss policy and payment policy for units that differ from the policy requirements currently mandated in the 1937 Act and its implementing regulations. Damage claim and vacancy loss authority are also subject to state and local laws. The agency must update its Administrative Plan to reflect the vacancy loss policy and/or damage claim policy. Agency may combine activities 3a and 3b into one voucher leasing incentive. For voucher activities related to this waiver, the Department will develop a standard rider to the HAP contract that reflects MTW authorizations that amend the current provisions of the HAP contract.

5.a.,5.b.,5.c. Vacancy Loss, Damage Claims, and Other Landlord Incentives	
Activity	5.a. *Vacancy Loss (Tenant-Based Assistance)*—The agency is authorized to make an additional payment equal to one month of the contract rent to landlords when vacancies are unforeseen or unexpected. Payment may only be made when a landlord leases unit to another tenant-based assisted family.
Activity	5.b. *Damage Claims (Tenant-Based Assistance)*—The agency may provide landlords with compensation of up to two months of contract rent if a tenant leaves the unit damaged. In implementing this activity, the tenant's security deposit must first be used to cover damages and the agency may provide up to two months of contract rent minus the security deposit to cover remaining repairs.
Activity	5.c. *Other Landlord Incentives (Tenant-Based Assistance)*—In order to incentivize new landlords to join the HCV program, the agency may provide an incentive payment for new landlords that join the program and/or landlords that remain in the program and lease to another tenant-based assisted family. Agencies may also target incentive payments to landlords leasing properties in high opportunity neighborhoods or in areas located where vouchers are difficult to use as defined in an agency's Administrative Plan.
Statutes and Regulations Waived.	Voucher Leasing Incentives (Tenant-Based Assistance): Certain provisions of section 8(o)(9) of the 1937 Act and 24 CFR 982.311, 982.352(c), and 983.259(e).
Safe Harbor	5.a. and 5.c. only. • Landlords receiving payments under the vacancy loss and other landlord incentives activities must have unit(s) that first pass Housing Quality Standards (HQS) for HCV before payment is made.

6. Public Housing Leases

Subject to State and local laws, the agency is authorized to develop and adopt a new form of local lease and establish community rules and reasonable tenant fees, provided that no-cause evictions are not permitted, and the agency includes grievance procedures in accordance with 24 CFR 966 Subpart B. Any implemented fees must be based on customary property management fees, and be generally applicable to non-assisted tenants in any mixed-income properties.

6.a.,6.b. Establish Community Rules and Reasonable Fees through Local Lease	
Activity	6.a. *Establish Community Rules through Local Lease (PH)*—The agency may develop a local lease which may establish community rules. Agency may only implement changes to the lease under this activity that do not require either a regulatory or statutory waiver. Fair housing and other civil rights requirements continue to apply. Agency must comply with HUD's Smoke-Free Public Housing Rule.
Activity	6.b. *Establish Reasonable Fees through Local Lease (PH)*—The agency may charge fees that are reasonable and cost effective through a local lease.
Statutes and Regulations Waived.	Public Housing Leases (PH): Certain provisions of section 6(l)(1) of the 1937 Act and 24 CFR 966.4.
Safe Harbor(s)	6.b. only. • Agency must implement an appeals process. • Agency must implement a hardship policy.***

7. Short-Term Assistance

The agency may develop and adopt a Short-Term Assistance Program in HCV or PH for specific populations (i.e., hard to house, at-risk, homeless, etc.).[19] The short-term housing assistance program must include supportive services in one or more buildings in collaboration with local community-based organization and government agencies. The agency will ensure that these programs do not have a disparate impact on protected classes, and will be operated in a manner that is consistent with the requirements of nondiscrimination and equal opportunity authorities, including but not limited to Section 504 of the Rehabilitation Act. More specifically, under no circumstances will residents of such programs be required to participate in supportive services that are targeted to persons with disabilities in general, or persons with any specific disability. In addition, admission to any of the programs or priority for supportive services developed under this section will not be conditioned on a diagnosis or specific disability of a member of an applicant or participant family. This section is not intended to govern the designation of housing that is subject to Section 7 of the 1937 Act. The agency must determine initial eligibility in accordance with 24 CFR 5.609 and must comply with Section 3(b)(2) of the Act. Subject to the Agency's policy, successful participants of the short-term housing assistance program may be given the option of transferring into whichever program (Section 8 or 9) the short-term housing assistance program falls under.

7.a.,7.b. Short-Term Assistance		
Activity	7.a. *Short-Term Assistance (PH)*—The agency may create a short-term housing assistance program with supportive services in one or more buildings in its public housing program. The agency may collaborate with local community-based organizations and government agencies to provide supportive services.	7.b. *Short-Term Assistance (HCV)*—The agency may create a short-term housing assistance program with supportive services in its HCV program. The agency may collaborate with local community-based organizations and government agencies to provide supportive services.
Statutes and Regulations Waived.	*Short-Term Assistance (PH):* Certain provisions of sections 6(l)(1) and 6(l)(5) of the 1937 Act and 24 CFR 966.4(a)(2)(i).	*Short-Term Assistance (HCV)*: Certain provisions of sections 8(o)(7)(A)–(C) of the 1937 Act and 24 CFR 982.303, 982.309(a)(1), 983.256(f), and 983.257.
Safe Harbor(s)	7.a. and 7.b. • The term of assistance may not be shorter than 3 months.	

	• The activity cannot be extended to an entire PH or HCV program and must only serve specific populations.

8. Term-Limited Assistance

The agency is authorized to implement term limits for families residing in public housing or receiving voucher assistance.

8.a.,8.b. Term-Limited Assistance

Activity	8.a. *Term-Limited Assistance (PH)*—The agency may limit the duration for which a family receives housing assistance.	8.b. *Term-Limited Assistance (HCV)*—The agency may limit the duration for which a family receives housing assistance.
Statutes and Regulations Waived.	*Term-Limited Assistance (PH):* Certain provisions of sections 6(l)(1) and 6(l)(5) of the 1937 Act and 24 CFR and 966.4(a)(2).	*Term-Limited Assistance (HCV):* Certain provisions of sections 8(o)(7)(A)–(C) of the 1937 Act and 24 CFR 982.303, 982.309(a), 982.552(a), 983.256(f), and 983.257.
Safe Harbor(s)	8.a. and 8.b. • The term of assistance may not be shorter than 4 years. • Services, or referrals to services, must be provided by the agency or a partner organization to support preparing families for the termination of assistance. • Agency must conduct an impact analysis.* • Agency must exclude elderly and disabled families from term limit.** • Agency must implement a hardship policy.***	

9. Work Requirements

The agency is authorized to implement a requirement that a specified segment of its PH and/or HCV residents work as a condition of tenancy, subject to all applicable fair housing and civil rights requirements and the mandatory admission and prohibition requirements imposed by sections 576–578 of the Quality Housing and Work Responsibility Act of 1998 and Section 428 of Public Law 105–276. Those individuals exempt from the Community Service Requirement in accordance with Section 12(c)(2)(A), (B), (D) and (E) of the 1937 Act must also be exempt from the agency's work requirement. The agency must update its Administrative Plan and/or Admissions and Continued Occupancy Plan (ACOP) to include a description of the circumstances in which families shall be exempt from the requirement. The Administrative Plan and/or ACOP should include a description of what is considered work as well as other activities that shall be considered acceptable substitutes for work.

9.a.,9.b. Work Requirement

Activity	9.a. *Work Requirement (PH)*—The agency may implement a work requirement for public housing residents who are at least 18 years old. Additionally, residents must be non-elderly, as defined by the agency, and non-disabled. The requirement shall be no more than 30 hours of work per week per non-elderly/non-disabled adult household member. Supportive services shall be provided, either through the agency or a partner organization, to assist families in obtaining employment or an acceptable substitute, as defined by the MTW agency's policy. Work requirements shall not be applied to exclude, or have the effect of excluding, the admission of or participation by persons with disabilities or families that include persons with disabilities. Work requirements shall not apply to persons with disabilities. However, persons with disabilities and families that include persons with disabilities must have equal access to the full range of program services and other incentives.	9.b. *Work Requirement (HCV)*—The agency may implement a work requirement for HCV residents who are at least 18 years old. Additionally, residents must be non-elderly, as defined by the agency, and non-disabled. The requirement shall be no more than 30 hours of work per week per non-elderly/non-disabled adult household member. Supportive services shall be provided, either through the agency or a partner organization, to assist families in obtaining employment or an acceptable substitute, as defined by the MTW agency's policy. Work requirements shall not be applied to exclude, or have the effect of excluding, the admission of or participation by persons with disabilities or families that include persons with disabilities. Work requirements shall not apply to persons with disabilities. However, persons with disabilities and families that include persons with disabilities must have equal access to the full range of program services and other incentives.
Statutes and Regulations Waived.	*Work Requirement (PH):* Certain provisions of sections 6(l)(1) and 6(l)(5) of the 1937 Act and 24 CFR 966.4(a)(2).	*Work Requirement (HCV):* Certain provisions of 24 CFR 982.551.
Safe Harbor	9.a. • Agency must conduct an impact analysis.* • Agency must implement a hardship policy.*** • The hardship policy in the ACOP must apply to families who are actively trying to comply with the agency's work requirement, but are having difficulties obtaining work or an acceptable substitute. • The ACOP must also describe the consequences of failure to comply with the work requirement. • Services, or referrals to services, must be provided by the agency to support preparing families for the termination of assistance. • Activity may apply to non-elderly, non-disabled households or non-elderly, non-disabled adult household members.	9.b. • Agency must conduct an impact analysis.* • Agency must implement a hardship policy.*** • The hardship policy in the Administrative Plan must apply to families who are actively trying to comply with the agency's work requirement, but are having difficulties obtaining work or an acceptable substitute. • The Administrative Plan must also describe the consequences of failure to comply with the work requirement. • Services, or referrals to services, must be provided by the agency to support preparing families for the termination of assistance. • Activity may apply to non-elderly, non-disabled households or non-elderly, non-disabled adult household members.

10. Increase Elderly Age

The agency is authorized to amend the definition of an elderly person to be an individual who is at least 65 years of age.

10. Increase Elderly Age

Activity	10. *Increase Elderly Age (PH & HCV)*—The agency may change HUD's definition of an elderly person to be at least 65 years of age. The implementation of this activity will apply only to new admissions after the effective date of the MTW ACC. The agency remains subject to HUD's regulations implementing the Age Discrimination Act of 1975 at 24 CFR Part 146 in its entirety.
Statutes and Regulations Waived.	Increase Elderly Age (PH & HCV): Certain provisions of section 3(b)(3)(D) of the 1937 Act to read ''[63, 64, or 65] years of age'' in relevant part, 24 CFR 5.100 to read ''[63, 64, or 65] years of age'' in relevant part of the definition of Elderly Person, and 24 CFR 5.403 to read ''[63, 64, or 65] years of age'' in relevant part of the definition of *Elderly family.*
Safe Harbor	10. • Definition of an elderly person may not set a threshold (minimum) age above 65 years old. • Agency must conduct an initial activity analysis consistent with 24 CFR Part 146 and make the activity analysis available during the applicable public review period prior to the implementation of the MTW activity. The activity analysis must be updated at least annually during implementation of the activity and at the time the activity is closed out. • Agency must retain records available for HUD inspection that cover the waiver, tenant consultation and public comment, results of the activity analysis, and specific policies and procedures to implement the waiver.

11. Increase Total PBV Unit Cap

The agency is authorized to expand the authority to project-base vouchers from 20% of authorized voucher units to 30% of authorized voucher units. In addition, the agency is authorized to project-base an additional 20% (rather than 10%) of its authorized units in accordance with the exception authority in 8(o)(13)(ii) of the United States Housing Act of 1937 to provide units for families meeting the statutory eligibility categories set forth in that section. The agency is authorized to project-base up to 50% of its authorized voucher units (30% general cap, 20% exception authority), subject to the safe harbors.

11. Increase Total PBV Unit Cap

Activity	11. *Increase Total PBV Unit Cap (PBV)*—The agency may project-base up to 30% of its authorized voucher units for the agency for project-based assistance. The agency may further project-base an additional 20% of its authorized voucher units if the units meet the statutory exception categories in Section 8(o)(13)(B)(ii) of the 1937 Act.
Statutes and Regulations Waived.	*Increase Total PBV Unit Cap (PBV):* Certain provisions of section 8(o)(13)(B) of the 1937 Act and 24 CFR 983.6(a)–(b), as superseded by Notice PIH 2017–21.
Safe Harbor(s)	11. • The agency may project-base up to 30% of its total authorized voucher units. The agency may also project-base up to an additional 20% of the total authorized voucher units, provided those additional units fall into one of the following categories: (1) The units are specifically made available to house people who meet the HUD definition of homeless; (2) the units are specifically made available to housing families that are comprised of or include a veteran; (3) the units provide supportive housing for elderly or disabled persons; or (4) the units are located in areas where vouchers are difficult to use (units located in a census tract with a poverty rate of 20 percent or less, and as further determined by the Secretary).

12. Increase PBV Project Cap

The agency is authorized to determine the percentage of units within a project that can be project-based to exceed the percentage limitation in the 1937 Act and its implementing regulations. The agency is subject to the PBV section of Notice PIH 2017–21 or any successor notice and/or guidance. The agency is subject to Notice PIH 2013–27 where applicable, or successor.

12. Increase PBV Project Cap

Activity	12. *Increase PBV Project Cap (PBV)*—The agency may raise the PBV cap within a project up to 100%.
Statutes and Regulations Waived.	*Increase PBV Project Cap (PBV):* Certain provisions of section 8(o)(13)(D) of the 1937 Act and 24 CFR 983.56(a)–(b).
Safe Harbor(s)	12. • Agency may raise the PBV cap within a project up to 100% for any of the following reasons: (1) At the time the HAP contract is signed, the development is in a census tract with a poverty rate of 20% or less; (2) the agency seeks to convert an existing agency-owned development (other than public housing or other exception projects under HOTMA) to PBV and will use no development dollars; or (3) the agency is seeking to transition a Low-Income Housing Tax Credit property that is approaching the expiration of its affordability period.

13. PBV—Elimination of Selection Process

Subject to subsidy layering review, the agency is authorized to project-base Section 8 assistance at PHA-owned properties that are not public housing properties. Project-based assistance for such units does not need to be competitively bid, nor are the owned units subject to any required assessments for voluntary conversion. Agency still needs to complete site selection requirements. This waiver does not waive 24 CFR 983.57 or 983.59(b) that HQS inspections be performed by an independent entity. The agency must still comply with 24 CFR 983.57 and 983.59(b) which requires that HQS inspections be completed by independent entities. The agency is subject to the PBV section of Notice PIH 2017–21 or any successor notice and/or guidance. The agency is subject to Notice PIH 2013–27 where applicable, or successor.

13. Eliminate PBV Selection Process

Activity	13. *Eliminate PBV Selection Process (PBV)*—The agency may eliminate the selection process in the award of PBVs to properties owned by the agency that are not public housing.
Statutes and/or Regulations Waived.	*Eliminate PBV Selection Process (PBV):* Certain provisions of 24 CFR 983.51.
Safe Harbor(s)	13. • Property must be owned by a single-asset entity of agency, see Notice PIH 2015–05.

14. PBV—Alternative Competitive Process

The agency is authorized to establish a reasonable competitive process or utilize an existing local competitive process for project-basing leased housing assistance at units that meet existing HQS requirements and that are owned by non-profit, for-profit housing entities, or by the agency that are not public housing. The agency must still comply with 24 CFR 983.57 and 983.59(b) which requires that HQS inspections be completed by independent entities if the selected project is PHA-owned. The agency is subject to PBV section of Notice PIH 2017–21 or any successor notice and/or guidance. The agency is subject to Notice PIH 2013–27 where applicable, or successor.

14. Establish Alternative PBV Competitive Process

Activity	14. *Establish Alternative PBV Competitive Process (PBV)*—The agency may establish an alternative competitive process in the award of PBVs that are owned by non-profit, for-profit housing entities, or by the agency that are not public housing.
Statutes and/or Regulations Waived.	*Establish Alternative PBV Competitive Process (PBV):* Certain provisions of 24 CFR 983.51 as superseded by the Housing Opportunity through Modernization Act of 2016 (HOTMA) Implementation Notice, Notice PIH 2017–21.
Safe Harbor(s)	14. • None.

15. PBV—Unit Types

Subject to subsidy layering review, the agency may attach or pay PBV assistance for shared housing units that are normally ineligible for assistance. PBV units must comply with HQS and be consistent with deconcentration and desegregation requirements under 24 CFR part 903. If the agency places a PBV unit in a public housing project, then the agency will not receive public housing funds for that unit.

15. PBV Unit Types

Activity	15. *PBV Unit Types (Shared Housing)*—The agency may attach and pay PBV assistance for shared housing units.
Statutes and/or Regulations Waived.	*PBV Unit Types (Shared Housing):* Certain provisions of 24 CFR 983.53(a)(1).
Safe Harbor(s)	15. • Shared housing units may not be owner occupied.

16. MTW Self-Sufficiency Program

The agency is authorized to operate any of its existing self-sufficiency and training programs, including its Family Self-Sufficiency (FSS) Program and any successor programs, exempt from certain HUD program requirements. If the agency receives dedicated funding for an FSS coordinator, such funds must be used to employ a self-sufficiency coordinator and in accordance with any requirements of any NOFA under which funds were received. Recruitment, eligibility, and selection policies and procedures must be consistent with the Department's non-discrimination and equal opportunity requirements. An agency may make its MTW Self-Sufficiency Program participation mandatory for any household member that is non-elderly/non-disabled by waiving the statutory and regulatory definition of FSS family or participating family which is ''a family that resides in public housing or receives assistance under the rental certificate or rental voucher programs, and that elects to participate in the FSS program'' (24 CFR 984.103(b)). In implementing this waiver, the agency must execute a contract of participation, or other locally developed agreement, that is at least 5 years but no more than 10 years. Notwithstanding the above, any funds granted pursuant to a competition must be used in accordance with the NOFA. These waivers should not exempt the agency from having an up to date, approved FSS Action Plan in accordance with 24 CFR 984.201.

16.a.–16.e. MTW Self Sufficiency Program Activities

Activity	16.a. *Waive Operating a Required FSS Program (PH & HCV)*—The agency is authorized to waive the requirement to operate the regulatory FSS program.

Activity	16.b. *Alternative Structure for Establishing Coordinating Committee (PH & HCV)*—The agency is authorized to create an alternative structure for securing local resources to support an MTW Self-Sufficiency Program.
Activity	16.c. *Alternative Family Selection Procedures (PH & HCV)*—The agency is authorized to develop its own recruitment and selection procedures for its MTW Self-Sufficiency Program(s). Alternatively, agency may make participation in the MTW Self-Sufficiency Program mandatory for any household member that is non-elderly or non-disabled.
Activity	16.d. *Modify or Eliminate the Contract of Participation (PH & HCV)*—The agency is authorized to modify the terms of, or eliminate the contract of participation, in lieu of a local form. The agency may modify the terms of the contract of participation to align with adjustments made to its MTW Self-Sufficiency Program(s) using MTW flexibility. Further, the agency may discontinue use of the contract of participation and instead employ a locally-developed agreement that codifies the terms of participation. However, all required fields in Form HUD–50058 MTW Section 23 or Form HUD–50058 Section 17 must be included in the Contract of Participation.
Activity	16.e. *Policies for Addressing Increases in Family Income (PH & HCV)*—The agency is authorized to set its own policies for addressing increases in family income during participation in the MTW Self-Sufficiency Program. Consistent with the goals and structure of its MTW Self-Sufficiency Program, the agency may set policies for whether income increases are recognized for purposes of increasing rent (consistent with the agency's existing rent policy) or changing the amount of funds moved to escrow/savings through the program. The agency may not use income increases during participation in the MTW Self-Sufficiency Program to change a family's eligibility status for purposes of participation in the MTW Self-Sufficiency Program or for the receipt public housing or HCV assistance.
Statutes and Regulations Waived.	MTW Self-Sufficiency Program (PH & HCV): Certain provisions of sections 23(b)–(d), (f), and (n)(1) of the 1937 Act and 24 CFR 984.105, 984.202(b)–(c), 984.203(a)–(c)(2), 984.303(b)–(d), (f)–(h).
Safe Harbor(s)	16.a.–16.e. • Agency must review FSS Guidance.[20] • If the agency requires MTW Self-Sufficiency Program participation as a condition for housing subsidy, an impact analysis must be developed and adopted in accordance with MTW guidance prior to the implementation of the activity.* • The agency may not make MTW Self-Sufficiency Program participation mandatory for individuals that do not meet the definition of an eligible family at Section 23(n)(3) of the U.S. Housing Act of 1937 (1937 Act) (42 U.S.C. 1437u(n)(3)), and those exempted from the Community Service Requirement under Section 12(c)(2)(A), (B), (D) and (E) of the 1937 Act, 42 U.S.C. 1437j(c)(2)(A), (B), (D), and (E). If the agency requires MTW FSS program participation as a condition for housing subsidy, a hardship policy must be developed and adopted in accordance with MTW guidance prior to the implementation of the activity.*** • If an agency terminates the housing subsidy or tenancy of a family for alleged violation of mandatory MTW Self-Sufficiency Program participation, the family will be entitled to a hearing under the Agency's Grievance Procedure (24 CFR part 966, subpart B) or the HCV informal hearing process (24 CFR part 982.555).

17. Local, Non-Traditional Activities

MTW funds awarded to an MTW agency under Sections 8(o), 9(d), and 9(e) of the 1937 Act can be utilized per statute and regulation on the eligible activities listed at Sections 9(d)(1), 9(e)(1), and 8(o) of the 1937 Act. Any authorized use of these funds outside of the allowable uses listed in the 1937 Act constitutes a local, non-traditional activity. The agency is authorized to implement the local, non-traditional activities listed below to provide a rental subsidy to a third-party entity to provide housing and supportive services to eligible participants, and to contribute MTW funds to the development of affordable housing. Families served through the activities described below must be at or below 80% of area median income, and implemented activities must meet one of the three MTW statutory objectives of increasing the efficiency of federal expenditures, incentivizing self-sufficiency of participating families and increasing housing choice for low-income families. Any MTW funds awarded to a third-party provider must be competitively bid. The use of MTW funds must be consistent with the requirements of 2 CFR 200 and other basic federal principles. The agency must determine the eligibility of families in accordance with 24 CFR 5.609 and with Section 3(b)(2) of the Act. The agency is subject to Notice PIH 2011–45 or any successor notice and/or guidance. Local, non-traditional activities must fall within one of the three categories below and comply with Notice 2011–45 or any successor notice/and or guidance.

17.a.,17.b. Rental Subsidy Programs and Service Provision

Activity Categories	17.a. *Rental Subsidy Programs*—Programs that use MTW funds to provide a rental subsidy to a third-party entity (other than a landlord or tenant) who manages intake and administration of the subsidy program to implement activities, which may include: supportive housing programs and services to help homeless individuals and families reach independence; Supportive living; homeless/transitional housing programs; or programs that address special needs populations.
Activity Categories	17.b. *Service Provision*—The provision of HUD-approved self-sufficiency or supportive services that are not otherwise permitted under the public housing and HCV programs, or that are provided to eligible low-income individuals who do not receive either public housing or HCV assistance from the PHA. Eligible activities may include: Services for residents of other PHA-owned or managed affordable housing that is not public housing or HCV assistance; services for low-income non-residents; or supportive services.
Statutes and Regulations Waived.	*Local, Non-Traditional Activities:* MTW funds awarded to an MTW agency under sections 8(o), 9(d), and 9(e) of the 1937 Act can be utilized per statute and regulation on the eligible activities listed at Sections 9(d)(1), 9(e)(1), and 8(o) of the 1937 Act. Any authorized use of these funds outside of the allowable uses listed in the 1937 Act constitutes a local, non-traditional activity.
Safe Harbor(s)	17.a and 17.b. • Agency may spend up to 10% of its MTW budget on local, non-traditional actives. All other applicable MTW requirements apply. • The agency is subject to Notice PIH 2011–45 or any successor notice and/or guidance.

17.c. Housing Development Programs	
Activity Categories	17.c. *Housing Development Programs*—Programs that use MTW funds to acquire, renovate and/or build affordable units for low-income families that are not public housing units. Eligible activities may include: Gap financing for non-PHA development of affordable housing or tax credit partnerships.
Statutes and Regulations Waived.	*Local, Non-Traditional Activities:* MTW funds awarded to an MTW agency under sections 8(o), 9(d), and 9(e) of the 1937 Act can be utilized per statute and regulation for the eligible activities listed at Sections 8(o), 9(d)(1), and 9(e)(1) of the 1937 Act. Any authorized use of these funds outside of the allowable uses listed in the 1937 Act constitutes a local, non-traditional activity.
Safe Harbor(s)	17.c. • Agency must comply with Section 30 of the 1937 Housing Act. • The agency is subject to Notice PIH 2011–45 or any successor notice and/or guidance. • Agency may spend up to 10% of its MTW budget on local, non-traditional actives. All other applicable MTW requirements apply.

[1] In the HCV tenant-based program, the housing assistance payment (HAP) is the lower of: (1) The payment standard minus the family's TTP, or (2) the gross rent minus the TTP. The TTP is the minimum amount the family will pay as the family share. If the gross rent exceeds the payment standard, the family will pay TTP and the difference between the gross rent and the payment standard as the family share. In the HCV project-based program, the family always pays TTP minus any utility allowance (UA) as the tenant rent.

*** Impact Analysis**

The MTW agency must analyze and put into the writing the various impacts of the MTW activity. The MTW agency must prepare this analysis (1) prior to implementation of the MTW activity; (2) at minimum, on an annual basis during the implementation of the MTW activity; and (3) at the time the MTW activity is closed out.

This analysis must consider the following eight factors:

1. Impact on the agency's finances (*e.g.,* how much will the activity cost, any change in the agency's per family contribution);
2. Impact on affordability of housing costs for affected families (*e.g.,* any change in how much affected families will pay towards their housing costs);
3. Impact on the agency's waitlist(s) (*e.g.,* any change in the amount of time families are on the waitlist);
4. Impact on the agency's termination rate of families (*e.g.,* the rate at which families non-voluntarily lose assistance from the agency);
5. Impact on the agency's current occupancy level in public housing and utilization rate in the HCV program;
6. Impact on the agency's ability to meet the MTW statutory requirements;
7. Impact on the community (*e.g.,* any change in the number of families transitioning to self-sufficiency, and any change in the employment rate after the implementation of activities targeted towards working families); and
8. Across the other factors above, the impact on protected classes (and any associated disparate impact).

The MTW agency must have the initial impact analysis, which analyzes potential impacts of the MTW activity, available during the applicable public review period prior to implementation of the MTW activity. The agency must supply the annual impact analysis and/or the final impact analysis of the closed-out activity (if applicable), which analyzes actual impact of the MTW activity, at HUD's request. This information must be retained by the agency for the duration of the agency's participation in the MTW demonstration program and available for public review and inspection at the agency's principal office during normal business hours.

**** Elderly/Disabled Families**

The MTW activity must not apply to elderly families and disabled families as defined in 24 CFR 5.403 or the MTW agency's approved definition under its MTW program.

***** Hardship Policy**

The MTW agency must adopt written policies for determining when a requirement or provision of the MTW activity constitutes a financial or other hardship for the family.

The agency shall make the determination of whether a financial or other hardship exists within a reasonable time after the family request. If the agency determines that a financial or other hardship exists, the PHA must immediately provide an exemption from the MTW activity at a reasonable level and duration, according to the agency's written policies. Residents must be notified of the agency's hardship policy.

The agency's written policies for determining what constitutes financial hardship must include the following situations:

- The family has experienced a decrease in income because of changed circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance;
- The family has experienced an increase in expenses, because of changed circumstances, for medical costs, child care, transportation, education, or similar items; and
- Such other situations and factors determined by the agency to be appropriate.

The agency's written policies shall include a grievance procedure that a family may request for second level review of denied hardship requests.

The agency shall keep records of all hardship requests received and the results of these requests, and supply them at HUD's request. This information must be retained by the agency for the duration of the agency's participation in the MTW program and available for public review and inspection at the agency's principal office during normal business hours.

The protections for victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L, apply. The protections for persons requesting a reasonable accommodation under 24 CFR part 8 also apply.

[19] Agencies seeking to create a short-term program that goes beyond Section 8 or Section 9 as modified by MTW may propose an activity under the Local Non-Traditional Activities Rental Subsidy Program Waiver.

[20] As agencies are considering potential waivers to the FSS program, they are encouraged to consult the Promising Practices Guidebook and Online Training that can be found at *https://www.hudexchange.info/programs/fss/#1-introduction.* In addition, the HUD FSS team is available to review and provide feedback on proposed waivers. Please contact *fss@hud.gov.*

[FR Doc. 2018–22158 Filed 10–10–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX18LC00BM3FD00; OMB Control Number 1028–0079/Renewal]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; North American Breeding Bird Survey

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 November 13, 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 1028–0079 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Keith Pardieck by email at *kpardieck@usgs.gov* or by telephone at 301–497–5843. 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 June 21, 2018 (FR 83, Number 120, Pages 28860–28861). We did receive one comment but the comment did not address the collection of information on breeding birds.

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: Respondents supply the U.S. Geological Survey with avian population data for more than 600 North American bird species. The survey data, resulting population trend estimates, and relative abundance estimates will be made available via the internet and through special publications, for use by Government agencies, industry, education programs, and the general public. 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: North American Breeding Bird Survey.

OMB Control Number: 1028–0079.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: General public skilled in bird identification.

Total Estimated Number of Annual Respondents: 1,600.

Total Estimated Number of Annual Responses: 2,600.

Estimated Completion Time per Response: 11 hours.

Total Estimated Number of Annual Burden Hours: 28,600.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Non-hour Burden Cost: $141,700. Mileage costs are on average $54.50 per response, based on approximate 100-mile round trip for data collection per response and 2018 federal mileage rate of $0.545 per mile.

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.*).

John French,

Patuxent Wildlife Research Center Director.

[FR Doc. 2018–22040 Filed 10–10–18; 8:45 am]

BILLING CODE 4338–11–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1044]

Certain Graphics Systems, Components Thereof, and Consumer Products Containing the Same; Commission Determination To Institute a Modification and Rescission Proceeding; Modification and Rescission of Certain Remedial Orders; and Termination of the Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute a modification and rescission proceeding. The Commission has further determined to grant a joint petition to modify in part a limited exclusion order (''LEO'') as to Respondent VIZIO, Inc. (''VIZIO'') and to rescind the cease and desist order (''CDO'') against VIZIO, based on a settlement agreement. The Commission has issued a modified LEO. The modification and rescission proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation are or 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 *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (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 instituted Investigation No. 337–TA–1044 on March 22, 2017, based on a complaint filed by Complainants Advanced Micro Devices, Inc. of Sunnyvale, California and ATI Technologies ULC of Canada (collectively, ''AMD'' or ''Complainants''). *See* 82 FR 14748

(Mar. 22, 2017). The complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain graphics systems, components thereof, and consumer products containing the same, by reason of infringement of certain claims of U.S. Patent No. 7,633,506 (''the '506 patent); U.S. Patent No. 7,796,133; U.S. Patent No. 8,760,454; and U.S. Patent No. 9,582,846. *Id.* The notice of investigation identified LG Electronics, Inc. of Seoul, Republic of Korea, LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey, and LG Electronics MobileComm U.S.A. Inc. of San Diego, California (collectively, ''LG''), VIZIO of Irvine, California, MediaTek Inc. of Hsinchu City, Taiwan and Media Tek USA Inc. of San Jose, California (collectively, ''MediaTek''), and SDI of Fremont, California, as respondents in this investigation. *See id.* The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation.

On October 20, 2017, the Administrative Law Judge (''ALJ'') issued an initial determination terminating the investigation as to LG based on settlement. *See* Order No. 48 (Oct. 20, 2017), *unreviewed,* Comm'n Notice (Nov. 13, 2017). The remaining respondents in this investigation are VIZIO, MediaTek, and SDI (hereinafter, ''Respondents'').

On April 13, 2018, the ALJ issued her final initial determination (''FID'') finding a violation of section 337 with respect to the '506 patent. On August 22, 2018, the Commission affirmed with modification the FID's findings. *See* 83 FR 43899–900 (Aug. 28, 2018). The Commission also determined that the appropriate remedy is a LEO against Respondents' infringing products and CDOs against VIZIO and SDI. *See id.*

On September 11, 2018, Complainants and VIZIO filed a joint petition (*Petition*) to modify in part the LEO as to VIZIO and to rescind the CDO against VIZIO, based on a settlement agreement. The *Petition* states that ''[p]ursuant to this settlement, all VIZIO articles currently covered by the Commission's Limited Exclusion Order are now licensed.'' *See Petition* at 1. On September 21, 2018, the Investigative Attorney filed a response in support of the *Petition.* No other party filed a response or opposition to the *Petition.*

In view of the settlement agreement between Complainants and VIZIO, the Commission finds that the conditions justifying the remedial orders against Respondent VIZIO no longer exist, and therefore, granting the petition is warranted under 19 U.S.C. 1337(k) and 19 CFR 210.76(a). Accordingly, the Commission has determined to institute a modification and rescission proceeding. The Commission has further determined to grant the joint petition to modify in part the LEO as to VIZIO and to rescind the CDO against VIZIO. The Commission has issued a modified LEO. The modification and rescission proceeding is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.
Issued: October 5, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–22115 Filed 10–10–18; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1392–1393 (Final)]

Polytetrafluoroethylene (PTFE) Resin From China and India; Scheduling of the Final Phase of Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: September 26, 2018.

FOR FURTHER INFORMATION CONTACT: Robert Casanova (202) 708–2719, Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: Effective March 8, 2018, the Commission established a general schedule for the conduct of the final phase of its investigations on polytetrafluoroethylene resin from China and India,[1] following a preliminary determination by the U.S. Department of Commerce (''Commerce'') that imports of subject PTFE resin were being subsidized by the government of India.[2] Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 8, 2018 (83 FR 12815). The hearing was held in Washington, DC, on May 17, 2018, and all persons who requested the opportunity were permitted to appear in person or by counsel. The Commission subsequently issued its final negative determination regarding subsidized imports from India on July 6, 2018 (83 FR 32150, July 11, 2018). Commerce has issued final affirmative antidumping duty determinations with respect to the subject PTFE resin from China [3] and India.[4] Accordingly, the Commission currently is issuing a supplemental schedule for its antidumping duty investigations on imports of PTFE resin from China and India.

This supplemental schedule is as follows: The deadline for filing supplemental party comments on Commerce's final antidumping duty determinations is October 11, 2018. Supplemental party comments may address only Commerce's final antidumping duty determinations regarding imports of PTFE resin from China and India. These supplemental final comments may not contain new factual information and may not exceed five (5) pages in length. The supplemental staff report in the final phase of these investigations regarding subject imports from China and India

[1] *Polytetrafluoroethylene (PTFE) Resin from China and India, Scheduling of the Final Phase of Countervailing Duty and Anti-Dumping Duty Investigations,* 83 FR 12815, March 8, 2018.

[2] *Polytetrafluoroethylene Resin from India: Preliminary Affirmative Countervailing Duty Determination,* 83 FR 9842, March 8, 2018. *See also* Commerce's later preliminary determinations: *Polytetrafluoroethylene Resin from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 83 FR 20039, May 7, 2018; *Polytetrafluoroethylene Resin from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 83 FR 20035, May 7, 2018.

[3] *Polytetrafluoroethylene Resin from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value,* 83 FR 48590, September 26, 2018.

[4] *Polytetrafluoroethylene Resin from India: Final Affirmative Determination Sales at Less Than Fair Value,* 83 FR 48594, September 26, 2018.

will be placed in the nonpublic record on October 24, 2018; and a public version will be issued thereafter.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: October 4, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–22042 Filed 10–10–18; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Electronic Nicotine Delivery Systems and Components Thereof, DN 3346;* 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 Juul Labs, Inc., on October 3, 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 electronic nicotine delivery systems and components thereof. The complaint names as respondents: J Well France S.A.S. of France; Bo Vaping of Garden City, NY; MMS Distribution LLC of Rock Hill, NY; The Electric Tobacconist, LLC of Boulder, CO; Eonsmoke, LLC of Clifton, NJ; ZLab S.A. of Uruguay; Ziip Lab Co., Limited of China; Shenzhen Yibo Technology Co., Ltd. of China; XFire, Inc. of Stafford, TX; ALD Group Limited of China; Flair Vapor LLC of South Plainfield, NJ; Shenzhen Joecig Technology Co., Ltd. of China; Myle Vape Inc. of Jamaica, NY: Vapor Hub International, Inc. of Simi Valley, CA; Limitless Mod Co. of Simi Valley CA; Infinite-N Technology Limited of China; King Distribution LLC of Elmwood Park, NJ; and Keep Vapor Electronic Tech. Co., Ltd. of China. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders 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. 3346) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electonic Filing Procedures, Electronic Filing Procedures [1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel [2], solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS [3].

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: October 5, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–22156 Filed 10–10–18; 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.*

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on October 26, 2018, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at Segal Consulting, 333 W 34th St., New York, NY 10001.

FOR FURTHER INFORMATION CONTACT: Elizabeth Van Osten, Designated Federal Officer, Advisory Committee on Actuarial Examinations, at 202–317–3648.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at Segal Consulting, 333 W 34th St., New York, NY 10001, on October 26, 2018, from 8:30 a.m. to 5:00 p.m.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: October 3, 2018.

Thomas V. Curtin, Jr.,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2018–22050 Filed 10–10–18; 8:45 am]

BILLING CODE 4830–01–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Renewal of Charter of Advisory Committee on Actuarial Examinations

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of renewal of Advisory Committee.

SUMMARY: The Joint Board for the Enrollment of Actuaries announces the renewal of the charter of the Advisory Committee on Actuarial Examinations.

FOR FURTHER INFORMATION CONTACT: Thomas V. Curtin, Jr., Executive Director, at *nhqjbea@irs.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Advisory Committee on Examinations (Advisory Committee) is to advise the Joint Board for the Enrollment of Actuaries (Joint Board) on examinations in actuarial mathematics and methodology. The Joint Board administers such examinations in discharging its statutory mandate to enroll individuals who wish to perform actuarial services with respect to pension plans subject to the Employee Retirement Income Security Act of 1974. The Advisory Committee's functions include, but are not necessarily limited to, considering and recommending examination topics, developing examination questions, recommending proposed examinations and pass marks, and as requested by the Joint Board, making recommendations relative to the examination program.

Dated: October 3, 2018.

Chet Andrzejewski,

Chairman, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2018–22051 Filed 10–10–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; American Society of Mechanical Engineers

Notice is hereby given that, on September 6, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), American Society of Mechanical Engineers (''ASME'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, since January 23, 2018, ASME has published eight new standards, added one consensus committee charter, and initiated two new standards activities within the general nature and scope of ASME's standards development activities, as specified in its original notification.

More detail regarding these changes can be found at *www.asme.org.*

On September 15, 2004, ASME filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 13, 2004 (69 FR 60895).

The last notification with the Attorney General was filed on January 25, 2018. A notice was filed in the **Federal Register** on March 19, 2018. (83 FR 12026).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018–22092 Filed 10–10–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ODPi, Inc.

Notice is hereby given that, on September 17, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ODPi, Inc. (''ODPi'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Infosys Limited, Bengaluru, INDIA; EMC Corporation, Hopkinton, MA; General Electric Company, San Ramon, CA; WANdisco, Inc., San Ramon, CA; Ampool, Inc., Santa Clara, CA; DataTorrent, Santa Clara, CA; XIILAB Co., Ltd., Gyeonggi, REPUBLIC OF KOREA; VMWare, Inc., Palo Alto, CA; General Motors, Detroit, MI; 4C Decision, Herndon, VA; and Skytechnology sp. z o.o., Warsaw, POLAND, have withdrawn as parties to this venture.

In addition, SAS Institute, Inc., Cary, NC; and China Mobile Communication Company Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA were reported in error on the last filing as parties who had withdrawn from this venture. SAS Institute, Inc. and China Mobile Communication Company Ltd. remain as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODPi intends to file additional written notifications disclosing all changes in membership.

On November 23, 2015, ODPi filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 23, 2015 (80 FR 79930).

The last notification was filed with the Department on April 6, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 4, 2018 (83 FR 19836).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018–22082 Filed 10–10–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International Standards

Notice is hereby given that on September 7, 2018 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM activities originating between May 7, 2018 and September 4, 2018 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification with the Department was filed on May 21, 2018. A notice was filed in the **Federal Register** on July 9, 2018 (83 FR 31776).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018–22081 Filed 10–10–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On October 4, 2018, the Department of Justice lodged a proposed consent decree with the United States District Court for the Eastern District of Missouri in the lawsuit entitled *United States* v. *NL Industries, Inc.,* Civil Action No. 4:18–cv–1695.

The United States filed this lawsuit under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The United States' complaint names NL Industries, Inc. as the Defendant. The complaint seeks recovery of costs that the United States incurred responding to releases of hazardous substances at the Big River Mine Tailings Superfund Site in St. Francois County, Missouri. The complaint also seeks injunctive relief in the form of the performance of the selected remedy for Operable Unit 01 of the Site.

The Consent Decree requires the defendant to pay $13 million of the United States' response costs. In return for the Defendant's commitments, the United States agrees not to sue the Defendant under sections 106 and 107 of CERCLA and Section 7003 of the Resource Conservation and Recovery Act (''RCRA'').

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *NL Industries, Inc.,* D.J. Ref. No. 90–11–3–09306/5. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*

To submit comments:	Send them to:
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Under Section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $4.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018–22121 Filed 10–10–18; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Renewal of the Bureau of Labor Statistics Data Users Advisory Committee

The Secretary of Labor is announcing the renewal of a Federal Advisory Committee. In accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, the Secretary of Labor has determined that the renewal of the Bureau of Labor Statistics Data Users Advisory Committee (the ''Committee'') is in the public interest in connection with the performance of duties imposed upon the Commissioner of Labor Statistics by 29 U.S.C. 1 and 2. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

The Committee provides advice to the Bureau of Labor Statistics from the points of view of data users from various sectors of the U.S. economy, including the labor, business, research, academic and government communities, on matters related to the analysis, dissemination, and use of the Bureau's statistics, on its published reports, and on gaps between or the need for new Bureau statistics.

The Committee will function solely as an advisory body to the BLS, on technical topics selected by the BLS.

The Committee is responsible for providing the Commissioner of Labor Statistics: (1) The priorities of data users; (2) suggestions concerning the addition of new programs, changes in the emphasis of existing programs or cessation of obsolete programs; and (3) advice on potential innovations in data analysis, dissemination and presentation.

The Committee reports to the Commissioner of Labor Statistics, Bureau of Labor Statistics, U.S. Department of Labor.

The Committee will not exceed 20 members. Committee members are nominated by the Commissioner of Labor Statistics and approved by the Secretary of Labor. Membership of the Committee will represent a balance of expertise across a broad range of BLS program areas, including employment and unemployment statistics, occupational safety and health statistics, compensation measures, price indexes, and productivity measures; or other areas related to the subject matter of BLS programs. All committee members will have extensive research or practical experience using BLS data.

The Committee will function solely as an advisory body, in compliance with the provisions of the Federal Advisory Committee Act. The Charter will be filed under the Federal Advisory Committee Act.

For Further Information Contact: Lisa Fieldhouse, Office of the Commissioner, Bureau of Labor Statistics, telephone: 202–691–5025, email: *Fieldhouse.Lisa@bls.gov.*

Signed at Washington, DC, this 4th day of October 2018.

Mark Staniorski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2018–22104 Filed 10–10–18; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Technical Advisory Committee; Renewal of the Bureau of Labor Statistics Technical Advisory Committee

The Secretary of Labor is announcing the renewal of a Federal Advisory Committee. In accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, the Secretary of Labor has determined that the renewal of the Bureau of Labor Statistics Technical Advisory Committee (the ''Committee'') is in the public interest in connection with the performance of duties imposed upon the Commissioner of Labor Statistics by 29 U.S.C. 1 and 2. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

The Committee presents advice and makes recommendations to the Bureau of Labor Statistics (BLS) on technical aspects of the collection and formulation of economic measures.

The Committee functions solely as an advisory body to the BLS, on technical topics selected by the BLS. Important aspects of the Committee's responsibilities include, but are not limited to:

a. Provide comments on papers and presentations developed by BLS research and program staff. The comments will address the technical soundness of the research and whether it reflects best practices in the relevant fields.

b. Recommend that BLS conduct research projects to address technical problems with BLS statistics that have been identified in the academic literature.

c. Participate in discussions of areas where the types or coverage of economic statistics could be expanded or improved and areas where statistics are no longer relevant.

The Committee reports to the Commissioner of Labor Statistics, Bureau of Labor Statistics, U.S. Department of Labor.

The Committee consists of approximately sixteen members who serve as Special Government Employees. Members are appointed by the BLS and are approved by the Secretary of Labor. Committee members are economists, statisticians, and behavioral scientists and are chosen to achieve a balanced membership across those disciplines. They are prominent experts in their fields and recognized for their professional achievements and objectivity.

The Committee will function solely as an advisory body, in compliance with the provisions of the Federal Advisory Committee Act. The Charter will be filed under the Federal Advisory Committee Act.

For Further Information Contact: Lisa Fieldhouse, Office of the Commissioner, Bureau of Labor Statistics, telephone: 202–691–5025, email: *Fieldhouse.Lisa@bls.gov.*

Signed at Washington, DC, this 4th day of October 2018.

Mark Staniorski,

Division Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2018–22103 Filed 10–10–18; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2018–0007]

National Advisory Committee on Occupational Safety and Health (NACOSH); Charter Renewal

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Renewal of the NACOSH charter.

SUMMARY: The Secretary of Labor (Secretary) has renewed the charter for NACOSH.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle Walker, OSHA Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration; telephone (202) 693–2350 (TTY (877) 889–5627); email *walker.michelle@dol.gov.*

SUPPLEMENTARY INFORMATION: The Secretary has renewed the NACOSH charter. The charter will expire on October 3, 2020.

Congress established NACOSH in Section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 656) to advise, consult with and make recommendations to the Secretary and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. NACOSH is a non-discretionary advisory committee of indefinite duration.

NACOSH operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), its implementing regulations (41 CFR part 102–3), OSHA's regulations on NACOSH (29 CFR part 1912a), Secretary of Labor's Order 04–2018 (6/1/2018), and Chapter 1600 of Department of Labor Manual Series 3 (7/18/2016). Pursuant to FACA (5 U.S.C. App. 2, 14(b)(2)), the NACOSH charter must be renewed every two years.

The new charter includes updates of the procedures for appointment of individuals to Department of Labor advisory committees and increases the estimated annual operating costs for NACOSH by approximately 3 percent (to $192,000 from $186,500).

The new NACOSH charter is available to read or download at *http://www.regulations.gov* (Docket No. OSHA–2018–0007), the federal eRulemaking portal. The charter also is available on the NACOSH page on OSHA's web page at *http://www.osha.gov* and at the OSHA Docket Office, N–3508, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; telephone (202) 693–2350. In addition, the charter is available for viewing or download at the Federal Advisory Committees Database at *http://www.facadatabase.gov.*

Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by 29 U.S.C. 656; 5 U.S.C. App. 2; 29 CFR part 1912a; 41 CFR part 102–3; and Secretary of Labor's Orders No. 1–2012 (77 FR 3912 (1/25/2012)) and 04–2018 (6/1/2018).

Signed at Washington, DC, on October 4, 2018.

Loren Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2018–22102 Filed 10–10–18; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

National Council on the Arts 195th Meeting

AGENCY: National Endowment for the Arts.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that a meeting of the National Council on the Arts will be held. This meeting is open to the public on a space available basis.

DATES: See the **SUPPLEMENTARY INFORMATION** section for meeting times and dates. All activities are Eastern time and ending times are approximate.

ADDRESSES: National Museum of Women in the Arts, Performance Hall, Fifth Floor, 1250 New York Avenue NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Victoria Hutter, Office of Public Affairs, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

SUPPLEMENTARY INFORMATION: If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b, and in accordance with the July 5, 2016 determination of the Chairman. Additionally, discussion concerning purely personal information about individuals, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, to Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact Beth Bienvenu, Office of Accessibility, National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506, 202/682–5733, Voice/T.T.Y. 202–682–5496, at least seven (7) days prior to the meeting.

The upcoming meeting is: National Council on the Arts 195th Meeting.

This meeting and activities will be open.

Dates and times: Council meeting at National Museum of Women in the Arts; October 26, 2018; 9:00 a.m. to 11:30 a.m.

There will be opening remarks and voting on recommendations for grant funding and rejection, followed by updates from the Acting Chairman and guest presentations.

Dated: October 4, 2018.

Sherry Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2018–22028 Filed 10–10–18; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–395, 52–027, 52–028, 72–1038; NRC–2018–0043]

Renewed Operating License No. NPF–12; Combined License Nos. NPF–93 and NPF–94; and the General License for the Independent Spent Fuel Storage Installation (ISFSI); In the Matter of Dominion Energy, Inc., and SCANA Corporation Virgil C. Summer Nuclear Station (VCSNS), Units 1, 2, and 3, and the ISFSI

AGENCY: Nuclear Regulatory Commission.

ACTION: Indirect transfer of license; corrected Orders.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) issued Orders

approving an application filed by South Carolina Electric & Gas Company (SCE&G) and Dominion Energy, Inc. (Dominion Energy) on January 25, 2018, that supersedes and corrects an error in the Orders issued on August 30, 2018. The August 30, 2018, Orders stated that VCSNS Units 1, 2 and 3 are co-owned by SCE&G and Santee Cooper, who have undivided ownership interests of two-thirds and one-third, respectively, in VCSNS. This statement was correct for VCSNS Unit 1 and the ISFSI, however, for the VCSNS Units 2 and 3 COLs, SCE&G and Santee Cooper have ownerships interests of 55 percent and 45 percent, respectively.

The application sought NRC approval of the indirect transfer of Renewed Facility Operating License No. NPF–12 and Combined License Nos. NPF–93 and NPF–94 for Summer, Units 1, 2, and 3 and the general license for the Independent Spent Fuel Storage Installation (ISFSI), from the ultimate parent, SCANA Corporation, to Dominion Energy. The NRC's approval of the indirect license transfer is subject to certain conditions, which are described in the Orders. No physical changes to the facility or operational changes were proposed in the application. The Orders were effective upon issuance.

DATES: The Orders were issued on September 24, 2018, and are effective for one year.

ADDRESSES: Please refer to Docket ID NRC–2018–0043 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0043. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *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: Shawn Williams, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1009; email: *Shawn.Williams@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Orders is attached.

Dated at Rockville, Maryland, this 5th of October 2018.

For the Nuclear Regulatory Commission.

Shawn A. Williams,

Senior Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Orders Approving Indirect Transfer of License.

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of: SCANA CORPORATION, SOUTH CAROLINA ELECTRIC & GAS COMPANY, DOMINION ENERGY, INC., Virgil C. Summer Nuclear Station, Unit No. 1, and Independent, Spent Fuel Storage Installation Docket Nos. 50–395, 72–1038, Renewed Facility Operating, License No. NPF–12; and, General License for the Independent Spent Fuel Storage Installation

ORDER SUPERSEDING ORDER OF AUGUST 30, 2018 APPROVING INDIRECT TRANSFER OF LICENSES

I.

South Carolina Electric & Gas Company (SCE&G) and the South Carolina Public Service Authority (Santee Cooper) are the holders of Renewed Facility Operating License No. NPF–12 and the general license for the Independent Spent Fuel Storage Installation (ISFSI) for the Virgil C. Summer Nuclear Station (VCSNS), Unit No. 1 and the ISFSI. SCE&G is the licensed operator of VCSNS, Unit 1 and the ISFSI. SCE&G is a wholly owned subsidiary of SCANA Corporation (SCANA). VCSNS is located in Fairfield County, South Carolina.

II.

By application dated January 25, 2018, SCE&G, acting for itself and its parent company, SCANA, and Dominion Energy, Inc. (Dominion Energy) (together, the Applicants) requested, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.80 (10 CFR 50.80), that the U.S. Nuclear Regulatory Commission (NRC) consent to the indirect transfer of SCE&G's ownership interest in the Renewed Facility Operating License No. NPF–12, Combined License Nos. NPF–93 and NPF–94, and the general license for the associated ISFSI. The proposed indirect transfer does not involve Santee Cooper's ownership interest in VCSNS, Unit 1, 2 and 3, and the ISFSI. The Combined License Nos. NPF–93 and NPF–94 indirect license transfer is addressed in a separate Order.

The proposed indirect license transfer would facilitate a merger between Dominion Energy and SCANA, the parent company of SCE&G. The transaction would be effected through the merger of SCANA and Sedona Corp. (Sedona), which is a South Carolina corporation and subsidiary of Dominion Energy formed for the sole purpose of merging with SCANA. Sedona would be merged with and into SCANA, with SCANA remaining as the surviving corporation, which will be a direct wholly-owned subsidiary of Dominion Energy.

Approval of the indirect transfer of the Renewed Facility Operating License and ISFSI was requested by SCE&G and Dominion Energy. A notice entitled, ''Virgil C. Summer Nuclear Station, Unit 1, 2, and 3, and Independent Spent Fuel Storage Installation; Consideration of Approval of Transfer of License,'' was published in the **Federal Register** on March 8, 2018 (83 FR 9876). No comments or hearing requests were received.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the NRC gives its consent in writing. After the indirect transfer, SCE&G would remain a wholly owned subsidiary of SCANA, which in turn would become a wholly owned subsidiary of Dominion Energy. SCE&G would remain the licensed co-owner and operator of VCSNS, Unit 1 and the ISFSI. Upon review of the information in the application, and other information before the Commission, the NRC staff has determined that the Applicants are qualified to hold the licenses to the extent proposed to permit the indirect transfer. The NRC staff has also determined that indirect transfer of the licenses, as described in the application, is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the

NRC, pursuant thereto, subject to the conditions set forth below.

On August 30, 2018, the Commission issued, ''Order Approving Indirect Transfer of Licenses,'' for VCSNS, Unit No. 1 and the ISFSI. Subsequently, the NRC staff determined that corrections were needed to the cover letter, Orders, and the safety evaluation. This Order contains the correction and supersedes the VCSNS, Unit No. 1 and the ISFSI, Order issued on August 30, 2018.

The findings set forth above are supported by a safety evaluation dated September 24, 2018.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended (the Act), 42 USC § 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the application regarding the proposed indirect license transfer is approved for VCSNS, Unit No. 1 and the ISFSI.

IT IS ORDERED that after receipt of all required regulatory approvals of the proposed indirect transfer action, SCE&G shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt no later than 2 business days prior to the date of the closing of the indirect transfer. Should the proposed indirect transfer not be completed within 1 year of this Order's date of issue, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may be extended by order.

This Order supersedes the Order issued on August 30, 2018, and is effective upon issuance.

For further details with respect to this Order, see the initial application dated January 25, 2018 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18025C035), and the Safety Evaluation dated September 24, 2018. (ADAMS Accession No. ML18255A256), which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland this 24th day of September, 2018

For the Nuclear Regulatory Commission.

Kathryn M. Brock,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of: SCANA CORPORATION, SOUTH CAROLINA ELECTRIC & GAS COMPANY, DOMINION ENERGY, INC., Virgil C. Summer Nuclear Station, Unit Nos. 2 and 3 Docket Nos. 52–027, 52–028, Combined License Nos. NPF–93 and NPF–94

ORDER SUPERSEDING ORDER OF AUGUST 30, 2018 APPROVING INDIRECT TRANSFER OF LICENSES

I.

South Carolina Electric & Gas Company (SCE&G) and the South Carolina Public Service Authority (Santee Cooper) are the holders of Combined License (COL) Nos. NPF–93 and NPF–94 for the Virgil C. Summer Nuclear Station (VCSNS), Unit Nos. 2 and 3. SCE&G is a wholly owned subsidiary of SCANA Corporation (SCANA). VCSNS is located in Fairfield County, South Carolina.

II.

By application dated January 25, 2018, SCE&G, acting for itself and its parent company, SCANA, and Dominion Energy, Inc. (Dominion Energy) (together, the Applicants) requested, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.80 (10 CFR 50.80), that the U.S. Nuclear Regulatory Commission (NRC) consent to the indirect transfer of SCE&G's ownership interest in Renewed Facility Operating License No. NPF–12, Combined License Nos. NPF–93 and NPF–94, and the general license for the associated Independent Spent Fuel Storage Installation (ISFSI). The proposed indirect transfer does not involve Santee Cooper's ownership interest in VCSNS, Units 1, 2 and 3, and the ISFSI. The Renewed Facility Operating License No. NPF–12 and the general license for the ISFSI indirect license transfer is addressed in a separate Order.

The proposed indirect license transfer would facilitate a merger between Dominion Energy and SCANA, the parent company of SCE&G. The merger would be effected through the merger of SCANA and Sedona Corp. (Sedona), which is a South Carolina corporation and subsidiary of Dominion Energy formed for the sole purpose of merging with SCANA. Sedona would be merged with and into SCANA, with SCANA remaining as the surviving corporation which will be a direct wholly-owned subsidiary of Dominion Energy.

Approval of the indirect transfer of the Combined License Nos. NPF–93 and NPF–94 was requested by SCE&G and Dominion Energy. A notice entitled, ''Virgil C. Summer Nuclear Station, Unit 1, 2, and 3, and Independent Spent Fuel Storage Installation; Consideration of Approval of Transfer of License,'' was published in the **Federal Register** on March 8, 2018 (83 FR 9876). No comments or hearing requests were received.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the NRC gives its consent in writing. After the indirect transfer, SCE&G would remain a wholly owned subsidiary of SCANA, which in turn would become a wholly owned subsidiary of Dominion Energy. SCE&G would remain the licensed co-owner and operator of VCSNS, Units 2 and 3. Upon review of the information in the licensee's application, and other information before the Commission, the NRC staff has determined that the Applicants are qualified to hold the license to the extent proposed to permit the indirect transfer. The NRC staff has also determined that indirect transfer of the licenses, as described in the application, is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the NRC, pursuant thereto, subject to the conditions set forth below.

On August 30, 2018, the Commission issued, ''Order Approving Indirect Transfer of Licenses,'' for VCSNS, Units 2 and 3. Subsequently, the NRC staff determined that corrections were needed to the cover letter, Orders, and the safety evaluation. This Order contains the correction and supersedes the VCSNS, Units 2 and 3, Order issued on August 30, 2018.

The findings set forth above are supported by a safety evaluation dated September 24, 2018.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended (the Act), 42 USC § 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80 and 52.105, IT IS HEREBY ORDERED that the application regarding the proposed indirect license transfer is approved for

Virgil C. Summer Nuclear Station, Unit Nos. 2 and 3.

IT IS ORDERED that after receipt of all required regulatory approvals of the proposed indirect transfer action, SCE&G shall inform the Director of the Office of New Reactors in writing of such receipt no later than 2 business days prior to the date of the closing of the indirect transfer. Should the proposed indirect transfer not be completed within 1 year of this Order's date of issue, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may be extended by order.

This Order supersedes the Order issued on August 30, 2018, and is effective upon issuance.

For further details with respect to this Order, see the initial application dated January 25, 2018 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18025C035), and the Safety Evaluation dated September 24, 2018 (ADAMS Accession No. ML18255A256), which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland this 24th day of September, 2018.

For the Nuclear Regulatory Commission.

Robert M. Taylor,

Director Division of Licensing, Siting, and Environmental Analysis Office of New Reactors

[FR Doc. 2018–22159 Filed 10–10–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–409; NRC–2018–0217]

La Crosse Boiling Water Reactor; Consideration of Approval of Transfer of License and Conforming Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Application for direct transfer of license; opportunity to comment, request a hearing, and petition for leave to intervene

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of an application filed by LaCrosseSolutions, LLC (LS), on June 27, 2018. The application seeks NRC approval of the direct transfer of Facility Operating License No. DPR–45 for the La Crosse Boiling Water Reactor (LACBWR), from the current holder, LS, to the Dairyland Power Cooperative (DPC), who held the operating license for LACBWR prior to transferring it to LS in 2016. The NRC is also considering amending the facility operating license for administrative purposes to reflect the proposed transfer.

DATES: Comments must be filed by November 13, 2018. A request for a hearing must be filed by October 31, 2018.

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–2018–0217. Address questions about NRC Docket IDs 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
- *Email comments to: hearing.docket@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

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: Marlayna Vaaler, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–3178, email: *marlayna.vaaler@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0217 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–2018–0217.
- *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 LS ''Application for Order Approving License Transfer and Conforming Administrative License Amendments,'' dated June 27, 2018, is available in ADAMS under Accession No. ML18184A444.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0217 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering the issuance of an order under section 50.80 of title 10 of the *Code of Federal Regulations*

(10 CFR), approving the direct transfer of control of Facility Operating License No. DPR–45 for the LACBWR, currently held by LS. The transfer would be to DPC. The NRC is also considering amending the facility operating license for administrative purposes to reflect the proposed transfer.

Following approval of the proposed direct transfer of control of the license, DPC would acquire full ownership of the facility, similar to what existed before the June 2016 license transfer to LS. The proposed amendment would reflect that LS's licensed possession, maintenance, and decommissioning authorities have been transitioned back to DPC upon completion of decommissioning activities at the LACBWR site. Thereafter, DPC will maintain the onsite independent spent fuel storage installation (ISFSI), and the ultimate disposition of the spent nuclear fuel will be provided for under the terms of DPC's Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Waste with the U.S. Department of Energy. DPC will also continue to maintain its nuclear decommissioning trust, a grantor trust in which funds are segregated from its assets and outside its administrative control, in accordance with the requirements of 10 CFR 50.75(e)(1).

The NRC's regulations at 10 CFR 50.80 state that no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the direct transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. An Environmental Assessment will not be performed because, pursuant to 10 CFR 51.22(c)(21), license transfer approvals and the associated license amendments are categorically excluded from the requirements to perform an Environmental Assessment.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

III. Opportunity To Comment

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted as described in the **ADDRESSES** section of this document.

IV. Opportunity To Request a Hearing; Petition for Leave To Intervene

Within 20 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 20 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 20 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local

governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

V. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the following procedures.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding U.S. government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket that is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described in Section V, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

For further details with respect to this application, see the application dated June 27, 2018.

Dated at Rockville, Maryland, on October 4, 2018.

For the Nuclear Regulatory Commission.

Bruce A. Watson,

Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–22100 Filed 10–10–18; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2019–1 and CP2019–1]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 12, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2019–1 and CP2019–1; *Filing Title:* USPS Request to Add Priority Mail Contract 466 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 4, 2018; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* October 12, 2018.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–22106 Filed 10–10–18; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 11, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 4, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 466 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–1, CP2019–1.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–22062 Filed 10–10–18; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84365; File No. SR–IEX–2018–21]

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct Several Typographical Errors in IEX Rule 2.160 Added by a Previous Filing

October 4, 2018.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 4, 2018, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''),[4] and Rule 19b–4 thereunder,[5] IEX is filing with the Commission a proposed rule change to correct several typographical errors in IEX Rule 2.160 added by a previous filing.[6] The Exchange has designated this proposal as ''non-controversial'' and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[7] The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently filed a proposed rule change to amend, in part, Rule 2.160 related to qualification and registration requirements for associated persons of a Member (the ''Original Filing'').[8] The Original Filing introduced several typographical errors in Rule 2.160, which the Exchange proposes to correct as described below.

First, the Exchange proposes to add the text ''Supplementary Material'' immediately following the text of Rule 2.160(e)(3) to introduce Supplementary Material .01 and .02 which follows. The Exchange's rulebook introduces Supplementary Material in this manner in other rules, and therefore proposes to conform in Rule 2.160(e).

Second, in each of Rule 2.160(h) and (i) the Exchange proposes to relocate the text ''.01'' following the text ''Supplementary Material'' to the beginning of such Supplementary Material rather than following the text ''Supplementary Material.''

Third, the Original Filing inadvertently introduced two typographical errors in Rule 2.160(g). Specifically, in the first sentence the word ''shown'' was incorrectly included as ''show'' and the word ''Exchange'' was not capitalized. The Exchange proposes to correct both typographical errors.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general and furthers the objectives of Sections 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and 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.

IEX believes that the proposed rule change is consistent with Section 6(b)(5) of the Act [11] because it will eliminate any confusion regarding IEX rules by correcting inadvertent typographical errors introduced by the Original Filing in Rule 2.160 without changing the substance of such rule provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change is not designed to address any competitive issues but rather to correct inadvertent typographical errors, thereby eliminating any potential confusion regarding such rule provisions with changing their substance.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) [12] of the Act and Rule 19b–4(f)(6) [13] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) [14] of the Act and Rule 19b–4(f)(6) [15] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Commission notes that the Exchange's proposal does not make any substantive changes and merely corrects typographical errors in the Exchange's rules. Accordingly, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposal operative on filing.[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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [19] of the Act to determine whether the proposed rule

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] *See* Securities Exchange Act Release No. 84320 (September 28, 2018) (SR–IEX–2018–19).

[7] 17 CFR 240.19b–4(f)(6)(iii).

[8] *See* note 6.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waving the 30-day operative delay, the Commission has considered the purposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78s(b)(2)(B).

change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–IEX–2018–21 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–IEX–2018–21. 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–IEX–2018–21 and should be submitted on or before November 1, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–22048 Filed 10–10–18; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84366; File No. SR–FINRA–2018–030]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend FINRA Rule 7730 To Remove Computer-to-Computer Interface as a Technological Option for TRACE Reporting

October 4, 2018.

I. Introduction

On August 15, 2018, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the technological connectivity options available to member firms for reporting transactions to the Transaction Reporting and Compliance Engine (''TRACE''). The proposed rule change was published for comment in the **Federal Register** on August 23, 2018.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

FINRA has proposed to amend Rule 7730 (Trade Reporting and Compliance Engine (TRACE)) to remove Computer-to-Computer Interface (''CTCI'') as a technological means of connectivity for use in reporting transactions to TRACE. CTCI was made available for TRACE reporting purposes at TRACE's inception. FINRA added Financial Information eXchange (''FIX'') as a protocol for transaction reporting to TRACE for securitized products in 2011 and for corporate and agency debt securities in 2012. FINRA has represented that approximately two thirds of member firms with direct connections, and half of the service bureaus, have migrated from CTCI to FIX.[4] FINRA believes that the migration to FIX will continue for member firms and service bureaus as it is an immediately available and viable alternative to CTCI, and that removing CTCI as a connectivity option will reduce operational overhead and risk for FINRA.[5]

Accordingly, FINRA has proposed to amend Rule 7730 to remove CTCI as a means of connectivity for members to report transactions to TRACE, leaving three currently available options: (i) Web browser access; (ii) FIX line access; or (iii) indirectly via third-party vendors (*e.g.,* service bureaus).[6] Member firms that currently use CTCI will be able to migrate at any point throughout the implementation period, during which FINRA will engage in outreach with the industry to provide information and assistance in connection with the migration.[7] The operative date for the rule change will be February 3, 2020.[8]

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[10] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

While Section 15A(b)(6) sets out principles to which the rules of a national securities association must adhere, it does not prescribe specific technological requirements for carrying out those principles. Thus, in a situation where an association requires information from its members to carry out its self-regulatory and market oversight functions, the association generally has discretion over establishing the means by which its members may be required to provide

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83868 (August 17, 2018), 83 FR 42741 (''Notice'').

[4] *See id.*

[5] *See id.*

[6] *See* FINRA Rule 7730.

[7] *See* Notice, 83 FR at 42741. FINRA stated that, in addition to general industry outreach, FINRA will contact each member firm that directly reports to TRACE via CTCI by email and telephone to provide information and assistance in connection with the migration. *See id.* at n. 8.

[8] *See id.* at 42741.

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78o–3(b)(6).

that information. Currently, FINRA supports four technological protocols for its members to report transactions to TRACE. FINRA has proposed to discontinue supporting one of those four protocols, CTCI. The Commission believes that such action is a reasonable exercise of FINRA's discretion, for the following reasons.

First, FINRA will continue to support three other technological protocols for reporting transactions to TRACE: FIX, web browser, and via third-party vendor. Second, FIX already is utilized by approximately half of the third-party vendors and two-thirds of member firms with direct reporting capability, and with the increase in the percentage of TRACE transactions reported via FIX there has been a concomitant decrease in CTCI usage.[11] Third, supporting three instead of four reporting protocols would conserve FINRA resources and has some potential for reducing operational risks.[12] Fourth, FINRA is taking reasonable steps to assist member firms that currently use CTCI and must transition to other reporting protocols. FINRA has stated that it will contact each such firm to offer assistance in connection with the migration, and is allowing over a year—until February 3, 2020—for affected firms to complete the migration.[13] The Commission has no reason to believe that this proposal will impose undue burdens on FINRA member firms; the Commission notes that no comments on the proposal were submitted.

For these reasons, the Commission believes the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–FINRA–2018–030) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–22046 Filed 10–10–18; 8:45 am]

BILLING CODE 8011–01–P

[11] *See* Notice, 83 FR at 42741.

[12] *See id.* at 42741.

[13] *See id.* at n. 8.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84360; File No. SR–IEX–2018–20]

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Its Fee Schedule To Specify the Circumstances Under Which the Exchange Will Aggregate the Activity of Affiliated Members for Purposes of Applying the Provisions of Rule 11.170(a) Related to the IEMM Program

October 4, 2018.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 26, 2018, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''),[4] and Rule 19b–4 thereunder,[5] IEX is filing with the Commission a proposed rule change to modify its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to specify the circumstances under which the Exchange will aggregate the activity of affiliated Members for purposes of applying the provisions of Rule 11.170(a) (IEX Enhanced Market Maker (''IEMM'')) Program. The Exchange has designated this rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act[6] and provided the Commission with the notice required by Rule 19b–4(f)(6) thereunder.[7]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchange proposes to modify its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to specify the circumstances under which the Exchange will aggregate the activity of affiliated Members for purposes of applying the provisions of the IEMM Program. The Exchange also proposes a minor change to correct an errant cross reference in the Fee Schedule.

The IEMM program is a Market Quality Incentive Program that offers certain fee-based incentives for Members that provide meaningful and consistent support to market quality and price discovery by extensive quoting at and/or near the NBBO in IEX-listed securities for a significant portion of the day.[8] Specifically, a Member that satisfies the quoting criteria for one or more of the following tiers in each security listed on IEX over the course of the month that the security is listed on IEX may be designated as an IEMM:

- *Inside Tier IEMM:* One or more of its MPIDs has a displayed order entered in a principal capacity of at least one round lot resting on the Exchange at the NBB and/or the NBO for an average of at least 20% of Regular Market Hours (the ''NBBO Quoting Percentage''); and/or
- *Depth Tier IEMM:* One or more of its MPIDs has a displayed order entered in a principal capacity of at least one round lot resting on the Exchange at the greater of 1 minimum price variation (''MPV'') or 0.03% (*i.e.,* 3 basis points) away from the NBBO (or more aggressive) for an average of at least

[8] *See* Rule 11.170(a). *See also* Securities Exchange Act Release No. 82636 (February 6, 2018), 83 FR 6059 (February 12, 2018) (SR–IEX–2018–02).

75% of Regular Market Hours (the ''Depth Quoting Percentage'').

Members that are designated as an IEMM qualify for the Standard Match Fee Discount, Reduced Match Fee Discount, and the Spread-Crossing Eligible Remove Fee Discount. Specifically, for Inside Tier IEMMs, the Standard Match Fee Discount, Reduced Match Fee Discount, and the Spread-Crossing Eligible Remove Fee Discount results in a $0.0001 discount for each execution subject to the Standard Match Fee Discount, Reduced Match Fee Discount, or the Spread-Crossing Eligible Remove Fee Discount, respectively, with no cap on aggregate monthly savings. Furthermore, Depth Tier IEMMs will receive a $0.0001 discount for each execution subject to the Standard Match Fee Discount, the Reduced Match Fee Discount, and the Spread-Crossing Eligible Remove Fee Discount, up to $20,000.00 in aggregate savings per month. If a Member qualifies under both the Inside Tier and the Depth Tier, any earned Standard Match Fee Discount, Reduced Match Fee Discount, and Spread-Crossing Eligible Remove Fee Discount will be aggregated and applied to such Member's executions subject to the Standard Match Fee, Reduced Match Fee, or Spread-Crossing Eligible Remove Fee in securities priced at or above $1.00, subject to the applicable Depth Tier aggregate monthly savings cap of $20,000.00.

Proposed Changes

The Exchange proposes to amend its Fee Schedule to provide for aggregation of affiliated Members' activity for purposes of applying the provisions of the IEMM Program. The proposal is substantially based on Nasdaq Stock Market, LLC (''Nasdaq'') Rule 7027, and the New York Stock Exchange, Inc.'s (''NYSE'') Price List.[9]

Specifically, the Exchange proposes to add footnote 2 to the Exchange's Fee Schedule, entitled ''Aggregation of activity of affiliated Members'' to specify that for purposes of applying the provisions of Rule 11.170(a), a Member may request that the Exchange aggregate its activity with activity of such Member's affiliated Members. A Member requesting aggregation of affiliate activity is required to certify to the Exchange the affiliate status of Members whose activity it seeks to aggregate prior to receiving approval for aggregation, and inform the Exchange immediately of any event that causes an entity to cease being an affiliate. The Exchange shall review available information regarding the entities and reserves the right to request additional information to verify the affiliate status of an entity.[10] The Exchange shall approve a request unless it determines that the certification is not accurate.

If two or more Members become affiliated on or prior to the sixteenth day of a month and submit the required request for aggregation on or prior to the twenty-second day of the month, an approval of the request by the Exchange shall be deemed to be effective as of the first day of that month. If two or more Members become affiliated after the sixteenth day of a month or submit a request for aggregation after the twenty-second day of the month, an approval of the request by the Exchange shall be deemed to be effective as of the first day of the next calendar month. For purposes of applying the provisions of Rule 11.170(a), references to an IEMM shall include the Member and any of its affiliates that have been approved for aggregation. The term ''affiliate'' shall mean any Member under 75% common ownership or control of that Member.

Lastly, the Exchange proposes to correct an errant cross reference in the Fee Schedule that incorrectly cross references Rule 11.160(a) (Notification Requirements for Offering Participants) as the IEX Enhanced Market Maker program. The Exchange proposes to correct the cross reference to appropriately cite to Rule 11.170(a) (Market Quality Incentive Programs).

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)[11] of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change is consistent with the protection of investors and the public interest because it establishes a clear and objective process for aggregating activity across affiliated legal entities to simplify the process of billing under the IEMM program. Furthermore, the Exchange believes the proposed rule change is consistent with the protection of investors and the public interest in that it establishes a clear policy with respect to affiliate aggregation for fee purposes that is common among other exchanges, thereby promoting Members' understanding of the parameters of the IEMM program and the efficiency of its administration. The proposed rule is equitable because all similarly situated members are subject to the proposed rules equally, and access to the Exchange is offered on fair and nondiscriminatory terms.

All Members seeking to aggregate their activity are subject to the same reasonable parameters, in accordance with a standard that recognizes an affiliation as of the month's beginning, or close in time to when the affiliation occurs, provided the Member submits a timely request. Moreover, the proposed billing aggregation language is reasonable because it establishes a standard for implementation of aggregation requests that is easy to administer and that reflects the need for the Exchange to review and approve aggregation requests while avoiding the complexities associated with proration of the bills of Members that become affiliated during the course of a month. The Exchange believes that this approach will thus simplify the process of billing under the IEMM program for the Exchange and its Members and is substantially similar to aggregation standards adopted by other exchanges.[13]

The Exchange believes that the proposed rule change avoids disparate treatment of Members that have divided their various business activities between separate legal entities as compared to Members that operate those business activities within a single legal entity. The Exchange further notes that the proposed rule change is reasonable and is designed to remove impediments to and perfect the mechanism of a free and open market by harmonizing the rules across exchanges that govern the aggregation of certain activity for purposes of billing. In particular, as noted above, both Nasdaq and NYSE have substantially similar rules governing aggregation of activity for fee purposes.[14] Thus, the Exchange believes the proposed change does not present any unique or novel issues under the Act that have not already been considered by the Commission.

[9] *See* Nasdaq Rule 7027; *see also* NYSE's Price List, available at: *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.*

[10] For example, the Exchange would review a Member's Form BD in FINRA's Central Registration Depository (''CRD'') to verify that the Member(s) for which it seeks aggregation pursuant to the proposed rule is under 75% common ownership or control of the requesting Member.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] *See supra* note 4 [sic].

[14] *See supra* note 4 [sic].

Lastly, the Exchange believes the proposed correction to the cross-reference is reasonable and consistent with the protection of investors and the public interest in that it is designed to make the Exchange's Fee Schedule more clear and accurate, to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As stated above, the proposed rule change, which applies equally to all Members, is intended to reduce the Exchange's administrative burden in applying discounts for firms which have requested aggregation with an affiliate Member, and is substantially similar to rules adopted by other exchanges. Because the market for order execution and routing is extremely competitive, Members may readily opt to disfavor the Exchange if they believe that alternatives offer them better value. The Exchange thus does not believe the proposed changes will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets.

Lastly, the Exchange believes the proposed correction to the cross reference, as described above, does not impose any burden on competition, as it is simply designed to make the Exchanges Fee Schedule more clear and accurate, to the benefit of all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [17] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange may implement the proposed rule change to coincide with the launch of its listing program. The Exchange believes that providing for IEMM affiliate aggregation will help to address the significant competitive challenges it will face in establishing itself as a competitive listings market by providing appropriate incentives to affiliated Members seeking to become IEMMs that accrue to the benefit of issuers listed on IEX as well as market participants generally. The Commission does not believe that the proposed change presents any new or novel issues, as the Exchange's proposal is based on similar rules of other listing exchanges. Accordingly, waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [20] of the Act to determine whether the proposed rule change should be approved or disapproved.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78s(b)(2)(B).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–IEX–2018–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2018–20. This file number should be included in the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its internet website at *www.iextrading.com.* All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–IEX–2018–20 and should be submitted on or before November 1, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–22043 Filed 10–10–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84362; File No. SR–PEARL–2018–20]

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL, LLC To Amend Exchange Rule 203, Qualification and Registration of Members and Associated Persons, Relating to Registration and Qualification Examinations Required for Members and Associated Persons of Members That Engage in Trading Activities on the Exchange

October 4, 2018.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2018, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change '') a 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 is filing a proposal to amend Rule 203, Qualification and Registration of Members and Associated Persons, relating to registration and qualification examinations required for Members and Associated Persons of Members that engage in trading activities on the Exchange.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Securities and Exchange Commission (the ''SEC'' or the ''Commission'') recently approved a proposed rule change to restructure the Financial Industry Regulatory Authority (''FINRA'') representative-level qualification examination program.[3] The rule change, which will become effective on October 1, 2018, restructures the examination program into a more efficient format whereby all new representative-level applicants will be required to take a general knowledge examination (the Securities Industry Essentials Examination (''SIE'')) and a tailored, specialized knowledge examination (a revised representative-level qualification examination) for their particular registered role. Individuals are not required to be associated with the Exchange or any other self-regulatory organization (''SRO'') member to be eligible to take the SIE. However, passing the SIE alone will not qualify an individual for registration with the Exchange. To be eligible for registration, an individual must also be associated with a firm, pass an appropriate qualification examination for a representative or principal and satisfy the other requirements relating to the registration process.

The SIE will assess basic product knowledge; the structure and function of the securities industry markets, regulatory agencies and their functions; and regulated and prohibited practices. In particular, the SIE will cover four major areas. The first, ''Knowledge of Capital Markets,'' focuses on topics such as types of markets and offerings, broker-dealers and depositories, and economic cycles. The second, ''Understanding Products and Their Risks,'' covers securities products at a high level as well as associated investment risks. The third, ''Understanding Trading, Customer Accounts and Prohibited Activities,'' focuses on accounts, orders, settlement and prohibited activities. The final, ''Overview of the Regulatory Framework,'' encompasses topics such as SROs, registration requirements and specified conduct rules. It is anticipated that the SIE will include 75 scored questions plus an additional 10 unscored pretest questions. The passing score will be determined through methodologies compliant with testing industry standards used to develop examinations and set passing standards.

The restructured program will eliminate duplicative testing of general securities knowledge on the current representative-level qualification examinations by moving such content into the SIE. The SIE will test fundamental securities related knowledge, including knowledge of basic products, the structure and function of the securities industry, the regulatory agencies and their functions and regulated and prohibited practices, whereas the revised representative-level qualification examinations will test knowledge relevant to day-to-day activities, responsibilities and job functions of representatives. The SIE was developed in consultation with a committee of industry representatives and representatives of several SROs. Each of the current representative-level examinations covers general securities knowledge, with the exception of the Research Analyst (Series 86 and 87) examinations.

The Exchange proposes to require that effective October 1, 2018, new applicants seeking to register in a representative capacity with the Exchange must pass the SIE before their registrations can become effective. The Exchange proposes to make the requirement operative on October 1, 2018 to coincide with the effective date of FINRA's requirement.

The Exchange notes that individuals who are registered as of October 1, 2018 will be eligible to maintain their registrations without being subject to any additional requirements. Individuals who have been registered within the last two years prior to October 1, 2018, will also be eligible to maintain those registrations without being subject to any additional requirements, provided they register within two years from the date of their last registration. However, with respect to an individual who is not registered

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (Order Approving File No. SR–FINRA–2017–007).

on the effective date of the proposed rule change but was registered within the last two years prior to the effective date of the proposed rule change, the individual's SIE status in the Central Registration Depository (''CRD'') system would be administratively terminated if such individual does not register with the Exchange within four years from the date of the individual's last registration. The Exchange also notes that consistent with Rule 203 Interpretations and Policies .05, the Exchange will consider waivers of the SIE alone or the SIE and the representative or principal-level examination(s) for applicants who are seeking registration in a representative- or principal-level registration category.[4]

The Exchange also proposes to add Interpretations and Policies .09 to Rule 203 ''Summary of Qualifications Requirements'' which summarizes the qualification requirements for each of the required registration categories described in the Exchange Rules.

The Exchange notes that this filing is substantially similar to a companion Miami International Securities Exchange, LLC (''MIAX Options'') filing relating to registration and qualification examinations required for Members and Associated Persons of Members that engage in trading activities on the MIAX Options Exchange.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change will improve the efficiency of the Exchange's examination requirements, without compromising the qualification standards, by eliminating duplicative testing of general securities knowledge on examinations. FINRA has indicated that the SIE was developed in an effort to adopt an examination that would assess basic product knowledge; the structure and function of the securities industry markets, regulatory agencies and their functions; and regulated and prohibited practices. The Exchange also notes that the introduction of the SIE and expansion of the pool of individuals who are eligible to take the SIE, has the potential of enhancing the pool of prospective securities industry professionals by introducing them to securities laws, rules and regulations and appropriate conduct before they join the industry in a registered capacity. Lastly, the Exchange notes adopting the SIE requirement is consistent with the requirement recently adopted by FINRA.[8]

Furthermore, the Exchange believes that adding Interpretations and Policies .09 to Rule 203 will provide greater clarity regarding the Exchange's examination requirements as updated by, and those remaining in effect following, the proposed rule change, and consistency with the rules of other exchanges.[9]

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 believes that the proposed rule change, which harmonizes its rules with recent rule changes adopted by FINRA and which is being filed in conjunction with similar filings by the other national securities exchanges, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of these registration requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market system and promoting competition among participants across the multiple national securities exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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[10] and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative on October 1, 2018 to coincide with the effective date of FINRA's proposed rule change on which the proposal is based.[12] The waiver of the operative delay would make the Exchange's qualification requirements consistent with those of FINRA, as of October 1, 2018. Therefore, the Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposal operative on October 1, 2018.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[4] Pursuant to a Regulatory Services Agreement between FINRA and MIAX PEARL, FINRA provides MIAX PEARL certain exam waiver services in responding to exam waiver requests from MIAX PEARL Members.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] *See supra* note 3.

[9] *See e.g.* Cboe Exchange, Inc. Rule 3.6A Interpretations and Policies .08(b) and Nasdaq ISE, LLC Rule 313 Registration Requirements Supplementary Material .08 (b).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See supra* note 3.

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email *to rule-comments@sec.gov.* Please include File Number SR–PEARL–2018–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2018–20. 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 the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2018–20 and should be submitted on or before November 1, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–22045 Filed 10–10–18; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84369]

Securities Exchange Act of 1934

October 4, 2018.

In the Matter of the NYSE Arca, Inc.; Order Scheduling Filing of Statements on Review for an Order of Disapproval of Proposed Rule Change To List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF (File No. SR–NYSEArca–2017–139).

On December 4, 2017, NYSE Arca Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF issued by the ProShares Trust II under NYSE Arca Rule 8.200–E, Commentary .02. The proposed rule change was published for comment in the **Federal Register** on December 26, 2017.[3]

On January 30, 2018, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On March 23, 2018, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act [6] to determine whether to approve or disapprove the proposed rule change.[7] On June 15, 2018, the Commission extended the period for consideration of the proposed rule change to August 23, 2018.[8]

On August 22, 2018, the Division of Trading and Markets, pursuant to delegated authority,[9] issued an order disapproving the proposed rule change.[10] On August 23, 2018, the Secretary of the Commission notified NYSEArca that, pursuant to Commission Rule of Practice 431,[11] the Commission would review the Division's action pursuant to delegated authority and that the Division's action pursuant to delegated authority had been automatically stayed.[12]

Accordingly, *it is ordered*, pursuant to Commission Rule of Practice 431, that by November 5, 2018, any party or other person may file a statement in support of, or in opposition to, the action made pursuant to delegated authority.

It is further *ordered* that the order disapproving proposed rule change SR–NYSEArca–2017–139 shall remain in effect pending the Commission's review.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–22094 Filed 10–10–18; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82350 (Dec. 19, 2017), 82 FR 61100 (Dec. 26, 2017).

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 82602 (Jan. 30, 2018), 83 FR 4941 (Feb. 2, 2018).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 82939 (Mar. 23, 2018), 83 FR 13537 (Mar. 29, 2018).

[8] *See* Securities Exchange Act Release No. 83452 (June 15, 2018), 83 FR 28894 (June 21, 2018).

[9] 17 CFR 200.30–3(a)(12).

[10] *See* Securities Exchange Act Release No. 83904 (Aug. 22, 2018), 83 FR 43934 (Aug. 28, 2018) (SR–NYSEArca-2017–139) (''Disapproval Order'').

[11] *See* 17 CFR 201.431(c).

[12] *See* Letter from Secretary of the Commission to David De Gregorio, Senior Counsel, NYSE Group, Inc. (Aug. 23, 2018), *available at https://www.sec.gov/rules/sro/nysearca/2018/34-83904-letter-from-secretary.pdf.*

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934; Release No. 34–84368/October 4, 2018]

In the Matter of the Cboe BZX Exchange, Inc.; For an Order of Disapproval of Proposed Rule Change To List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF (File No. SR–CboeBZX–2018–001); Order Scheduling Filing of Statements on Review

On January 5, 2018, Cboe BZX Exchange, Inc. (''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF issued by the GraniteShares ETP Trust under BZX Rule 14.11(f)(4).[3] The proposed rule change was published for comment in the **Federal Register** on January 18, 2018.[4]

On February 22, 2018, pursuant to Section 19(b)(2) of the Exchange Act, the Commission designated a longer

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On August 21, 2018, BZX filed Amendment No. 1 to the proposal, and on August 22, 2018, BZX filed Amendment No. 2 to the proposal.

[4] *See* Securities Exchange Act Release No. 82484 (Jan. 11, 2018), 83 FR 2704 (Jan. 18, 2018).

period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On April 5, 2018, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On June 28, 2018, the Commission extended the period for consideration of the proposed rule change to September 15, 2018.[8] On August 21, 2018, CboeBZX filed Amendment No. 1 to the proposed rule change, stating that it was amending and replacing in its entirety the proposal as originally filed on January 5, 2018. On August 22, 2018, CboeBZX filed Amendment No. 2 to the proposed rule change, stating that it was amending and replacing in its entirety Amendment No. 1 to the proposed rule change.

On August 22, 2018, the Division of Trading and Markets, pursuant to delegated authority,[9] issued an order disapproving the proposed rule change.[10] On August 23, 2018, the Secretary of the Commission notified BZX that, pursuant to Commission Rule of Practice 431,[11] the Commission would review the Division's action pursuant to delegated authority and that the Division's action pursuant to delegated authority had been automatically stayed.[12] On October 4, 2018, the Commission published notice of Amendment No. 2 to the proposed rule change.[13]

Accordingly, *It is ordered*, pursuant to Commission Rule of Practice 431, that by November 5, 2018, any party or other person may file a statement in support of, or in opposition to, the action made pursuant to delegated authority.

It is further *Ordered* that the order disapproving proposed rule change SR–CboeBZX–2018–001 shall remain in effect pending the Commission's review.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–22084 Filed 10–10–18; 8:45 am]

BILLING CODE 8011–01–P

[5] *See* Securities Exchange Act Release No. 82759 (Feb. 22, 2018), 83 FR 8719 (Feb. 28, 2018).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 82995 (Apr. 5, 2018), 83 FR 15425 (Apr. 10, 2018).

[8] *See* Securities Exchange Act Release No. 83548 (June 28, 2018), 83 FR 31246 (July 3, 2018).

[9] 17 CFR 200.30–3(a)(12).

[10] *See* Securities Exchange Act Release No. 83913 (Aug. 22, 2018), 83 FR 43923 (Aug. 28, 2018) (SR–CboeBZX–2018–001).

[11] *See* 17 CFR 201.431.

[12] *See* Letter from Secretary of the Commission to Kyle Murray, Assistant General Counsel, BZX (Aug. 23, 2018), *available at https://www.sec.gov/rules/sro/cboebzx/2018/34-83913-letter-from-secretary.pdf.*

[13] *See* Securities Exchange Act Release No. 84367 (Oct. 4, 2018).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84367; File No. SR–CboeBZX–2018–001]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 2 to a Proposed Rule Change To List and Trade Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF, a Series of the GraniteShares ETP Trust, Under Rule 14.11(f)(4), Trust Issued Receipts

October 4, 2018.

On January 5, 2018, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF issued by the GraniteShares ETP Trust under BZX Rule 14.11(f)(4). The proposed rule change was published for comment in the **Federal Register** on January 18, 2018.[3]

On February 22, 2018, pursuant to Section 19(b)(2) of the Exchange Act, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[4] On April 5, 2018, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposed rule change.[6] On June 28, 2018, the Commission extended the period for consideration of the proposed rule change to September 15, 2018.[7] As of August 21, 2018, the Commission had received 15 comments on the proposed rule change.[8]

On August 21, 2018, BZX filed Amendment No. 1 to the proposal, which amended and replaced in its entirety the proposal as originally filed on January 5, 2018. On August 22, 2018, BZX filed Amendment No. 2 to the proposal, which amended and replaced in its entirety the proposal as amended on August 21, 2018.

On August 22, 2018, the Division of Trading and Markets (''Division''), acting by delegated authority, issued an order disapproving the proposed rule change.[9] On August 23, 2018, the Secretary of the Commission notified BZX that, pursuant to Commission Rule of Practice 431,[10] the Commission would review the Division's action pursuant to delegated authority and that the Division's action pursuant to delegated authority had been automatically stayed.[11] On October 4, 2018, the Commission issued an Order Scheduling Filing of Statements on Review, setting November 5, 2018 as the date by which any party or other person may file a statement in support of, or in opposition to, the action by the Division pursuant to delegated authority.[12]

Pursuant to Section 19(b)(1) of the Act,[13] and Rule 19b–4 thereunder,[14] notice is hereby given that on August 22, 2018, BZX filed with the Commission Amendment No. 2 to 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 from interested persons on the proposed rule change, as modified by Amendment No. 2.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to list and trade shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF (each a ''Fund'' and, collectively, the ''Funds''), a series of the GraniteShares ETP Trust (the ''Trust''), under Rule 14.11(f)(4) (''Trust Issued Receipts''). The shares of the Funds are referred to herein as the ''Shares.''

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82484 (Jan. 11, 2018), 83 FR 2704 (Jan. 18, 2018).

[4] *See* Securities Exchange Act Release No. 82759 (Feb. 22, 2018), 83 FR 8719 (Feb. 28, 2018).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 82995 (Apr. 5, 2018), 83 FR 15425 (Apr. 10, 2018).

[7] *See* Securities Exchange Act Release No. 83548 (June 28, 2018), 83 FR 31246 (July 3, 2018).

[8] All comments on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboebzx-2018-001/cboebzx2018001.htm.*

[9] *See* Securities Exchange Act Release No. 83913 (Aug. 22, 2018), 83 FR 43923 (Aug. 28, 2018).

[10] *See* 17 CFR 201.431.

[11] *See* Letter from Secretary of the Commission to Kyle Murray, Assistant General Counsel, BZX (Aug. 23, 2018), *available at https://www.sec.gov/rules/sro/cboebzx/2018/34-83913-letter-from-secretary.pdf.*

[12] *See* Securities Exchange Act Release No. 84368 (Oct. 4, 2018).

[13] 15 U.S.C. 78s(b)(1).

[14] 17 CFR 240.19b–4.

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This Amendment No. 2 to SR–CboeBZX–2018–001 amends and replaces in its entirety Amendment No. 1 to the proposal as submitted on August 21, 2018, which amended and replaced in its entirety the proposal as originally submitted on January 5, 2018. The Exchange submits this Amendment No. 2 in order to clarify certain points and add additional details about the Fund.

The Exchange proposes to list and trade shares of the GraniteShares Bitcoin ETF (the ''Long Fund'') and the GraniteShares Short Bitcoin ETF (the ''Short Fund'') under Rule 14.11(f)(4), which governs the listing and trading of Trust Issued Receipts [15] on the Exchange.[16]

The Shares will be offered by the Trust, which was established as a Delaware statutory trust on November 7, 2016. The Trust will not be registered as an investment company under the Investment Company Act of 1940 and is not required to register under such act.[17] The Trust is registered as a commodity pool under the Commodity Exchange Act (''CEA'').[18] The Shares of the Trust will be registered with the Commission by means of the Trust's registration statement on Form S–1 (the ''Registration Statement'') under the Securities Act of 1933 (the ''Securities Act''). The Registration Statement was filed on December 15, 2017 and the Registration Statement will be effective as of the date of any offer and sale pursuant to the Registration Statement.[19]

GraniteShares Advisors LLC (the ''Sponsor'') serves as the Trust's sponsor and commodity pool operator and is a member of the National Futures Association (the ''NFA''). As a member of the NFA, the Sponsor is subject to NFA standards relating to fair trade practices, financial condition, and consumer protection. Bank of New York Mellon serves as administrator, custodian, and transfer agent for the Funds. Foreside Fund Services, LLC (''Marketing Agent'') serves as the distributor for the Trust.

The Funds are not actively managed by traditional methods (*e.g.,* by effecting changes in the composition of a portfolio on the basis of judgments relating to economic, financial and market considerations with a view toward obtaining positive results under all market conditions) other than for cash management purposes and the rolling methodology employed by the Sponsor described below.

Bitcoin Futures Contracts

Prior to listing a new commodity futures contract, a designated contract market must either submit a self-certification to the CFTC that the contract complies with the CEA and CFTC regulations or voluntarily submit the contract for CFTC approval. This process applies to all futures contracts and all commodities underlying the futures contracts, whether the new futures contracts are related to oil, gold, or any other commodity.[20] On December 1, 2017, it was announced [21] that both Cboe Futures Exchange, Inc. (''CFE'') and Chicago Mercantile Exchange, Inc. (''CME'') had self-certified with the CFTC new contracts for bitcoin [22] futures products.[23] While the CFE bitcoin futures contracts (''XBT Futures'' and the ''Benchmark Futures Contracts'') [24] and the CME bitcoin futures contracts (''CME Futures'') [25] will differ in certain of their implementation details, both contracts will generally trade and settle like any other cash-settled commodity futures contracts.[26]

As such, the Exchange is proposing to list and trade the Funds under Rule 14.11(f)(4), which governs the listing and trading of Trust Issued Receipts on the Exchange.

GraniteShares Bitcoin ETF

The Long Fund seeks as its investment objective results (before fees and expenses) that, both for a single day [27] and over time, match the performance of lead month Benchmark Futures Contracts. By being long Bitcoin Futures Contracts, as defined below, the Long Fund seeks to benefit from daily increases in the price of the Bitcoin Futures Contracts and will lose value when the price of the Bitcoin Futures Contracts decline.

[15] Rule 14.11(f)(4) applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Rule 14.11(f)(4)(A)(iv), means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[16] The Commission approved BZX Rule 14.11(f)(4) in Securities Exchange Act Release No. 68619 (January 10, 2013), 78 FR 3489 (January 16, 2013) (SR–BATS–2012–044).

[17] 15 U.S.C. 80a–1.

[18] 17 U.S.C. 1.

[19] *See* Registration Statement on Form S–1, dated December 15, 2017 (File No. 333–222109). The descriptions of the Trust and the Shares contained herein are based, in part, on information in the Registration Statement.

[20] Section 1a(9) of the CEA defines commodity to include, among other things, ''all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.'' The definition of commodity is broad. 7 U.S.C. 1a(9).

[21] *See* ''CFTC Statement on Self-Certification of Bitcoin Products by CME, CFE and Cantor Exchange,'' dated December 1, 2017, available at *http://www.cftc.gov/PressRoom/PressReleases/pr7654-17.*

[22] Bitcoin is a digital asset based on the decentralized, open source protocol of the peer-to-peer bitcoin computer network (the ''Bitcoin Network''). No single entity owns or operates the Bitcoin Network; the infrastructure is collectively maintained by a decentralized user base. The Bitcoin Network is accessed through software, and software governs bitcoin's creation, movement, and ownership. The value of bitcoin is determined by the supply of and demand for bitcoin on websites that facilitate the transfer of bitcoin in exchange for government-issued currencies, and in private end-user-to-end-user transactions.

[23] Bitcoin is a commodity as defined in Section 1a(9) of the CEA. 7 U.S.C. 1a(9). *See In re* Coinflip, Inc., No. 15–29 (CFTC Sept. 17, 2015), *available at: http://www.cftc.gov/ucm/groups/public/@lrenforcementactions/documents/legalpleading/enfcoinfliprorder09172015.pdf.*

[24] The XBT Futures are cash-settled futures contracts based on the auction price of bitcoin in U.S. dollars on the Gemini Exchange that will expire on a weekly, monthly and quarterly basis. XBT Futures are designed to reflect economic exposure related to the price of bitcoin. XBT Futures began trading on December 10, 2017.

[25] The CME Futures are also cash-settled futures contracts based on the CME CF Bitcoin Reference Rate, which is based on an aggregation of trade flow from several bitcoin spot exchanges, that will expire on a monthly and quarterly basis. CME Futures began trading on December 17, 2017.

[26] CFE and CME are registered with the CFTC and seek to provide a neutral, regulated marketplace for the trading of derivatives contracts for commodities, such as futures, options and certain swaps. Both the CFE and CME are both members of the Intermarket Surveillance Group (''ISG'').

[27] A ''single day'' is measured from the time a Fund calculates its net asset value (''NAV'') to the time of the Fund's next NAV calculation. The NAV calculation time for the Funds will typically be 4:00 p.m. Eastern time.

GraniteShares Short Bitcoin ETF

The Short Fund seeks to provide investment results that, on a daily basis correspond (before fees and expenses) to the inverse (−1x) of the daily performance of the Benchmark Futures Contracts for a single day. By being short Bitcoin Futures Contracts, as defined below, the Short Fund seeks to benefit from daily decreases in the price of the Bitcoin Futures Contracts and will lose value when the price of the Bitcoin Futures Contracts increase.

Investment Strategies

Each Fund will, under Normal Market Conditions,[28] hold substantially all of its assets in the Benchmark Futures Contracts and cash and Cash Equivalents [29] (which are used to collateralize the Benchmark Futures Contracts) in order to achieve its investment objective. Although the Funds generally intend to invest substantially all of their respective assets in Benchmark Futures Contracts, the Funds may invest in other U.S. exchange-listed bitcoin futures contracts, as available, in addition to the Benchmark Futures Contracts (collectively, with Benchmark Futures Contracts, the ''Bitcoin Futures Contracts'').

Bitcoin Futures Contracts are measures of the market's expectation of the price of bitcoin at certain points in the future, and as such will behave differently than current or spot bitcoin prices. The Funds are not linked to bitcoin and in many cases the Funds could significantly underperform or outperform the price of bitcoin.

The Funds do not intend to hold Bitcoin Futures Contracts through expiration, but instead intend to either close or ''roll'' their respective positions. When the market for these contracts is such that the prices are higher in the more distant delivery months than in the nearer delivery months, the sale during the course of the ''rolling process'' of the more nearby contract would take place at a price that is lower than the price of the more nearby Bitcoin Futures Contracts would take place at a price that is lower than the price of the more distant Bitcoin Futures Contracts. This pattern of higher futures prices for longer expiration Bitcoin Futures Contracts is referred to as ''contango.'' Alternatively, when the market for certain Bitcoin Futures Contracts is such that the prices are higher in the nearer months than in the more distant months, the sale during the course of the ''rolling process'' of the more nearby Bitcoin Futures Contracts would take place at a price that is higher than the price of the more distant Bitcoin Futures Contracts. This pattern of higher future prices for shorter expiration Bitcoin Futures Contracts is referred to as ''backwardation.'' The presence of contango in the relevant Bitcoin Futures Contracts at the time of rolling would be expected to adversely affect the long positions held by the Long Fund, and positively affect the short positions held by the Short Fund. Similarly, the presence of backwardation in Bitcoin Futures Contracts at the time of rolling such Bitcoin Futures Contracts would be expected to adversely affect the short positions held by the Short Fund and positively affect the long positions held by the Long Fund.

Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage).[30] Each Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.* 2x or −2x) of the Index. Each Fund's use of derivative instruments will be collateralized.

Policy Considerations

The Exchange recognizes that certain policy concerns exist as it relates to any series of Trust Issued Receipts that are listed on the Exchange, but that these concerns, as well as certain other concerns raised by this proposal specifically, are mitigated as it relates to the Funds and their holdings for the reasons enumerated below.

First, the Exchange believes that the policy concerns related to an underlying reference asset and its susceptibility to manipulation are mitigated as it relates to bitcoin because the very nature of the bitcoin ecosystem makes manipulation of bitcoin difficult. The geographically diverse and continuous nature of bitcoin trading makes it difficult and prohibitively costly to manipulate the price of bitcoin and, in many instances, that the bitcoin market is generally less susceptible to manipulation than the equity, fixed income, and commodity futures markets. There are a number of reasons this is the case, including that there is not inside information about revenue, earnings, corporate activities, or sources of supply; it is generally not possible to disseminate false or misleading information about bitcoin in order to manipulate; manipulation of the price on any single venue would require manipulation of the global bitcoin price in order to be effective; a substantial over-the-counter market provides liquidity and shock-absorbing capacity; bitcoin's 24/7/365 nature provides constant arbitrage opportunities across all trading venues; and it is unlikely that any one actor could obtain a dominant market share.

Further, bitcoin is arguably less susceptible to manipulation than other commodities that underlie ETPs; there may be inside information relating to the supply of the physical commodity such as the discovery of new sources of supply or significant disruptions at mining facilities that supply the commodity that simply are inapplicable as it relates to bitcoin. The Exchange believes that the fragmentation across bitcoin exchanges, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each exchange make manipulation of bitcoin prices through continuous trading activity unlikely. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple bitcoin exchanges in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange. As a result, the potential for manipulation on a particular bitcoin exchange would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any

[28] The term ''Normal Market Conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[29] ''Cash and Cash Equivalents'' means short-term instruments with maturities of less than three months, including: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

[30] The Funds will each include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of a fund, including a fund's use of derivatives, may give rise to leverage, causing a fund to be more volatile than if it had not been leveraged.

cross-market pricing differences. For all of these reasons, bitcoin is not particularly susceptible to manipulation, especially as compared to other approved ETP reference assets.

Second, the Exchange believes that the policy concerns related to the susceptibility to manipulation of an underlying futures contract is, in addition to the arguments above, further mitigated by the Bitcoin Futures Contracts. The Funds are designed to, both for a single day and over time, match the performance (or the inverse) of lead month Benchmark Futures Contracts (and not the spot price of bitcoin). The Funds will continuously roll the contracts that they hold prior to expiration (generally at least one week before expiration) and will never hold a contract through settlement, such holdings will never be directly priced based on the spot bitcoin market price. This combined with the CFE, CME, and Exchange surveillance procedures related to the Bitcoin Futures, the Shares, and CFTC oversight,[31] along with the difficulty in manipulating the bitcoin market described above will mitigate the potential policy concerns and further prevent trading in the Shares from being susceptible to manipulation.

Net Asset Value

According to the Registration Statement, the net asset value (''NAV'') of the Shares of the Funds will be calculated by dividing the value of the net assets of the Fund (*i.e.,* the value of its total assets less total liabilities) by the total number of Shares outstanding. Expenses and fees, including the management and administration fees, are accrued daily and taken into account for purposes of determining NAV. The NAV of each Fund is generally determined at 4:00 p.m. Eastern Time each business day when the Exchange is open for trading. If the Exchange or market on which the Fund's investments are primarily traded closes early, the NAV may be calculated prior to its normal calculation time. Creation/redemption transaction order time cutoffs (as further described below) would also be accelerated.

Bitcoin Futures Contracts are generally valued at their settlement price as determined by the relevant exchange. Cash and Cash Equivalents will generally be valued at their market price using market quotations or information provided by a pricing service.

For more information regarding the valuation of Fund investments in calculating a Fund's NAV, see the Registration Statement.

The Shares

The Funds will issue and redeem Shares on a continuous basis at the NAV per Share only in large blocks of a specified number of Shares or multiples thereof (''Creation Units'') in transactions with authorized participants who have entered into agreements with the Distributor. The Adviser currently anticipates that a Creation Unit will consist of 10,000 Shares, though this number may change from time to time, including prior to listing of the Shares. The exact number of Shares that will constitute a Creation Unit will be disclosed in the Registration Statement. Once created, Shares of the Funds may trade on the secondary market in amounts less than a Creation Unit.

Although the Adviser anticipates that purchases and redemptions for Creation Units will generally be executed on an all-cash basis, the consideration for purchase of Creation Units of the Funds may consist of an in-kind deposit of a designated portfolio of assets (including any portion of such assets for which cash may be substituted) (*i.e.,* the ''Deposit Assets''), and the ''Cash Component'' computed as described below. Together, the Deposit Assets and the Cash Component constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The specific terms surrounding the creation and redemption of shares are at the discretion of the Adviser.

The Deposit Assets and Fund Securities (as defined below), as the case may be, in connection with a purchase or redemption of a Creation Unit, generally will correspond pro rata, to the extent practicable, to the assets held by the Funds.

The Cash Component will be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the ''Deposit Amount,'' which will be an amount equal to the market value of the Deposit Assets, and serve to compensate for any differences between the NAV per Creation Unit and the Deposit Amount. The Funds generally offer Creation Units partially or entirely for cash. The Adviser will make available through the National Securities Clearing Corporation (''NSCC'') on each business day, prior to the opening of business on the Exchange, the list of names and the required number or par value of each Deposit Asset and the amount of the Cash Component to be included in the current Fund Deposit (based on information as of the end of the previous business day) for the Fund.

The identity and number or par value of the Deposit Assets may change pursuant to changes in the composition of a Fund's portfolio as rebalancing and rolling adjustments and corporate action events occur from time to time. The composition of the Deposit Assets may also change in response to adjustments to the weighting or composition of the holdings of the Fund.

The Fund reserves the right to permit or require the substitution of a ''cash in lieu'' amount to be added to the Cash Component to replace any Deposit Asset that may not be available in sufficient quantity for delivery or that may not be eligible for transfer through the Depository Trust Company (''DTC'') or the clearing process through the NSCC.[32]

Except as noted below, all creation orders must be placed for one or more Creation Units and must be received by the Distributor at a time specified by the Adviser. The Fund currently intends that such orders must be received in proper form no later than 2:00 p.m. Eastern Time on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of Shares of each Fund as next determined on such date after receipt of the order in proper form. The ''Settlement Date'' is generally the second business day after the transmittal date. On days when the Exchange or the futures markets close earlier than normal, the Funds may require orders to create or to redeem Creation Units to be placed earlier in the day.

Fund Deposits must be delivered through either the Continuous Net Settlement facility of the NSCC, the Federal Reserve System (for cash and

[31] The CFTC issued a press release on December 1, 2017, noting the self-certifications from CFE and CME and highlighting the rigorous process that the CFTC had undertaken in its engagement with CFE and CME prior to the self-certification for the Bitcoin Futures Contracts. The press release focused on the ongoing surveillances that will occur on each listing exchange, including surveillance based on information sharing with the underlying cash bitcoin exchanges as well as the actions that the CFTC will undertake after the contracts are launched, including monitoring and analyzing the size and development of the market, positions and changes in positions over time, open interest, initial margin requirements, and variation margin payments, stress testing positions, conduct reviews of designated contract markets, derivatives clearing organizations, clearing firms, and individual traders involved in trading and clearing bitcoin futures. For more information, *see http://www.cftc.gov/PressRoom/PressReleases/pr7654-17.*

[32] The Adviser represents that, to the extent the Trust permits or requires a ''cash in lieu'' amount, such transactions will be effected in the same or equitable manner for all authorized participants.

government securities), through DTC (for corporate securities), or through a central depository account, such as with Euroclear or DTC, maintained by each Fund's Custodian (a ''Central Depository Account''), in any case at the discretion of the Adviser, by an authorized participant. Any portion of a Fund Deposit that may not be delivered through the NSCC, Federal Reserve System or DTC must be delivered through a Central Depository Account.

A standard creation transaction fee may be imposed to offset the transfer and other transaction costs associated with the issuance of Creation Units.

Shares of the Funds may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor and only on a business day. The Adviser will make available through the NSCC, prior to the opening of business on the Exchange on each business day, the designated portfolio of assets (including any portion of such assets for which cash may be substituted) that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day (''Fund Securities''). The redemption proceeds for a Creation Unit generally will consist of a specified amount of cash less a redemption transaction fee. The Fund generally will redeem Creation Units entirely for cash.

A standard redemption transaction fee may be imposed to offset transfer and other transaction costs that may be incurred by the Fund.

Redemption requests for Creation Units of the Funds must be submitted to the Distributor by or through an authorized participant by a time specified by the Adviser. The Fund currently intends that such requests must be received no later than 3:30 p.m. Eastern Time on any business day, in order to receive that day's NAV. The authorized participant must transmit the request for redemption in the form required by the Funds to the Distributor in accordance with procedures set forth in the authorized participant agreement.

Additional information regarding the Shares and the Funds, including investment strategies, risks, creation and redemption procedures, fees and expenses, portfolio holdings disclosure policies, distributions, taxes and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the website for the Funds (*www.GraniteShares.com*), as applicable.

Availability of Information

The Funds' website, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for each Fund that may be downloaded. The websites will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV, the closing market price or the midpoint of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[33] daily trading volume, and a calculation of the premium and discount of the closing market price or Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing market price or Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Daily trading volume information will be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public websites. On each business day, before commencement of trading in Shares during Regular Trading Hours [34] on the Exchange, each Fund will disclose on its website the identities and quantities of the portfolio Bitcoin Futures Contracts and other assets (the ''Disclosed Portfolio'') held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[35] The Disclosed Portfolio will include, as applicable: Ticker symbol or other identifier, a description of the holding, identity of the asset upon which the derivative is based, the quantity of each security or other asset held as measured by select metrics, maturity date, coupon rate, effective date, market value and percentage weight of the holding in the portfolio. The website and information will be publicly available at no charge.

In addition, for each Fund, an estimated value that reflects an estimated intraday value of the Fund's portfolio (the ''Intraday Indicative Value''), will be disseminated. Moreover, the Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.[36] In addition, the quotations of certain of each Fund's holdings may not be updated for purposes of calculating Intraday Indicative Value during U.S. trading hours where the market on which the underlying asset is traded settles prior to the end of the Exchange's Regular Trading Hours.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of each Fund on a daily basis and provide an estimate of that value throughout the trading day.

Intraday price quotations on Cash Equivalents of the type held by the Funds are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay, or ''live'' with a paid fee. For Bitcoin Futures Contracts, such intraday information is available directly from the applicable listing venue. Intraday price information is also available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors. Pricing information related to Cash Equivalents will be available through issuer websites and publicly available quotation services such as Bloomberg, Markit and Thomson Reuters.

Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be generally available daily in the print and online financial press. Quotation and last sale information for the Shares will be available on the facilities of the CTA.

[33] The Bid/Ask Price of each Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

[34] Regular Trading Hours are 9:30 a.m. to 4:00 p.m. Eastern Time.

[35] Under accounting procedures to be followed by the Funds, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, each Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[36] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Intraday Indicative Values published via the Consolidated Tape Association (''CTA'') or other data feeds.

Initial and Continued Listing

The Shares will be subject to BZX Rule 14.11(f)(4), which sets forth the initial and continued listing criteria applicable to Trust Issued Receipts that invest in Financial Instruments. The Exchange will obtain a representation that the Trust's NAV will be calculated daily and that these values and information about the assets of the Trust will be made available to all market participants at the same time. The Trust currently expects that there will be at least 20,000 Shares outstanding at the time of commencement of trading on the Exchange. Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Wilmington Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(f)(2)(D)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange.

As required in Rule 14.11(f)(4)(D), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, *e.g.,* Rule 4.2), the registered Market Maker in Trust Issued Receipts shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the bitcoin underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(f)(4)(C)(ii), which sets forth circumstances under which trading in the Shares may be halted and delisting proceedings commenced.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares from 8:00 a.m. until 5:00 p.m. Eastern Time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a) the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01 where the price is greater than $1.00 per share or $0.0001 where the price is less than $1.00 per share.

Surveillance

As discussed above, the Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Additionally, the Bitcoin Futures Contracts will be subject to the rules and surveillance programs of CFE, CME, and the CFTC.[37] Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Trust Issued Receipts. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the underlying Bitcoin Futures Contracts via ISG from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[38] The Exchange may also obtain information regarding trading in the spot bitcoin market from exchanges with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine (''TRACE''). The Exchange prohibits the distribution of material non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Exchange Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening[39] and After Hours Trading Sessions[40] when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Funds for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action, and interpretive relief granted by the

[37] *See* supra note 33.

[38] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.* The Exchange notes that not all components of the Disclosed Portfolio for each Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Not more than 10% of the net assets of a Fund in the aggregate invested in Bitcoin Futures Contracts shall consist of Bitcoin Futures Contracts whose principal market is not a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[39] The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

[40] The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

Commission from any rules under the Act.

In addition, the Information Circular will reference that each Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Funds and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Funds will be publicly available on that Fund's website. In addition, the Information Circular will reference that the Trust is subject to various fees and expenses described in the Registration Statement.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [41] in general and Section 6(b)(5) of the Act [42] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. The geographically diverse and continuous nature of bitcoin trading makes it difficult and prohibitively costly to manipulate the price of bitcoin and, in many instances, that the bitcoin market is generally less susceptible to manipulation than the equity, fixed income, and commodity futures markets. There are a number of reasons this is the case, including that there is not inside information about revenue, earnings, corporate activities, or sources of supply; it is generally not possible to disseminate false or misleading information about bitcoin in order to manipulate; manipulation of the price on any single venue would require manipulation of the global bitcoin price in order to be effective; a substantial over-the-counter market provides liquidity and shock-absorbing capacity; bitcoin's 24/7/365 nature provides constant arbitrage opportunities across all trading venues; and it is unlikely that any one actor could obtain a dominant market share.

Further, bitcoin is arguably less susceptible to manipulation than other commodities that underlie ETPs; there may be inside information relating to the supply of the physical commodity such as the discovery of new sources of supply or significant disruptions at mining facilities that supply the commodity that simply are inapplicable as it relates to bitcoin. The Exchange believes that the fragmentation across bitcoin exchanges, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each exchange make manipulation of bitcoin prices through continuous trading activity unlikely. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple bitcoin exchanges in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange. As a result, the potential for manipulation on a particular bitcoin exchange would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences. For all of these reasons, bitcoin is not particularly susceptible to manipulation, especially as compared to other approved ETP reference assets.

The Exchange also believes that the policy concerns related to the susceptibility to manipulation of an underlying futures contract is, in addition to the arguments above, further mitigated by the Bitcoin Futures Contracts. The Funds are designed to, both for a single day and over time, match the performance (or the inverse) of lead month Benchmark Futures Contracts (and not the spot price of bitcoin). The Funds will continuously roll the contracts that they hold prior to expiration (generally at least one week before expiration) and will never hold a contract through settlement, such holdings will never be directly priced based on the spot bitcoin market price. This combined with the CFE, CME, and Exchange surveillance procedures related to the Bitcoin Futures, the Shares, and CFTC oversight, along with the difficulty in manipulating the bitcoin market described above will mitigate the potential policy concerns and further prevent trading in the Shares from being susceptible to manipulation.

Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Trust Issued Receipts. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the underlying Bitcoin Futures Contracts via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Exchange may also obtain information regarding trading in the spot bitcoin market via the ISG, from other exchanges who are members or affiliates of the ISG, or from other exchanges with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to TRACE. The Exchange prohibits the distribution of material non-public information by its employees. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

Because of its innovative features as a cryptoasset, bitcoin has gained wide acceptance as a secure means of exchange in the commercial marketplace and has generated significant interest among investors. In less than a decade since its creation in 2008, bitcoin has achieved significant market penetration, with payments giant PayPal and thousands of merchants and businesses accepting it as a form of commercial payment, as well as receiving official recognition from several governments, including Japan and Australia. Accordingly, investor interest in gaining exposure to bitcoin is increasing exponentially as well. As expected, the total volume of bitcoin transactions in the market continues to grow exponentially.

Despite the growing investor interest in bitcoin, the primary means for investors to gain access to bitcoin exposure remains either through the Bitcoin Futures Contracts or direct investment through bitcoin exchanges or over-the-counter trading. For regular investors simply wishing to express an investment viewpoint in bitcoin, investment through the Bitcoin Futures Contracts is complex and requires active

[41] 15 U.S.C. 78f.

[42] 15 U.S.C. 78f(b)(5).

management and direct investment in bitcoin brings with it significant inconvenience, complexity, expense and risk. The Shares would therefore represent a significant innovation in the bitcoin market by providing an inexpensive and simple vehicle for investors to gain long or short exposure to bitcoin in a secure and easily accessible product that is familiar and transparent to investors. Such an innovation would help to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest by improving investor access to bitcoin exposure through efficient and transparent exchange-traded derivative products.

In addition to improved convenience, efficiency and transparency, the Funds will also help to prevent fraudulent and manipulative acts and practices by enhancing the security afforded to investors as compared to a direct investment in bitcoin. Despite the extensive security mechanisms built into the Bitcoin network, a remaining risk to owning bitcoin directly is the need for the holder to retain and protect the ''private key'' required to spend or sell bitcoin after purchase. If a holder's private key is compromised or simply lost, their bitcoin can be rendered unavailable—*i.e.,* effectively lost to the investor. This risk will be eliminated by the Long Fund because the exposure to bitcoin is gained through cash-settled Bitcoin Futures Contracts that do not present any of the security issues that exist with direct investment in bitcoin.

The Funds expect that they will generally seek to remain fully exposed to Bitcoin Futures Contracts even during times of adverse market conditions. Under Normal Market Conditions, the Funds will generally hold only Bitcoin Futures Contracts and cash and Cash Equivalents (which are used to collateralize the Bitcoin Futures Contracts).

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value will be disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. On each business day, before commencement of trading in Shares during Regular Trading Hours, each Fund will disclose on its website the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Pricing information will be available on each Fund's website including: (1) The prior business day's reported NAV, the Bid/Ask Price of the Fund, and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Additionally, information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available on the facilities of the CTA. The website for each Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Funds will be halted under the conditions specified in BZX Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to BZX Rule 14.11(f)(4)(B)(ii), which sets forth circumstances under which Shares of the Funds may be halted and delisting proceedings commenced. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

Intraday price quotations on Cash Equivalents of the type held by the Funds are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay, or ''live'' with a paid fee. For Bitcoin Futures Contracts, such intraday information is available directly from the applicable listing venue. Intraday price information is also available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors. Pricing information related to Cash Equivalents will be available through issuer websites and publicly available quotation services such as Bloomberg, Markit and Thomson Reuters.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement as well as trade information for certain fixed income instruments as reported to FINRA's TRACE. Not more than 10% of the net assets of a Fund in the aggregate invested in Bitcoin Futures Contracts shall consist of Bitcoin Futures Contracts whose principal market is not a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

(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 purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of additional actively-managed exchange-traded products that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

(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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2018–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2018–001. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2018–001 and should be submitted on or before November 1, 2018.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–22096 Filed 10–10–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84361; File No. SR–MIAX–2018–26]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rules 203, Qualification and Registration of Members and Associated Persons, 1301, Registration of Options Principals, and 1302, Registration of Representatives, Relating to Registration and Qualification Examinations Required for Members and Associated Persons of Members That Engage in Trading Activities on the Exchange

October 4, 2018.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2018, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 is filing a proposal to amend Rules 203, Qualification and Registration of Members and Associated Persons, 1301, Registration of Options Principals, and 1302, Registration of Representatives, relating to registration and qualification examinations required for Members and Associated Persons of Members that engage in trading activities on the Exchange.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Securities and Exchange Commission (the ''SEC'' or the ''Commission'') recently approved a proposed rule change to restructure the Financial Industry Regulatory Authority (''FINRA'') representative-level qualification examination program.[3] The rule change, which will become effective on October 1, 2018, restructures the examination program into a more efficient format whereby all new representative-level applicants will be required to take a general knowledge examination (the Securities Industry Essentials Examination (''SIE'')) and a tailored, specialized knowledge examination (a revised representative-level qualification examination) for their particular registered role. Individuals are not required to be associated with the Exchange or any other self-regulatory organization (''SRO'') member to be eligible to take the SIE. However, passing the SIE alone will not qualify an individual for registration with the Exchange. To be eligible for registration, an individual must also be associated with a firm, pass an appropriate qualification examination for a representative or principal and satisfy the other requirements relating to the registration process.

The SIE will assess basic product knowledge; the structure and function of the securities industry markets, regulatory agencies and their functions; and regulated and prohibited practices. In particular, the SIE will cover four major areas. The first, ''Knowledge of Capital Markets,'' focuses on topics such as types of markets and offerings, broker-dealers and depositories, and economic cycles. The second, ''Understanding Products and Their Risks,'' covers securities products at a high level as well as associated investment risks. The third, ''Understanding Trading, Customer Accounts and Prohibited Activities,'' focuses on accounts, orders, settlement and prohibited activities. The final,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (Order Approving File No. SR–FINRA–2017–007).

''Overview of the Regulatory Framework,'' encompasses topics such as SROs, registration requirements and specified conduct rules. It is anticipated that the SIE will include 75 scored questions plus an additional 10 unscored pretest questions. The passing score will be determined through methodologies compliant with testing industry standards used to develop examinations and set passing standards.

The restructured program will eliminate duplicative testing of general securities knowledge on the current representative-level qualification examinations by moving such content into the SIE. The SIE will test fundamental securities related knowledge, including knowledge of basic products, the structure and function of the securities industry, the regulatory agencies and their functions and regulated and prohibited practices, whereas the revised representative-level qualification examinations will test knowledge relevant to day-to-day activities, responsibilities and job functions of representatives. The SIE was developed in consultation with a committee of industry representatives and representatives of several SROs. Each of the current representative-level examinations covers general securities knowledge, with the exception of the Research Analyst (Series 86 and 87) examinations.

The Exchange proposes to require that effective October 1, 2018, new applicants seeking to register in a representative capacity with the Exchange must pass the SIE before their registrations can become effective. The Exchange proposes to make the requirement operative on October 1, 2018 to coincide with the effective date of FINRA's requirement.

The Exchange notes that individuals who are registered as of October 1, 2018 will be eligible to maintain their registrations without being subject to any additional requirements. Individuals who have been registered within the last two years prior to October 1, 2018, will also be eligible to maintain those registrations without being subject to any additional requirements, provided they register within two years from the date of their last registration. However, with respect to an individual who is not registered on the effective date of the proposed rule change but was registered within the last two years prior to the effective date of the proposed rule change, the individual's SIE status in the Central Registration Depository (''CRD'') system would be administratively terminated if such individual does not register with the Exchange within four years from the date of the individual's last registration. The Exchange also notes that consistent with Rule 203 Interpretations and Policies .05, the Exchange will consider waivers of the SIE alone or the SIE and the representative or principal-level examination(s) for applicants who are seeking registration in a representative- or principal-level registration category.[4]

The Exchange also proposes to add Interpretations and Policies .09 to Rule 203 ''Summary of Qualifications Requirements'' which summarizes the qualification requirements for each of the required registration categories described in the Exchange Rules.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change will improve the efficiency of the Exchange's examination requirements, without compromising the qualification standards, by eliminating duplicative testing of general securities knowledge on examinations. FINRA has indicated that the SIE was developed in an effort to adopt an examination that would assess basic product knowledge; the structure and function of the securities industry markets, regulatory agencies and their functions; and regulated and prohibited practices. The Exchange also notes that the introduction of the SIE and expansion of the pool of individuals who are eligible to take the SIE, has the potential of enhancing the pool of prospective securities industry professionals by introducing them to securities laws, rules and regulations and appropriate conduct before they join the industry in a registered capacity. Lastly, the Exchange notes adopting the SIE requirement is consistent with the requirement recently adopted by FINRA.[8]

Furthermore, the Exchange believes that adding Interpretations and Policies .09 to Rule 203 will provide greater clarity regarding the Exchange's examination requirements as updated by, and those remaining in effect following, the proposed rule change, and consistency with the rules of other exchanges.[9]

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX Options 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 believes that the proposed rule change, which harmonizes its rules with recent rule changes adopted by FINRA and which is being filed in conjunction with similar filings by the other national securities exchanges, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of these registration requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market system and promoting competition among participants across the multiple national securities exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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

[4] Pursuant to a Regulatory Services Agreement between FINRA and MIAX Options, FINRA provides MIAX Options certain exam waiver services in responding to exam waiver requests from MIAX Members.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] *See supra* note 3.

[9] *See e.g.* Cboe Exchange, Inc. Rule 3.6A Interpretations and Policies .08(b) and Nasdaq ISE, LLC Rule 313 Registration Requirements Supplementary Material .08(b).

19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative on October 1, 2018 to coincide with the effective date of FINRA's proposed rule change on which the proposal is based.[12] The waiver of the operative delay would make the Exchange's qualification requirements consistent with those of FINRA, as of October 1, 2018. Therefore, the Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposal operative on October 1, 2018.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email *to rule-comments@sec.gov.* Please include File Number SR–MIAX–2018–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2018–26. 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 submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2018–26 and should be submitted on or before November 1, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–22044 Filed 10–10–18; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See supra* note 3.

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934; Release No. 34–84370/October 4, 2018]

In the Matter of the NYSE Arca, Inc. For an Order of Disapproval of Proposed Rule Change Relating To Listing and Trading of the Direxion Daily Bitcoin Bear 1X Shares, Direxion Daily Bitcoin 1.25X Bull Shares, Direxion Daily Bitcoin 1.5X Bull Shares, Direxion Daily Bitcoin 2X Bull Shares, and Direxion Daily Bitcoin 2X Bear Shares Under NYSE Arca Rule 8.200–E (File No. SR–NYSEArca–2018–02); Order Scheduling Filing of Statements on Review

On January 4, 2018, NYSE Arca, Inc. (''NYSE Arca'') 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 list and trade shares of the following exchange-traded products under NYSE Arca Rule 8.200–E, Commentary .02: Direxion Daily Bitcoin Bear 1X Shares, Direxion Daily Bitcoin 1.25X Bull Shares, Direxion Daily Bitcoin 1.5X Bull Shares, Direxion Daily Bitcoin 2X Bull Shares, and Direxion Daily Bitcoin 2X Bear Shares. The proposed rule change was published for comment in the **Federal Register** on January 24, 2018.[3]

On March 1, 2018, pursuant to Section 19(b)(2) of the Exchange Act, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[4] On April 23, 2018, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act[5] to determine whether to approve or disapprove the proposed rule change.[6] On July 18, 2018, the Commission extended the period for consideration of the proposed rule change to September 21, 2018.[7]

On August 22, 2018, the Division of Trading and Markets, pursuant to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82484 (Jan. 11, 2018), 83 FR 2704 (Jan. 18, 2018).

[4] *See* Securities Exchange Act Release No. 82759 (Feb. 22, 2018), 83 FR 8719 (Feb. 28, 2018).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 82995 (Apr. 5, 2018), 83 FR 15425 (Apr. 10, 2018).

[7] *See* Securities Exchange Act Release No. 83661 (July 18, 2018), 83 FR 35040 (July 24, 2018).

delegated authority,[8] issued an order disapproving the proposed rule change.[9] On August 23, 2018, the Secretary of the Commission notified NYSEArca that, pursuant to Commission Rule of Practice 431,[10] the Commission would review the Division's action pursuant to delegated authority and that the Division's action pursuant to delegated authority had been automatically stayed.[11]

Accordingly, *it is ordered*, pursuant to Commission Rule of Practice 431, that by November 5, 2018, any party or other person may file a statement in support of, or in opposition to, the action made pursuant to delegated authority.

It is further *ordered* that the order disapproving proposed rule change SR–CboeBZX–2018–001 shall remain in effect pending the Commission's review.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–22093 Filed 10–10–18; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

[9] *See* Securities Exchange Act Release No. 83913 (Aug. 22, 2018), 83 FR 43923 (Aug. 28, 2018) (SR–CboeBZX–2018–001).

[10] *See* 17 CFR 201.431.

[11] *See* Letter from Secretary of the Commission to Eugene Schlanger, Counsel, NYSE Group, Inc. (Aug. 23, 2018), *available at https://www.sec.gov/rules/sro/nysearca/2018/34-83912-letter-from-secretary.pdf.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84363; File No. SR–FINRA–2018–035]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend CAB Rule 331 (Anti-Money Laundering Compliance Program) To Conform to FinCEN's Final Rule on Customer Due Diligence Requirements for Financial Institutions

October 4, 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 September 20, 2018, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Capital Acquisition Broker (''CAB'') Rule 331 (Anti-Money Laundering Compliance Program) to reflect the Financial Crimes Enforcement Network's (''FinCEN'') adoption of a final rule on Customer Due Diligence Requirements for Financial Institutions (''CDD Rule''). Specifically, the proposed amendments would conform CAB Rule 331 to the CDD Rule's amendments to the minimum regulatory requirements for CABs' anti-money laundering (''AML'') compliance programs by requiring such programs to include risk-based procedures for conducting ongoing customer due diligence. This ongoing customer due diligence element for AML programs includes: (1) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (2) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

The text of the proposed rule change is available at the Commission's Public Reference Room, on FINRA's website at *http://www.finra.org,* and at the principal office of FINRA.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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

a. Background

FINRA Capital Acquisition Broker Rules

On August 18, 2016, the SEC approved[4] a separate set of FINRA rules for firms that meet the definition of a ''capital acquisition broker'' and that elect to be governed under this rule set. CABs are member firms that engage in a limited range of activities, essentially advising companies and private equity funds on capital raising and corporate restructuring, and acting as placement agents for sales of unregistered securities to institutional investors under limited conditions. Member firms that elect to be governed under the CAB rule set are not permitted, among other things, to carry or maintain customer accounts, handle customers' funds or securities, accept customers' trading orders, or engage in proprietary trading or market making.

The CAB Rules became effective on April 14, 2017. In order to provide new CAB applicants with lead time to apply for FINRA membership and obtain the necessary qualifications and registrations, CAB Rules 101–125 became effective on January 3, 2017.[5]

FinCEN Customer Due Diligence Rule

The Bank Secrecy Act[6] (''BSA''), among other things, requires financial institutions,[7] including broker-dealers that have elected CAB status, to develop and implement AML programs that, at a minimum, meet the statutorily enumerated ''four pillars.''[8] These four pillars currently require broker-dealers to have written AML programs that include, at a minimum:

- The establishment and implementation of policies, procedures and internal controls reasonably

[4] *See* Securities Exchange Act Release No. 78617 (August 18, 2016), 81 FR 57948 (August 24, 2016) (SR–FINRA–2015–054) (Order Approving Rule Change as Modified by Amendment Nos. 1 and 2 To Adopt FINRA Capital Acquisition Broker Rules).

[5] On September 29, 2017, the SEC approved CAB Rule 203 (Engaging in Distribution and Solicitation Activities with Government Entities) and CAB Rule 458 (Books and Records Requirements for Government Distribution and Solicitation Activities), which applied established ''pay-to-play'' and related recordkeeping rules to the activities of CABs. *See* Securities Exchange Act Release No. 81781 (September 29, 2017), 82 FR 46559 (October 5, 2017) (Order Approving File No. SR–FINRA–2017–027). CAB Rules 203 and 458 became effective on December 6, 2017.

[6] 31 U.S.C. 5311 *et seq.*

[7] *See* 31 U.S.C. 5312(a)(2) (defining ''financial institution'').

[8] 31 U.S.C. 5318(h)(1).

designed to achieve compliance with the applicable provisions of the BSA and implementing regulations;

• independent testing for compliance by broker-dealer personnel or a qualified outside party;

• designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the AML program; and

• ongoing training for appropriate persons.[9]

On May 11, 2016, FinCEN, the bureau of the Department of the Treasury responsible for administering the BSA and its implementing regulations, issued the CDD Rule [10] to clarify and strengthen customer due diligence for covered financial institutions,[11] including broker-dealers that have elected CAB status. In its CDD Rule, FinCEN identifies four components of customer due diligence: (1) Customer identification and verification; (2) beneficial ownership identification and verification; (3) understanding the nature and purpose of customer relationships; and (4) ongoing monitoring for reporting suspicious transactions and, on a risk basis, maintaining and updating customer information.[12] As the first component is already required to be part of a CAB's AML program under the BSA, the CDD Rule focuses on the other three components.

Specifically, the CDD Rule focuses particularly on the second component by adding a new requirement that covered financial institutions identify and verify the identity of the beneficial owners of all legal entity customers at the time a new account is opened, subject to certain exclusions and exemptions.[13] The CDD Rule also addresses the third and fourth components, which FinCEN states ''are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements,'' by amending the existing AML program rules for covered financial institutions to explicitly require these components to be included in AML programs as a new ''fifth pillar.'' As a result of the CDD Rule, CABs should ensure that their AML programs are updated, as necessary, to comply with the CDD Rule.

Amendments to FINRA Rule 3310

On November 21, 2017, FINRA published *Regulatory Notice* 17–40 to provide guidance to non-CAB member firms regarding their obligations under FINRA Rule 3310 (Anti-Money Laundering Compliance Program) in light of the adoption of FinCEN's CDD Rule. In addition, the *Notice* summarized the CDD Rule's impact on non-CAB member firms, including the addition of the new fifth pillar required for such firms' AML programs.

On April 20, 2018, FINRA filed for immediate effectiveness amendments to FINRA Rule 3310 to reflect FinCEN's adoption of the CDD Rule.[14] On May 3, 2018, FINRA published *Regulatory Notice* 18–19, which announced its amendments to FINRA Rule 3310.[15]

For the same reasons that FINRA amended FINRA Rule 3310 to reflect FinCEN's adoption of the CDD Rule, FINRA is filing for immediate effectiveness similar amendments to CAB Rule 331.

b. CAB Rule 331 and Amendment to Minimum Requirements for CABs' AML Programs

Section 352 of the USA PATRIOT Act of 2001 [16] amended the BSA to require broker-dealers to develop and implement AML programs that include the four pillars mentioned above. Consistent with Section 352 of the PATRIOT Act, and incorporating the four pillars, CAB Rule 331 requires each CAB to develop and implement a written AML program reasonably designed to achieve and monitor the CAB's compliance with the BSA and implementing regulations. Among other requirements, CAB Rule 331 requires that each CAB, at a minimum: (1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and implementing regulations; (3) provide for independent testing for compliance, no less frequently than every two years, to be conducted by CAB personnel or a qualified outside party; (4) designate and identify to FINRA an individual or individuals (*i.e.,* AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day operations and internal controls of the AML program and provide prompt notification to FINRA of any changes to the designation; and (5) provide ongoing training for appropriate persons.

FinCEN's CDD Rule does not change the requirements of CAB Rule 331 and CABs must continue to comply with its requirements.[17] However, FinCEN's CDD Rule amends the minimum regulatory requirements for CABs' AML programs by explicitly requiring such programs to include risk-based procedures for conducting ongoing customer due diligence.[18] Accordingly, FINRA is proposing to amend CAB Rule 331 to incorporate into the Rule this ongoing customer due diligence element, or ''fifth pillar'' required for AML programs. Thus, proposed CAB Rule 331(f) would provide that the AML programs required by this Rule shall, at a minimum, include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to: (1) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (2) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

As stated in the CDD Rule, these provisions are not new and merely codify existing expectations for broker-dealers, including CABs, to adequately identify and report suspicious transactions as required under the BSA and encapsulate practices generally already undertaken by securities firms to know and understand their

[9] 31 CFR 1023.210(b).

[10] FinCEN Customer Due Diligence Requirements for Financial Institutions; CDD Rule, 81 FR 29397 (May 11, 2016) (CDD Rule Release); 82 FR 45182 (September 28, 2017) (making technical correcting amendments to the final CDD Rule published on May 11, 2016). FinCEN is authorized to impose AML program requirements on financial institutions and to require financial institutions to maintain procedures to ensure compliance with the BSA and associated regulations. 31 U.S.C. 5318(h)(2) and (a)(2). The CDD Rule is the result of the rulemaking process FinCEN initiated in March 2012. *See* 77 FR 13046 (March 5, 2012) (Advance Notice of Proposed Rulemaking) and 79 FR 45151 (August 4, 2014) (Notice of Proposed Rulemaking).

[11] *See* 31 CFR 1010.230(f) (defining ''covered financial institution'').

[12] *See* CDD Rule Release at 29398.

[13] *See* 31 CFR 1010.230(d) (defining ''beneficial owner'') and 31 CFR 1010.230(e) (defining ''legal entity customer'').

[14] *See* Securities Exchange Act Release No. 83154 (May 2, 2018), 83 FR 20906 (May 8, 2018) (SR–FINRA–2018–016) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to FINRA Rule 3310 to Conform FINRA Rule 3310 to FinCEN's Final Rule on Customer Due Diligence Requirements for Financial Institutions).

[15] *See Regulatory Notice* 18–19 (May 3, 2018).

[16] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56, 115 Stat. 272 (2001).

[17] In fact, FinCEN notes that broker-dealers must continue to comply with FINRA Rules, notwithstanding differences between the CDD Rule and CAB Rule 331. *See* CDD Rule Release at 29421, n. 85.

[18] *See* CDD Rule Release at 29420; 31 CFR 1023.210.

customers.[19] The proposed rule change simply incorporates into CAB Rule 331 the ongoing customer due diligence element, or ''fifth pillar,'' required for AML programs by the CDD Rule to aid CABs in complying with the CDD Rule's requirements. However, to the extent that these elements, which are briefly summarized below, are not already included in CABs' AML programs, the CDD Rule requires CABs to update their AML programs to explicitly incorporate them.

c. Summary of Fifth Pillar's Requirements

Understanding the Nature and Purpose of Customer Relationships

FinCEN states in the CDD Rule that firms must necessarily have an understanding of the nature and purpose of the customer relationship in order to determine whether a transaction is potentially suspicious and, in turn, to fulfill their SAR obligations.[20] To that end, the CDD Rule requires that firms understand the nature and purpose of the customer relationship in order to develop a customer risk profile. The customer risk profile refers to information gathered about a customer to form the baseline against which customer activity is assessed for suspicious transaction reporting.[21] Information relevant to understanding the nature and purpose of the customer relationship may be self-evident and, depending on the facts and circumstances, may include such information as the type of customer, account or service offered, and the customer's income, net worth, domicile, or principal occupation or business, as well as, in the case of existing customers, the customer's history of activity.[22] The CDD Rule also does not prescribe a particular form of the customer risk profile.[23] Instead, the CDD Rule states that depending on the firm and the nature of its business, a customer risk profile may consist of individualized risk scoring, placement of customers into risk categories or another means of assessing customer risk that allows firms to understand the risk posed by the customer and to demonstrate that understanding.[24]

The CDD Rule also addresses the interplay of understanding the nature and purpose of customer relationships with the ongoing monitoring obligation discussed below. The CDD Rule explains that firms are not necessarily required or expected to integrate customer information or the customer risk profile into existing transaction monitoring systems (for example, to serve as the baseline for identifying and assessing suspicious transactions on a contemporaneous basis).[25] Rather, FinCEN expects firms to use the customer information and customer risk profile as appropriate during the course of complying with their obligations under the BSA in order to determine whether a particular flagged transaction is suspicious.[26]

Conducting Ongoing Monitoring

As with the requirement to understand the nature and purpose of the customer relationship, the requirement to conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, merely adopts existing supervisory and regulatory expectations as explicit minimum standards of customer due diligence required for firms' AML programs.[27] If, in the course of its normal monitoring for suspicious activity, the CAB detects information that is relevant to assessing the customer's risk profile, the CAB must update the customer information, including the information regarding the beneficial owners of legal entity customers.[28] However, there is no expectation that the CAB update customer information, including beneficial ownership information, on an ongoing or continuous basis.[29]

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the proposed changes will be no later than 30 days following publication of the *Regulatory Notice* announcing the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[30] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will aid CABs in complying with the CDD Rule's requirement that CABs' AML programs include risk-based procedures for conducting ongoing customer due diligence by also incorporating the requirement into CAB Rule 331.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply incorporates into CAB Rule 331 the ongoing customer due diligence element, or ''fifth pillar,'' required for AML programs by the CDD Rule. The CDD Rule required broker-dealers, including CABs, to update their AML programs to explicitly incorporate them by May 11, 2018. In addition, as stated in the CDD Rule, these elements are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements. Accordingly, FINRA is not imposing any additional direct or indirect burdens on CABs or their clients through this proposal.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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[31] and Rule 19b–4(f)(6) thereunder.[32]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[19] *See* CDD Rule Release at 29419.
[20] *See id.* at 29421.
[21] *See id.* at 29422.
[22] *See id.*
[23] *See id.*
[24] *See id.*
[25] *See id.*
[26] *See id.*
[27] *See id.* at 29402.
[28] *See id.* at 29420–21.
[29] *See id.*
[30] 15 U.S.C. 78*o*–3(b)(6).
[31] 15 U.S.C. 78s(b)(3)(A).
[32] 17 CFR 240.19b–4(f)(6).

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–FINRA–2018–035 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–FINRA–2018–035. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2018–035 and should be submitted on or before November 1, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–22047 Filed 10–10–18; 8:45 am]

BILLING CODE 8011–01–P

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84364; File No. SR–NYSEAMER–2018–39]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Rule Change To Allow Flexible Exchange Equity Options Where the Underlying Security is an Exchange-Traded Fund That Is Included in the Option Penny Pilot To Be Settled in Cash

October 4, 2018.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 20, 2018, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain rules related to Flexible Exchange (''FLEX'') Options. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend certain rules related to FLEX Options, as described below.

FLEX Options are customized equity or index contracts that allow investors to tailor contract terms for exchange-listed equity and index options.[4] The Exchange is proposing to modify rules to offer an alternative settlement for certain FLEX Equity Options.[5] As proposed, FLEX Equity Options where the underlying security is an Exchange-Traded Fund (''ETF'') that is included in the Option Penny Pilot[6] (''FLEX ETF Penny Option'') would be settled by physical delivery of the underlying ETF or by delivery in cash. Currently, all FLEX Equity Options are settled by physical delivery of the underlying security.[7] All FLEX Index Options, however, are currently settled by delivery in cash.[8]

To effectuate this change, the Exchange proposes to adopt new Rule 903G(c)(3)(ii)[9] which would provide that the exercise settlement for a FLEX ETF Penny Option shall be by physical delivery of the underlying security or by delivery in cash.[10] The proposed rule also adopts a definition of the term FLEX ETF Penny Option for purpose of Rule 903G(3) to mean a FLEX Equity Option whose underlying security is an ETF that is included in the Option Penny Pilot.[11] The Exchange believes it is appropriate to introduce cash-settlement as an alternative to this group of equity securities because ETFs generally have increasingly become a major part of investors' portfolio. The vast proliferation of ETFs has greatly

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See generally* Section 15, Flexible Exchange Options, Rules 900G–910G.

[5] The term ''FLEX Equity Option'' means an option on a specified underlying security that is subject to the rules in Section 15, Flexible Exchange Options Rules. *See* Rule 900G(b)(10).

[6] *See* Securities and Exchange Act Release No. 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (SR–Amex–2006–106). The Option Penny Pilot has been extended numerous times and remains operational through December 31, 2018. *See* Securities Exchange Act Release No. 83507 (June 25, 2018), 83 FR 30808 (June 29, 2018) (SR–NYSEAMER–2018–33).

[7] *See* Rule 903G(c)(3)(i).

[8] *See* Rule 903G(b)(2) and (3).

[9] The Exchange proposes a non-substantive amendment to Rule 903G to renumber current Rule 903G(c)(3)(ii) as new Rule 903G(c)(3)(iii).

[10] *See* proposed Rule 903G(c)(3)(ii).

[11] *Id.*

expanded the ability of investors to take advantage of many unique opportunities to hedge their portfolio and manage risk. Investors can take long and/or short positions—as well as in many cases, leveraged long or short positions—in baskets of securities whose components can include foreign and domestic stock indexes, currencies, commodities and bonds. Over the years, ETFs have also attracted a great deal of options trading.

Today, all ETF options are settled physically, *i.e.,* upon exercise, shares of the underlying ETF must be assumed or delivered. Physical settlement possesses certain risks with respect to volatility and movement of the underlying security at expiration that market participants may need to hedge against. Cash settlement does not present the same risk. If an issue with the delivery of the underlying security arises, it may become more expensive (and time consuming) to reverse the delivery because the price of the underlying security would almost certainly have changed. Reversing a cash payment, on the other hand, would not involve any such issue because reversing a cash delivery would simply involve the exchange of cash. Additionally, with physical settlement, market participants that have a need to generate cash would have to sell the underlying security while incurring the costs associated with liquidating their position in the underlying security as well as the risk of an adverse movement in the price of the underlying security. The Exchange notes that cash settlement for options is not a unique feature and other options exchanges currently trade cash-settled options.[12]

The Exchange understands that there are concerns that have been raised in the past regarding cash-settled equity options. The Exchange seeks to allay such concerns by proposing to adopt cash-settlement as an alternative to ETFs only, and more specifically, to a narrow universe of ETFs, *i.e.,* ETFs that are in the Option Penny Pilot. As a general matter, all index options traded today are cash-settled and derive their value from a disseminated index price. Similarly, ETFs typically have their values linked to a disseminated index price. As noted above, the Exchange seeks to limit cash-settlement to a subset of ETFs which are the most actively traded, as evidenced by their inclusion in the Option Penny Pilot. The Options Penny Pilot is an ongoing pilot program that, since 2007, allows certain option classes to be quoted in reduced price increments compared to all other option classes. More specifically, the Option Penny Pilot specifies that options trading at less than $3.00 have trading increment of one cent, while those trading at $3.00 or more have trading increments of five cents. There are currently 363 classes in the Options Penny Pilot. Each class added to the original pilot was chosen because it was one of the ''most actively-traded multiply-listed options classes.'' Upon the last expansion of the pilot, the specific 300 most-active classes were identified based on the underlying security's ''national average daily volume over a six-month period'' thereby ensuring that the Option Penny Pilot continues to include only those classes that are actively traded. There are currently only 64 ETFs in the Option Penny Pilot that would be subject to the proposed rule change.

With respect to position limits, cash-settled FLEX ETF Penny Options will be subject to the position limits set forth in Rule 906G. Accordingly, the Exchange would establish position limits for cash-settled FLEX ETF Penny Options that are the same as non-cash-settled FLEX ETF Penny Options.

The Exchange understands that FLEX ETF Penny Options are currently traded in the over-the-counter (''OTC'') market by a variety of market participants, *e.g.,* hedge funds, proprietary trading firms, and pension funds, to name a few. The Exchange believes there is room for significant growth if a comparable product were introduced for trading on a regulated market. The Exchange expects that users of these OTC products would be among the primary users of exchange-traded cash-settled FLEX ETF Penny Options. The Exchange also believes that the trading of cash-settled FLEX ETF Penny Options would allow these same market participants to better manage the risk associated with the volatility of underlying ETF positions given the enhanced liquidity that an exchange-traded product would bring.

Cash-settled FLEX ETF Penny Options traded on the Exchange would have three important advantages over the contracts that are traded in the OTC market. First, as a result of greater standardization of contract terms, exchange-traded contracts should develop more liquidity. Second, counter-party credit risk would be mitigated by the fact that the contracts are issued and guaranteed by The Options Clearing Corporation (''OCC''). Finally, the price discovery and dissemination provided by the Exchange and its members would lead to more transparent markets. The Exchange believes that its ability to offer cash-settled FLEX ETF Penny Options would aid it in competing with the OTC market and at the same time expand the universe of products available to interested market participants. The Exchange believes that an exchange-traded alternative may provide a useful risk management and trading vehicle for market participants and their customers.

The Exchange has confirmed with the OCC that OCC can support the clearance and settlement of cash-settled FLEX ETF Penny Options. The Exchange has analyzed its capacity and represents that it believes the Exchange and OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of cash-settled FLEX ETF Penny Options. The Exchange believes any additional traffic that would be generated from the introduction of cash-settled FLEX ETF Penny Options will be manageable. The Exchange believes ATP Holders will not have a capacity issue as a result of this proposed rule change. The Exchange also represents that it does not believe this proposed rule change will cause fragmentation of liquidity. The Exchange will monitor the trading volume associated with the additional options series listed as a result of this proposed rule change and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.

The Exchange has an adequate surveillance program in place for cash-settled FLEX ETF Penny Options and intends to apply the same program procedures that it applies to the Exchange's other options products. FLEX options products and their respective symbols are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes. As a result, the Exchange believes it would be able to effectively police the trading of cash-settled FLEX ETF Penny Options using means that include its surveillance for manipulation. The Exchange believes that manipulating the settlement price of cash-settled FLEX ETF Penny Options would be difficult based on the size of the market for such ETFs. Additionally, the Exchange notes that each cash-settled FLEX ETF Penny Option that would be subject to this proposed rule change is sufficiently active so as to alleviate concerns about

[12] *See e.g.* PHLX FX Options traded on Nasdaq PHLX and S&P 500® Index Options traded on Cboe Options Exchange. More recently, the Commission approved, on a pilot basis, the listing and trading of RealDay™ Options on the BOX Options Exchange LLC. *See* Securities Exchange Act Release No. 79936 (February 2, 2017), 82 FR 9886 (February 8, 2017) (''RealDay Pilot Program''). The RealDay Pilot Program has been extended until February 2, 2019. *See* Securities Exchange Act Release No. 82414 (December 28, 2017), 83 FR 577 (January 4, 2018) (SR–BOX–2017–38).

potential manipulative activity. Further, the vast liquidity of ETF options as well as the underlying equities markets ensures a multitude of market participants at any given time. Given the high level of participation among market participants that enter quotes and/or orders in ETF options, the Exchange believes it would be very difficult for a single participant to alter the prices of each of the underlying securities of an ETF in any significant way without exposing the would-be manipulator to regulatory scrutiny. The Exchange further believes any attempt to manipulate the prices of the underlying securities of an ETF would also be cost prohibitive.

Additionally, the Exchange is a member of the Intermarket Surveillance Group (''ISG'') under the Intermarket Surveillance Group Agreement dated June 20, 1994. The ISG members work together to coordinate surveillance and investigative information sharing in the stock and options markets. For surveillance purposes, the Exchange would therefore have access to information regarding trading activity in the pertinent underlying securities.

The Exchange believes that introducing cash-settled FLEX ETF Penny Options would further broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC markets for customized options, where settlement restrictions do not apply. The proposed rule change is also designed to encourage market makers to shift liquidity from OTC markets onto the Exchange, which, it believes, will enhance the process of price discovery conducted on the Exchange through increased order flow. The Exchange also believes that this may open up cash-settled FLEX ETF Penny Options to more retail investors. The Exchange does not believe that this raises any unique regulatory concerns because existing safeguards—such as position limits, exercise limits, and reporting requirements—would continue to apply.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes that introducing cash-settled FLEX ETF Penny Options will increase order flow to the Exchange, increase the variety of options products available for trading, and provide a valuable tool for investors to manage risk.

The Exchange believes that the proposal to add cash-settled FLEX ETF Penny Options would remove impediments to and perfect the mechanism of a free and open market as cash-settled FLEX ETF Penny Options would enable market participants to receive cash in lieu of shares of the underlying security, which would, in turn provide greater opportunities for market participants to manage risk through the use of cash-settled FLEX ETF Penny Options to the benefit of investors and the public interest.

The Exchange believes that the proposal to permit cash settlement would remove impediments to and perfect the mechanism of a free and open market because the proposed rule change would provide OTP [sic] Holders with enhanced methods to manage risk by receiving cash if they choose to do so instead of the underlying security. In addition, this proposal would promote just and equitable principles of trade and protect investors and the general public because cash settlement would provide investors with an additional tool to manage their risk. Further, the Exchange notes that its proposal to introduce cash-settled FLEX ETF Penny Options is not novel in that other exchanges currently offer [sic] cash settlement for options whose underlying security is an ETF. The proposed rule change therefore should not raise any issues for the Commission that have not been previously addressed.[15]

The proposed rule change to permit cash-settled FLEX ETF Penny Options is designed to promote just and equitable principles of trade in that the availability of cash-settled FLEX ETF Penny Options will give market participants an alternative to trading similar products in the OTC market. By trading a product in an exchange-traded environment (that is currently being used in the OTC market), the Exchange will be able to compete more effectively with the OTC market. The Exchange believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that it will hopefully lead to the migration of options currently trading in the OTC market to trading to the Exchange. Also, any migration to the Exchange from the OTC market will result in increased market transparency. Additionally, the Exchange believes the proposed rule change is designed to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in that it should create greater trading and hedging opportunities and flexibility. The proposed rule change should also result in enhanced efficiency in initiating and closing out positions and heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of cash-settled FLEX ETF Penny Options. Further, the proposed rule change will result in increased competition by permitting the Exchange to offer products that are currently used in the OTC market.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in cash-settled FLEX ETF Penny Options. Regarding the proposed cash settlement, the Exchange would use the same surveillance procedures currently utilized for the Exchange's other FLEX Options. For surveillance purposes, the Exchange would have access to information regarding trading activity in the pertinent underlying securities. The Exchange believes that limiting cash settlement to FLEX ETF Penny Options will minimize the possibility of manipulation due to the robust liquidity in both the ETF and options markets.

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 proposal is designed to increase competition for order flow on the Exchange in a manner that is beneficial to investors because it is designed to provide investors seeking to effect cash-settled FLEX ETF Penny Option orders with the opportunity for different methods of settling option contracts at expiration.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes the proposed rule change encourages competition amongst market participants to provide tailored cash-settled FLEX ETF Penny Option contracts.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *See supra* note 12.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2018–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2018–39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2018–39, and should be submitted on or before November 1, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–22049 Filed 10–10–18; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15716 and #15717; New York Disaster Number NY–00187]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of New York

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–4397–DR), dated 10/01/2018.

Incident: Severe Storms and Flooding.

Incident Period: 08/13/2018 through 08/15/2018.

DATES: Issued on 10/01/2018.

Physical Loan Application Deadline Date: 11/30/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 07/01/2019.

ADDRESS: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/01/2018, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Broome, Chemung, Chenango, Delaware, Schuyler, Seneca, Tioga.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 157166 and for economic injury is 157170.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–22108 Filed 10–10–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15698 and #15699; South Carolina Disaster Number SC–00054]

Presidential Declaration Amendment of a Major Disaster for the State of South Carolina

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of South Carolina (FEMA–4394–DR), dated 09/21/2018.

Incident: Hurricane Florence.

Incident Period: 09/08/2018 and continuing.

DATES: Issued on 10/02/2018.

Physical Loan Application Deadline Date: 11/20/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 06/21/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business

Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of South Carolina, dated 09/21/2018, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Darlington, Florence.

Contiguous Counties (Economic Injury Loans Only):

South Carolina: Clarendon, Lee, Sumter.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–22122 Filed 10–10–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15624 and #15625; California Disaster Number CA–00292]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of California (FEMA–4382–DR), dated 08/04/2018.

Incident: Wildfires and High Winds.

Incident Period: 07/23/2018 through 09/19/2018.

DATES: Issued on 10/01/2018.

Physical Loan Application Deadline Date: 10/03/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 05/06/2019.

ADDRESS: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of California, dated 08/04/2018, is hereby amended to establish the incident period for this disaster as beginning 07/23/2018 and continuing through 09/19/2018.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–22113 Filed 10–10–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15676 and #15677; Nebraska Disaster Number NE–00072]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Nebraska

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA–4387–DR), dated 08/27/2018.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 06/17/2018 through 07/01/2018.

DATES: Issued on 10/02/2018.

Physical Loan Application Deadline Date: 10/26/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 05/27/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Nebraska, dated 08/27/2018, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Boyd.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–22111 Filed 10–10–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15712 and #15713; Guam Disaster Number GU–00006]

Presidential Declaration of a Major Disaster for Public Assistance Only for the Territory of Guam

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Territory of Guam (FEMA–4398–DR), dated 10/01/2018.

Incident: Typhoon Mangkhut.

Incident Period: 09/10/2018 through 09/11/2018.

DATES: Issued on October 1, 2018.

Physical Loan Application Deadline Date: 11/30/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 07/01/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/01/2018, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Area: Guam.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	

	Percent
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 157128 and for economic injury is 157130.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–22119 Filed 10–10–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15622 and #15623; California Disaster Number CA–00288]

Presidential Declaration Amendment of a Major Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of California (FEMA–4382–DR), dated 08/04/2018.

Incident: Wildfires and High Winds.

Incident Period: 07/23/2018 through 09/19/2018.

DATES: Issued on 10/01/2018.

Physical Loan Application Deadline Date: 10/03/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 05/06/2019.

ADDRESS: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of California, dated 08/04/2018, is hereby amended to establish the incident period for this disaster as beginning 07/23/2018 and continuing through 09/19/2018.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–22109 Filed 10–10–18; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2018–0052]

Privacy Act of 1974; System of Records

AGENCY: Deputy Commissioner for Communications, Social Security Administration (SSA).

ACTION: Rescindment of a system of records notice.

SUMMARY: In accordance with the Privacy Act, we are issuing public notice of our intent to discontinue an existing system of records notice entitled, Optical System for Correspondence Analysis and Response, last published on January 11, 2006.

DATES: Comments must be received no later than November 13, 2018. This rescindment will be effective upon publication in today's **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tristin Dorsey, Government Information Specialist, Privacy Implementation Division, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 965–2950, email: *tristin.dorsey@ssa.gov.*

SUPPLEMENTARY INFORMATION: SSA is discontinuing the system of records 60–0002, entitled OSCAR, which was created to aid in the control of internal and external correspondence received in agency offices through various processing steps and management information regarding the correspondence process. The records will be combined and managed through an existing system of records currently titled, Assignment and Correspondence Tracking (ACT) System (60–0001), last published in full at 71 FR 1800 (January 11, 2006). SSA will rely upon the ACT system to manage internal and external correspondence and assignments received from members of the public, media, White House, Congress, and other federal agencies.

SYSTEM NAME AND NUMBER

Optical System for Correspondence Analysis and Response (OSCAR), 60–0002.

HISTORY:

71 FR 1801 (Jan. 11, 2006), Optical System for Correspondence Analysis and Response.

72 FR 69723 (Dec. 10, 2007), Optical System for Correspondence Analysis and Response.

Dated: October 2, 2018.

Mary Ann Zimmerman,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

[FR Doc. 2018–22035 Filed 10–10–18; 8:45 am]

BILLING CODE P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36227]

David L. Durbano—Continuance in Control Exemption—Washington Eastern Railroad, LLC

David L. Durbano (Durbano), a noncarrier, has filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to continue in control of Washington Eastern Railroad, LLC (WERR), upon WERR's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in *Washington Eastern Railroad, LLC—Change in Operator Exemption—Eastern Washington Gateway Railroad Company,* Docket No. FD 36226. In that proceeding, WERR seeks an exemption under 49 CFR 1150.31 to assume operations over approximately 107.8 miles of track extending between milepost 1.0 near Cheney, Wash., and the end of the track at milepost 108.8 in Coulee City, Wash. (CW Branch), and over approximately 5.9 miles of track that connects with the CW Branch at Geiger Junction near Medical Lake, Wash. (Geiger Spur).

The earliest this transaction may be consummated is October 25, 2018, the effective date of the exemption (30 days after the verified notice was filed). Durbano states that he intends to consummate the transaction on or after the effective date of the transaction established by the Board in Docket No. FD 36226, which is also October 25, 2018.

Durbano will continue in control of WERR upon WERR's becoming a Class III rail carrier, while remaining in control of six other Class III carriers: Texas & Eastern Railroad, LLC, Wyoming and Colorado Railroad Company, Inc., Southwestern Railroad, Inc., Cimarron Valley Railroad, L.C., Clarkdale Arizona Central Railroad, L.C., and Saratoga Railroad, LLC.

Durbano certifies that: (1) The rail lines to be operated by WERR do not

connect with any other railroads in the Durbano corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect these rail lines with each other or with any other railroad in the Durbano corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than October 18, 2018 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36227, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW, Suite 300, Washington, DC 20037.

Board decisions and notices are available on our website at *www.stb.gov.*

Decided: October 5, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–22171 Filed 10–10–18; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36225]

Fortress Investment Group LLC—Continuance in Control Exemption—Central Maine & Quebec Railway US Inc., Ohio River Partners Shareholder LLC, and DesertXpress Enterprises, LLC

Fortress Investment Group LLC (Fortress) has filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) for the benefit of Brightline Holdings LLC (Brightline) and Fortress Transportation and Infrastructure Investors LLC, which are managed by affiliates of Fortress, to continue in control of DesertXpress Enterprises, LLC (DXE) [1] following the acquisition of DXE by Brightline.

According to Fortress, on September 17, 2018, Brightline, DXE, and Benny's HoldCo, LLC, entered into a Membership Interest Purchase Agreement (Purchase Agreement) [2] pursuant to which Brightline will acquire 100% of the member interests of DXE. Upon consummation of the transaction contemplated by the Purchase Agreement, Brightline, a noncarrier, will control DXE. Brightline currently controls Brightline Trains LLC (Brightline Trains) which operates express passenger rail service between Miami, Fla., and West Palm Beach, Fla.[3] Fortress asserts that Brightline can assist DXE in bringing its planned high-speed passenger rail system between Las Vegas and Victorville to fruition.

The parties intend to consummate the proposed control transaction as soon as practicable after the exemption becomes effective (30 days after the verified notice was filed) and the satisfaction of all other conditions precedent to closing set forth in the Purchase Agreement.

Fortress states that two other rail carriers subject to the Board's jurisdiction, Central Maine & Quebec Railway US Inc. (CMQR) and Ohio River Partners Shareholder LLC (ORPS), are currently managed by affiliates of Fortress. CMQR, a Class III carrier, operates approximately 244 miles of rail lines in the States of Maine and Vermont. ORPS, a Class III carrier, operates a 12.2-mile rail line between milepost 60.5 at or near Powhatan Point, Ohio, and milepost 72.2 at or near Hannibal, Ohio.

Fortress represents that: (1) None of the rail lines of CMQR, ORPS, or DXE connect with the lines of any other United States railroad that is owned or controlled by Fortress; (2) the transaction is not part of a series of anticipated transactions that would connect the DXE Line with the lines of any other rail carrier owned or controlled by Fortress, any affiliate of Fortress, or any investment fund or entity managed by an affiliate of Fortress; and (3) CMQR, ORPS, and DXE are not Class I carriers.[4] Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all the carriers involved are Class III carriers.[5]

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than October 18, 2018 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36225, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Terence M. Hynes, Sidley Austin LLP, 1501 K Street NW, Washington, DC 20005.

According to Fortress, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting under 49 CFR 1105.8(b).

Board decisions and notices are available on our website at *www.stb.gov.*

Decided: October 5, 2018.

[1] In *DesertXpress Enterprises—Construction & Operation Exemption—in Victorville, Cal. & Las Vegas, Nev.* (*DesertXpress*), FD 35544 (STB served Oct. 25, 2011), the Board authorized DXE to construct and operate a high-speed passenger rail line between Victorville, Cal., and Las Vegas, Nev. (DXE Line). Fortress states that DXE has been engaged in development and planning for the DXE Line, including obtaining certain federal and state permits, acquiring rights-of-way, and pursuing financing for the project.

[2] Fortress submitted a redacted copy of the Purchase Agreement with its verified notice of exemption. It also submitted an unredacted copy under seal along with a motion for protective order pursuant to 49 CFR 1104.14(b). That motion will be addressed in a separate decision.

[3] Brightline Trains formerly was known as All Aboard Florida-Operations LLC. Citing *All Aboard Florida-Operations LLC—Construction & Operation Exemption—in Miami, Fla., & Orlando, Fla.,* FD 35680 (STB served Dec. 21, 2012), Fortress states that Brightline Trains is not a rail carrier subject to the Board's jurisdiction.

[4] Fortress states that CMQR and ORPS are Class III carriers. In *DesertXpress,* slip op. at 2, the Board noted that DXE anticipated that its operating revenues would qualify it as a Class I carrier; presently, however, according to Fortress, DXE has not commenced operations and does not have any operating employees or revenues. *See* Notice 6.

[5] *See* n. 4, above.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–22227 Filed 10–10–18; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36226]

Washington Eastern Railroad, LLC—Change in Operators Exemption—Eastern Washington Gateway Railroad Company

Washington Eastern Railroad, LLC (WERR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to assume operations over approximately 107.8 miles of track extending between milepost 1.0 near Cheney, Wash., and the end of the track at milepost 108.8 in Coulee City, Wash. (CW Branch), and over approximately 5.9 miles of track that connects with the CW Branch at Geiger Junction near Medical Lake, Wash. (Geiger Spur) [1] (collectively, the Lines). The verified notice indicates that the CW Branch is currently owned by the State of Washington, Department of Transportation (WDOT) and the Geiger Spur is owned by the County of Spokane, Wash. The Lines are currently leased to Eastern Washington Gateway Railroad Company (EWG). As a result of this transaction, WERR will become a carrier and replace EWG as the Lines' exclusive lessee and operator. According to WERR, EWG is aware that WDOT plans to change operators over the Lines and does not object to the proposed change in operators.

The verified notice indicates that WERR and WDOT have reached an agreement in principle for WERR to replace EWG as the lessee and operator of the Lines upon the effective date of the exemption. WERR states that BNSF Railway Company (BNSF) currently has trackage rights over the CW Branch and that WERR's lease of the Lines will continue to be subject to BNSF's trackage rights.

This transaction is related to a concurrently filed verified notice of exemption in *David L. Durbano—Continuance in Control Exemption—Washington Eastern Railroad, LLC,* Docket No. FD 36227, in which David L. Durbano seeks to continue in control of WERR upon WERR's becoming a Class III rail carrier.

WERR certifies that the underlying lease and operation agreement does not contain any provision or agreement that would limit future interchange with a third-party connecting carrier. Further, WERR certifies that its annual rail revenues as a result of this transaction will not exceed $5 million, and it will not result in WERR's becoming a Class I or Class II rail carrier. Under 49 CFR 1150.32(b), a change in operator requires that notice be given to shippers. WERR certifies that notice of the change in operator was served on all known shippers on the Lines.

The earliest this transaction may be consummated is October 25, 2018, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than October 18, 2018 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36226, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW, Suite 300, Washington, DC 20037.

Board decisions and notices are available on our website at *www.stb.gov.*

Decided: October 5, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–22173 Filed 10–10–18; 8:45 am]

BILLING CODE 4915–01–P

[1] The Geiger Spur consists of two segments: The first extends from milepost 2.5 (at the east gate of Fairchild Air Force Base) to milepost 4.93 (at McFarlane and Hayford Roads) near Airway Heights, Wash.; the second extends from milepost 0.0 at Geiger Junction at its connection with the CW Branch to milepost 3.45, where it connects with the first segment at milepost 2.7.

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: July 1–31, 2018.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and 806.22(f) for the time period specified above:

Approvals by Rule Issued Under 18 CFR 806.22(f)

1. Seneca Resources Corporation, Pad ID: DCNR Tract 007 Pad D, ABR–201807001; Delmar Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 12, 2018.

2. Diversified Gas & Oil, LLC, Pad ID: Stubler Pad A, ABR–201305003.R1; Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 13, 2018.

3. SWN Production Company, LLC, Pad ID: GU 04 Williams Aeppli, ABR–201309001.R1; Herrick Township, Bradford County, Pa.; Consumptive Use of Up to 4.9999 mgd; Approval Date: July 18, 2018.

4. SWN Production Company, LLC, Pad ID: Dropp–Range–Pad46, ABR–201308016.R1; Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: July 27, 2018.

5. Repsol Oil & Gas USA, LLC, Pad ID: ALDERSON (05 269), ABR–201807002; Pike Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 25, 2018.

6. Repsol Oil & Gas USA, LLC, Pad ID: BROADLEAF HOLDINGS (01 115), ABR–201807003; Springfield, Troy, and Columbia Townships, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 25, 2018.

7. EXCO Resources (PA), LLC, Pad ID: Chaapel Hollow Unit, ABR–201305016.R1; Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 8.0000 mgd; Approval Date: July 30, 2018.

8. EXCO Resources (PA), LLC, Pad ID: Poor Shot Pad 2 Unit, ABR–201309007.R1; Anthony Township, Lycoming County, Pa.; Consumptive Use of Up to 8.0000 mgd; Approval Date: July 30, 2018.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: October 4, 2018.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2018–22054 Filed 10–10–18; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Rescinded for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the approved by rule projects rescinded by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: July 1–31, 2018.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, being rescinded for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and 806.22(f) for the time period specified above:

Rescinded ABR Issued

1. EXCO Resources (PA), LLC, Pad ID: Snyder Unit #1, ABR–20090430.R1; Franklin Township, Lycoming County, Pa.; Rescind Date: July 2, 2018.

2. EXCO Resources (PA), LLC, Pad ID: Kitzmiller Drilling Pad #1, ABR–20100546.R1; Jordan Township, Lycoming County, Pa.; Rescind Date: July 2, 2018.

3. EXCO Resources (PA), LLC, Pad ID: Marquardt Drilling Pad #1, ABR–201008008.R1; Davidson Township, Sullivan County, Pa.; Rescind Date: July 2, 2018.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: October 4, 2018.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2018–22055 Filed 10–10–18; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Minor Modifications

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the minor modifications approved for a previously approved project by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: July 1–31, 2018.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists previously approved projects, receiving approval of minor modifications, described below, pursuant to 18 CFR 806.18 for the time period specified above:

Minor Modifications Issued Under 18 CFR 806.18

1. Graymont (PA) Inc., Pleasant Gap Facility, Docket No. 20050306–2, Spring Township, Centre County, Pa.; approval to add Walker Township Water Association public water supply as an additional source of water for consumptive use; Approval Date: July 6, 2018.

2. Silver Springs Ranch, LLC, Docket No. 20170306–1, Monroe Township, Wyoming County, Pa.; approval authorizing the additional water use purpose of bulk supply to a horse training facility; Approval Date: July 20, 2018.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: October 4, 2018.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2018–22056 Filed 10–10–18; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; General Wayne A. Downing Peoria International Airport, Peoria, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is considering a proposal to change portions of 18 different parcels with a total of 2.778 acres of airport land from aeronautical use to non-aeronautical use and to authorize the sale of airport property located at General Wayne A. Downing Peoria International Airport, Peoria, IL. The aforementioned land is not needed for aeronautical use.

The 2.778 acres of land is in the Northeast section of the airport property and it covers the intersection of Dirksen Parkway and Middle Road. This property does not currently serve an aeronautical purpose. This area of property is currently Right of Way for the airport entrance road, Dirksen Parkway. If the airport receives permission from the FAA to release the property from aeronautical obligations, it intends on transferring this property to the Peoria County for continued use as Right of Way.

DATES: Comments must be received on or before November 13, 2018.

ADDRESSES: Documents are available for review by appointment at the FAA Chicago Airports District Office, Robert Lee, Program Manager, 2300 E Devon Avenue, Des Plaines, Illinois 60018, Telephone: (847) 294–7526/Fax: (847) 294–7046.

Written comments on the Sponsor's request must be delivered or mailed to: Robert Lee, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 E Devon Avenue, Des Plaines, IL 60018, Telephone Number: (847) 294–7526/ FAX Number: (847) 294–7046.

FOR FURTHER INFORMATION CONTACT: Robert Lee, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 E Devon Avenue, Des Plaines, IL 60018, Telephone Number: (847) 294–7526/ FAX Number: (847) 294–7046.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The land consists of all or portions from eighteen (18) different parcels. All but two of these parcels were purchased by the airport with FAA participation. The parcels were acquired under grants 3–17–0080–21 and 3–17–0080–10 or without federal participation. The future use of the property is for roadway Right of Way.

The disposition of proceeds from the sale of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the Wayne A. Downing Peoria International Airport, Peoria, IL from federal land covenants, subject to a reservation for continuing right of flight as well as restrictions on the released property as required in FAA Order 5190.6B section 22.16. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Legal Description

Parcel 17–15–401–047

Part of the southeast quarter of section 15 in township 8 north, range 7 east of the fourth principal meridian in Peoria County, Illinois. Said part being further described as follows:

Commencing at the northwest corner of the southeast quarter of said section 15; thence north 88 degrees 58 minutes 38 seconds east along the north line of the said southeast quarter a distance of 1085.74 feet; thence south 01 degree 01 minute 22 seconds east a distance of 33.00 feet to the point of beginning, said point being on the south right of way line of County Highway D49 (Middle Road); thence north 88 degrees 58 minutes 38 seconds east along the said south right of way line a distance of 792.03 feet to a point on the east line of lot 28 of McCarty Acres; thence south 00 degree 29 minutes 22 seconds east along the said east line of lot 28 a distance of 60.24 feet to point on the proposed south right of way line of County Highway D49 (Dirksen Parkway); thence south 58 degrees 45 minutes 34 seconds west along the proposed south right of way line a distance of 230.39 feet to a point on the east line of lot 25 of said McCarty Acres; thence south 00 degree 29 minutes 22 seconds east along the said east line of lot 25 and proposed south right of way line a distance of 46.04 feet to a point at the beginning of a curve to the left, said curve having a radius of 1080.00 feet and an arc length of 78.14 feet thence on a chord bearing of south 57 degrees 10 minutes 02 seconds west along the said proposed south right of way line a chord distance of 78.12 feet; thence south 85 degrees 10 minutes 24 seconds west along the said proposed south right of way line a distance of 128.86 feet; thence north 40 degrees 28 minutes 11 seconds west a distance of 108.19 feet to a point on the east line of lot 21 of McCarty Acres; thence north 00 degree 29 minutes 22 seconds west along the said east line of lot 21 a distance of 37.19 feet; thence north 55 degrees 21 minutes 36 seconds west a distance of 80.70 feet to a point; thence north 65 degrees 37 minutes 45 seconds west a distance of 218.22 feet to a point on the east line of lot 17 of McCarty Acres; thence north 81 degree 53 minutes 33 seconds west along the said proposed south right of way line a distance of 66.75 feet to the point of beginning, containing 2.524 acres more or less.

Basis of bearings are to the Illinois State Plane Coordinate system, west zone being the north line of the southeast quarter of section 15 at north 88 degrees 58 minutes 38 seconds east.

Parcel 17–15–401–030

Parcel 17–15–426–001

Parcel 17–15–426–002

Parcel 17–15–426–003

Parcel 17–15–426–004

Parcel 17–15–426–005

Part of lot 29 and lot 30 of McCarty Acres being a part of the southeast quarter of section 15 in township 8 north, range 7 east of the fourth principal meridian in Peoria County, Illinois. Said part being further described as follows:

Commencing at the northwest corner of the southeast quarter of said section 15; thence north 88 degrees 58 minutes 38 seconds east along the north line of the said southeast quarter a distance of 1877.77 feet; thence south 01 degree 01 minute 22 seconds east a distance of 33.00 feet to the point of beginning, said point being on the south right of way line of County Highway D49 (Middle Road); thence north 88 degrees 58 minutes 38 seconds east along the said south right of way line and parallel with the said north line of the southeast quarter of section 15 a distance of 542.72 feet to a point at the beginning of a curve to the right, said curve having a radius of 150.00 feet and an arc length of 55.08 feet; thence on a chord bearing of south 80 degrees 30 minutes 11 seconds east a chord distance of 54.77 feet to a point on the proposed south right of way line of County Highway D49 (Middle Road); thence south 88 degrees 58 minutes 38 seconds west along the said proposed south right of way line and parallel with the north line of the southeast quarter of section 15 a distance of 352.62 feet; thence south 81 degrees 50 minutes 33 seconds west along the said proposed south right of way line a distance of 90.69 feet; thence south 74 degrees 49 minutes 17 seconds west along the said proposed south right of way line a distance of 159.37 feet to a point on the west line of said lot 29; thence north 00 degrees 29 minutes 22 seconds west along the said west line a distance of 60.24 feet to the point of beginning, containing 0.254 acres more or less.

Basis of bearings are to the Illinois State Plane Coordinate System, west zone being the north line of the southeast quarter of section 15 at north 88 degrees 58 minutes 38 seconds east.

Issued in Des Plaines, IL on Sept. 27, 2018.

Deb Bartell,

Manager, Chicago Airports District Office, Great Lakes Region, FAA.

[FR Doc. 2018–22197 Filed 10–10–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2018–0043]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that FHWA will submit the collection of information described below to the Office of Management and Budget (OMB) for review and comment. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 19, 2018. The PRA submission describes the nature of the information collection and its expected cost and burden.

DATES: Please submit comments by December 10, 2018.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2018–0043 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room

W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Peter Clark, 202–366–2025, or Arnold Feldman, 202–366–2028, Office of Real Estate Services, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Annual State Right-of-way Acquisition Data.

Background: Moving Ahead for Progress in the 21st Century (MAP–21) Section 1521(d) amends the Uniform Relocation Assistance and Real Properties Acquisition Policy Act of 1970 Section 213(b), codified in 42 U.S.C. 4633 by requiring ''that each Federal agency that has programs or projects requiring the acquisition of real property or causing a displacement from real property subject to the provisions of this Act shall provide to the lead agency an annual summary report that describes the activities conducted by the Federal agency.''

Respondents: Each of the 52 state DOT's will be asked to send an annual report to the division office which outlines state-specific acquisition data.

Frequency: Annually. Every October FHWA Office of Real Estate, HQ will request this data.

Estimated Average Burden per Response: Approximately 5 hours per response.

Estimated Total Annual Burden Hours: Approximately 260 hours total for all 52 states.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: October 4, 2018.

Michael Howell,

Information Collection Officer.

[FR Doc. 2018–22138 Filed 10–10–18; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is updating the entries of 462 persons on OFAC's Specially Designated National and Blocked Persons List (SDN List).

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The Specially Designated Nationals and Blocked Persons (SDN) List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On September 20, 2017, the President issued Executive Order 13810 (E.O. 13810), ''Imposing Additional Sanctions With Respect to North Korea.'' Section 4 of E.O. 13810 authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to impose sanctions on foreign financial institutions upon determining that the foreign financial institution has, on or after the effective date of E.O. 13810, knowingly conducted or facilitated any significant transaction, among others, on behalf of any person whose property and interests in property are blocked pursuant to Executive Order 13551 of August 30, 2010, Executive Order 13687 of January 2, 2015, Executive Order 13722 of March 15, 2016, or E.O. 13810, or of any person whose property and interests in property are blocked pursuant to Executive Order 13382 in connection with North Korea-related activities. Accordingly, OFAC has added the reference ''Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210'' to the SDN list entries for the 462 persons listed below.

Individuals

1. CHA, Sung Jun (a.k.a. CH'A, Su'ng-chun), Beijing, China; DOB 04 Jun 1966; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 472434355 (individual) [DPRK4].

2. CHANG, Chang-ha (a.k.a. JANG, Chang Ha); DOB 10 Jan 1964; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; President of Second Academy of Natural Sciences (individual) [DPRK2] (Linked To: SECOND ACADEMY OF NATURAL SCIENCES).

3. CHANG, Kyong-hwa (a.k.a. JANG, Kyong Hwa); DOB 13 Nov 1951; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Official at Second Academy of Natural Sciences (individual) [DPRK2] (Linked To: SECOND ACADEMY OF NATURAL SCIENCES).

4. CHANG, Myong-Chin (a.k.a. JANG, Myong-Jin); DOB 1966; alt. DOB 1965; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (individual) [NPWMD].

5. CHANG, Wen-Fu (a.k.a. CHANG, Tony; a.k.a. ZHANG, Wen-Fu); DOB 01 Apr 1965; nationality Taiwan; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 211606395 (Taiwan) (individual) [NPWMD].

6. CHI, Yupeng, Room 301, Unit 1, No. 129 Jiangcheng Street, Yuanbao District, Dandong City, Liaoning Province, China; DOB 22 May 1969; nationality China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport E27979708 (China); National ID No. 210602196905220510 (China); Chairman and Majority Owner, Dandong Zhicheng Metallic Material Co., Ltd. (individual) [DPRK3] (Linked To: DANDONG ZHICHENG METALLIC MATERIAL CO., LTD.).

7. CHO, Chun-ryong (a.k.a. JO, Chun Ryong); DOB 04 Apr 1960; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Chairman of the Second Economic Committee (individual) [DPRK2] (Linked To: SECOND ECONOMIC COMMITTEE).

8. CHO, Il-U (a.k.a. CHO, Ch'o'l; a.k.a. CHO, Il Woo; a.k.a. JO, Chol), Korea, North; DOB 10 May 1945; POB Musan, North Hamgyo'ng Province, North Korea; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 736410010 (Korea, North); Director of the Fifth Bureau of the Reconnaissance General Bureau (individual) [DPRK2].

9. CHO, Yon Chun (a.k.a. JO, Yon Jun), Korea, North; DOB 28 Sep 1937; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; First Vice Director of the Organization and Guidance Department (individual) [DPRK2].

10. CHOE, Chang Pong, Korea, North; DOB 02 Jun 1964; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 381320227 (Korea, North) expires 29 Jul 2016; Director of the Investigation Bureau of the Ministry of People's Security (individual) [DPRK2].

11. CHOE, Chun Yong (a.k.a. CH'OE, Ch'un-yo'ng), Moscow, Russia; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport 654410078 (Korea, North); Ilsim International Bank representative (individual) [DPRK3] (Linked To: ILSIM INTERNATIONAL BANK).

12. CHOE, Chun-sik (a.k.a. CHOE, Chun Sik; a.k.a. CH'OE, Ch'un-sik), Korea, North; DOB 12 Oct 1954; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (individual) [NPWMD] (Linked To: SECOND ACADEMY OF NATURAL SCIENCES).

13. CHOE, Hwi, Korea, North; DOB 01 Jan 1954 to 31 Dec 1955; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; First Vice Director of the Workers' Party of Korea Propaganda and Agitation Department (individual) [DPRK2].

14. CHOE, Pu Il (a.k.a. CH'OE, Pu-il; a.k.a. CHOI, Bu-il), Korea, North; DOB 06 Mar 1944; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Minister of People's Security (individual) [DPRK3] (Linked To: MINISTRY OF PEOPLE'S SECURITY).

15. CH'OE, So'k-min, Shenyang, China; DOB 25 Jul 1978; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Foreign Trade Bank of the Democratic People's Republic of Korea representative (individual) [DPRK2].

16. CHOE, Song Il, Vietnam; DOB 08 Jun 1973; citizen Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 472320665 (Korea, North) expires 26 Sep 2017; alt. Passport 563120356 (Korea, North) issued 19 Mar 2018; Tanchon Commercial Bank Representative in Vietnam (individual) [NPWMD] (Linked To: TANCHON COMMERCIAL BANK).

17. CHOE, Song Nam (a.k.a. CH'OE, So'ng-nam), Shenyang, China; DOB 07 Jan 1979; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 563320192 expires 09 Aug 2018; Korea Daesong Bank Representative (individual) [DPRK4].

18. CHU, Hyo'k (a.k.a. JU, Hyok), Vladivostok, Russia; DOB 23 Nov 1986; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport 836420186 (Korea, North) issued 28 Oct 2016 expires 28 Oct 2021; Foreign Trade Bank of the Democratic People's Republic of Korea representative (individual) [DPRK4].

19. CHU, Kyu-Chang (a.k.a. CHU, Kyu-Ch'ang; a.k.a. JU, Kyu-Chang); DOB 25 Nov 1928; POB Hamju County, South Hamgyong Province, Democratic People's Republic of Korea; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (individual) [NPWMD].

20. HAN, Jang Su (a.k.a. HAN, Chang-su), Moscow, Russia; DOB 08 Nov 1969; POB Pyongyang; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport 745420176 expires 19 Oct 2020; Foreign Trade Bank chief representative (individual) [NPWMD].

21. HAN, Kwon U (a.k.a. HAN, Kon U; a.k.a. HAN, Ko'n-u; a.k.a. HAN, Kwo'n-u), Zhuhai, China; DOB 21 Aug 1962; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 745434880; Korea Ryonbong General Corporation Representative in Zhuhai, China (individual) [DPRK2].

22. HO, Yong Il (a.k.a. HO', Yo'ng-il), Dandong, China; DOB 09 Sep 1968; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (individual) [DPRK4].

23. HONG, Jinhua, China; DOB 19 Jan 1972; nationality China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; National Foreign ID Number 210604197201190322 (China); Deputy General Manager, Dandong Hongxiang Industrial Development Co Ltd (individual) [NPWMD] (Linked To: DANDONG HONGXIANG INDUSTRIAL DEVELOPMENT CO LTD).

24. HUISH, Irina Igorevna (a.k.a. BURLOVA, Irina), Russia; South Africa; DOB 18 Jan 1973; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Female (individual) [DPRK3] (Linked To: VELMUR MANAGEMENT PTE LTD).

25. HUSSAIN, Mavungal; DOB 03 Jun 1961; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (individual) [DPRK2] (Linked To: KOREA MINING DEVELOPMENT TRADING CORPORATION).

26. HWANG, Pyong So (a.k.a. HWANG, Pyo'ng-so'), Korea, North; DOB 1940; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vice Chairman of the National Defense Commission (individual) [DPRK2] (Linked To: NATIONAL DEFENSE COMMISSION).

27. HWANG, Su Man (a.k.a. HWANG, Kyong Nam); DOB 06 Apr 1955; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 472220033 (Korea, North) (individual) [DPRK2] (Linked To: KOREA MINING DEVELOPMENT TRADING CORPORATION).

28. HYON, Gwang Il (a.k.a. HYON, Kwang Il), Korea, North; DOB 27 May 1961; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Department Director at the National Aerospace Development Administration (individual) [NPWMD] (Linked To: NATIONAL AEROSPACE DEVELOPMENT ADMINISTRATION).

29. JANG, Bom Su (a.k.a. JANG, Hyon U; a.k.a. JANG, Pom Su), Syria; DOB 15 Apr 1957; alt. DOB 22 Feb 1958; citizen Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Diplomatic Passport 836110034 expires 01 Jan 2020; Tanchon Commercial Bank Representative in Syria (individual) [NPWMD] (Linked To: TANCHON COMMERCIAL BANK).

30. JANG, Song Chol; DOB 12 Mar 1967; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; KOMID representative in Russia (individual) [DPRK2].

31. JANG, Sung Nam, Dalian, China; DOB 14 Jul 1970; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport 563120368 (Korea, North) issued 22 Mar 2013 expires 22 Mar 2018; Chief of the Tangun Trading Corporation branch in Dalian, China (individual) [NPWMD] (Linked To: KOREA TANGUN TRADING CORPORATION).

32. JANG, Yong Son; DOB 20 Feb 1957; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; KOMID Representative in Iran (individual) [DPRK2].

33. JI, Sang Jun (a.k.a. CHI, Sang-chun), Moscow, Russia; DOB 03 May 1971; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (individual) [DPRK4].

34. JO, Chol Song (a.k.a. CHO, Ch'o'l-so'ng), Dandong, China; DOB 25 Sep 1984; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport 654320502 expires 16 Sep 2019; Korea Kwangson Banking Corporation Deputy Representative (individual) [NPWMD] (Linked To: KOREA KWANGSON BANKING CORP).

35. JO, Kyong-Chol (a.k.a. CHO, Kyo'ng-ch'o'l), Korea, North; DOB 1944 to 1945; POB Korea, North; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; DPRK Director of Military Security Command (individual) [DPRK2].

36. JO, Yong Chol (a.k.a. CHO, Yong Chol), Syria; DOB 30 Sep 1973; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; North Korea's Ministry of State Security Official (individual) [DPRK2].

37. JO, Yong-Won (a.k.a. CHO, Yongwon), Korea, North; DOB 24 Oct 1957; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Vice Director of the Organization and Guidance Department (individual) [DPRK2].

38. JON, Myong Guk (a.k.a. CHO'N, Myo'ng-kuk; a.k.a. JON, Yong Sang), Syria; DOB 18 Oct 1976; alt. DOB 25 Aug 1976; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 4721202031 (Korea, North)

expires 21 Feb 2017; Diplomatic Passport 836110035 expires 01 Jan 2020; Tanchon Commercial Bank Representative in Syria (individual) [NPWMD] (Linked To: TANCHON COMMERCIAL BANK).

39. JONG, Man Bok (a.k.a. CHO'NG, Man-pok), Dandong, China; DOB 23 Dec 1958; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Korea Ryonbong General Corporation Representative in Dandong, China (individual) [DPRK2].

40. JONG, Song Hwa (Korean: 정성화); DOB 05 Feb 1970; nationality Korea, North; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations,, sections 510.201 and 510.210; Passport 927220230 (Korea, North) issued 11 May 2017 expires 11 May 2022 (individual) [DPRK4].

41. JONG, Yong Su, Korea, North; DOB 15 Dec 1950; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport 563310172; Minister of Labor (individual) [DPRK2].

42. KANG, Chol Su, Linjiang, China; DOB 13 Feb 1969; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 472234895 (Korea, North); Korea Ryonbong General Corporation Official (individual) [NPWMD] (Linked To: KOREA RYONBONG GENERAL CORPORATION).

43. KANG, Min, Beijing, China; DOB 07 May 1980; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport 563132918 expires 04 Feb 2018; Korea Daesong Bank representative (individual) [DPRK4].

44. KANG, Mun-kil (a.k.a. JIAN, WenJi), Korea, North; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport PS 472330208 (Korea, North) expires 04 Jul 2017 (individual) [NPWMD] (Linked To: NAMCHONGANG TRADING CORPORATION).

45. KANG, P'il-Hun (a.k.a. KANG, Phil Hun; a.k.a. KANG, Pil Hoon), Korea, North; DOB 11 Jun 1943; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Director of the General Political Bureau of the Ministry of People's Security (individual) [DPRK2].

46. KANG, Ryong; DOB 21 Aug 1968; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; KOMID official in Syria (individual) [DPRK2].

47. KANG, Song Nam, Korea, North; DOB 28 Jul 1962; POB North P'yo'ngan Province, North Korea; citizen Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 654410025 (Korea, North) expires 14 Oct 2019; Bureau Director (individual) [DPRK3] (Linked To: MINISTRY OF STATE SECURITY).

48. KIL, Jong Hun; DOB 20 Feb 1972; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 472410022; KOMID Representative in Namibia (individual) [DPRK2].

49. KIM, Chol (a.k.a. KIM, Ch'o'l), Dalian, China; DOB 27 Sep 1964; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Korea United Development Bank Representative (individual) [DPRK4].

50. KIM, Chol Nam, Korea, North; DOB 19 Feb 1970; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 563120238 (Korea, North); President of Korea Kumsan Trading Corporation (individual) [NPWMD] (Linked To: KOREA KUMSAN TRADING CORPORATION).

51. KIM, Chol Sam; DOB 11 Mar 1971; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Treasurer, Daedong Credit Bank (individual) [NPWMD].

52. KIM, Ho Kyu (a.k.a. KIM, Ho Gyu; a.k.a. KIM, Ho'-kyu; a.k.a. KIM, Ho-Kyu; a.k.a. PARK, Aleksei), Nakhodka, Russia; DOB 15 Sep 1970; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Korea Ryonbong General Corporation Official (individual) [DPRK2].

53. KIM, Hyok Chol (a.k.a. KIM, Hyo'k-ch'o'l), Zhuhai, China; DOB 09 Jul 1978; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 472235761 expires 06 Jun 2017; Korea United Development Bank representative (individual) [DPRK4].

54. KIM, Il-Nam (a.k.a. KIM, Il Nam), Korea, North; DOB 09 Apr 1958; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Chief, South Hamgyong Province, Ministry of State Security (individual) [DPRK2].

55. KIM, Jong Man (a.k.a. KIM, Cho'ng-man), Korea, North; Zhuhai, China; DOB 16 Jul 1956; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 918320780; Korea United Development Bank representative (individual) [DPRK4].

56. KIM, Jong Sik (a.k.a. KIM, Cho'ng-sik), Korea, North; DOB 01 Jan 1967 to 31 Dec 1969; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Deputy Director of the Workers' Party of Korea Military Industry Department (individual) [DPRK2].

57. KIM, Jong Un, Korea, North; DOB 08 Jan 1984; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Chairman of the Workers' Party of Korea (individual) [DPRK3].

58. KIM, Jung Jong (a.k.a. KIM, Chung Chong), Vietnam; DOB 07 Nov 1966; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 199421147 (Korea, North) expires 29 Dec 2014; alt. Passport 381110042 (Korea, North) expires 25 Jan 2016; alt. Passport 563210184 (Korea, North) expires 18 Jun 2018; Tanchon Commercial Bank Representative in Vietnam (individual) [NPWMD] (Linked To: TANCHON COMMERCIAL BANK).

59. KIM, Kang Jin (a.k.a. KIM, Kang-chin), Korea, North; DOB 22 Apr 1961; POB Pyongyang, North Korea; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Director, External Construction Bureau (individual) [DPRK2].

60. KIM, Ki Nam, Korea, North; DOB 28 Aug 1929; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Director of the Workers' Party of Korea Propaganda and Agitation Department (individual) [DPRK2].

61. KIM, Kwang Chun; DOB 20 Apr 1967; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Korea Ryungseng Trading Corporation Representative in Shenyang, China (individual) [DPRK2].

62. KIM, Kwang Hyok, Burma; DOB 20 Apr 1970; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 654210025 (Korea, North); Korean Mining Development Trading Corporation Representative in Burma (individual) [DPRK2] (Linked To: KOREA MINING DEVELOPMENT TRADING CORPORATION).

63. KIM, Kwang Yon; DOB 30 Jul 1966; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 563210059 (individual) [DPRK2].

64. KIM, Kwang-Il, Beijing, China; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Tanchon Commercial Bank Deputy Representative to Beijing, China (individual) [NPWMD].

65. KIM, Kyong Hak (a.k.a. KIM, Kyo'ng-hak), Zhuhai, China; DOB 27 Nov 1973; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 654231856; Korea Ryonbong

General Corporation Representative in Zhuhai, China (individual) [DPRK2].

66. KIM, Kyong Hyok (a.k.a. KIM, Kyo'ng-hyo'k), Shanghai, China; DOB 05 Nov 1985; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Cheil Credit Bank representative (individual) [DPRK4].

67. KIM, Kyong Il (a.k.a. KIM, Kyo'ng-il), Libya; DOB 01 Aug 1979; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport 836210029; Foreign Trade Bank of the Democratic People's Republic of Korea deputy chief representative in Libya (individual) [DPRK2].

68. KIM, Kyong Nam (a.k.a. KIM, Kyo'ng-Nam), Russia; DOB 11 Jul 1976; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Foreign Trade Bank of the Democratic People's Republic of Korea Representative in Russia (individual) [NPWMD] (Linked To: FOREIGN TRADE BANK OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA).

69. KIM, Kyong Ok (a.k.a. KIM, Kyong Ok), Korea, North; DOB 01 Jan 1937 to 31 Dec 1938; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; First Vice Director of the Organization and Guidance Department (individual) [DPRK2].

70. KIM, Kyu; DOB 30 Jul 1968; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; KOMID External Affairs Officer (individual) [DPRK2].

71. KIM, Man Chun (a.k.a. KIM, Man-ch'un), No. 567 Xinshi Street, Linjiang City, China; DOB 25 May 1966; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport PS654320308; Korea Ryonbong General Corporation Representative in Linjiang, China (individual) [DPRK2].

72. KIM, Min Chol, Vietnam; DOB 21 Sep 1967; POB North Korea; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Diplomat at North Korean Embassy (individual) [DPRK2].

73. KIM, Mun Chol (a.k.a. KIM, Mun-ch'o'l), Dandong, China; DOB 25 Mar 1957; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Korea United Development Bank representative (individual) [DPRK3] (Linked To: KOREA UNITED DEVELOPMENT BANK).

74. KIM, Nam Ung, Moscow, Russia; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 654110043 (Korea, North); Ilsim International Bank representative (individual) [DPRK3] (Linked To: ILSIM INTERNATIONAL BANK).

75. KIM, Pyong Chan (a.k.a. KIM, Pyo'ng-ch'an), Korea, North; Zhuhai, China; DOB 09 Jun 1961; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Workers' Party of Korea Official (individual) [DPRK2].

76. KIM, Sang-ho, Yanji, China; DOB 16 May 1957; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 563337601; Korea Daesong Bank representative (individual) [DPRK4].

77. KIM, Se Gon; DOB 13 Nov 1969; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 472310104 (Korea, North); Representative of Ministry of Atomic Energy Industry (individual) [NPWMD] (Linked To: MINISTRY OF ATOMIC ENERGY INDUSTRY).

78. KIM, Sok Chol, Burma; DOB 08 May 1955; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 472310082; North Korean Ambassador to Burma (individual) [DPRK2].

79. KIM, Song (a.k.a. KIM, So'ng), Linjiang, China; DOB 11 Jan 1964; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Representative of the Korea Ryonbong General Corporation in Linjiang, China (individual) [DPRK2].

80. KIM, Song Chol (a.k.a. KIM, Hak Song); DOB 26 Mar 1968; alt. DOB 15 Oct 1970; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 654120219 (Korea, North) expires 24 Feb 2019; alt. Passport 381420565 (Korea, North) expires 23 Nov 2016 (individual) [NPWMD] (Linked To: KOREA MINING DEVELOPMENT TRADING CORPORATION).

81. KIM, Su-Kwang (a.k.a. KIM, Son-gwang; a.k.a. KIM, Son-kwang; a.k.a. KIM, Sou-gwang; a.k.a. KIM, Sou-kwang; a.k.a. KIM, Su-gwang); DOB 18 Aug 1976; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male (individual) [DPRK2].

82. KIM, Tong Chol (a.k.a. KIM, Tong-ch'o'l), Shenyang, China; DOB 28 Jan 1966; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Foreign Trade Bank of the Democratic People's Republic of Korea official (individual) [DPRK2].

83. KIM, Tong-chol, 34 Herbst Street, Windhoek, Namibia; DOB 07 Aug 1968; POB North Korea; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport 472336944 issued 10 Sep 2012 expires 10 Sep 2017; Managing Director, Mansudae Overseas Projects; Director, Mansudae Overseas Projects Architectural and Technical Services (PTY) Ltd.; Deputy Managing Director, Qingdao Construction (Namibia) CC (individual) [DPRK3] (Linked To: MANSUDAE OVERSEAS PROJECT GROUP OF COMPANIES; Linked To: MANSUDAE OVERSEAS PROJECTS ARCHITECTURAL AND TECHNICAL SERVICES (PTY) LIMITED; Linked To: QINGDAO CONSTRUCTION (NAMIBIA) CC).

84. KIM, Tong-ho, Vietnam; DOB 18 Aug 1969; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport 745310111 (Korea, North); Tanchon Commercial Bank representative (individual) [DPRK3].

85. KIM, Tong-Myo'ng (a.k.a. KIM, CHIN–SO'K; a.k.a. KIM, HYOK CHOL; a.k.a. KIM, TONG MYONG; a.k.a. ''KIM, JIN SOK''); DOB 1964; alt. DOB 28 Aug 1962; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 290320764 (individual) [NPWMD] (Linked To: TANCHON COMMERCIAL BANK).

86. KIM, Won Hong (a.k.a. KIM, Wo'n-hong), Korea, North; DOB 17 Jul 1945; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Minister of State Security (individual) [DPRK2].

87. KIM, Yo Jong (a.k.a. KIM, Yo'-cho'ng), Korea, North; DOB 26 Sep 1989; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Female; Vice Director of the Workers' Party of Korea Propaganda and Agitation Department (individual) [DPRK2].

88. KIM, Yong Chol (a.k.a. KIM, Yong-Chol; a.k.a. KIM, Young-Cheol; a.k.a. KIM, Young-Chol; a.k.a. KIM, Young-Chul); DOB circa 1947; alt. DOB circa 1946; alt. POB Pyongan-Pukto, North Korea; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (individual) [DPRK].

89. KIM, Yong Chol; DOB 18 Feb 1962; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; KOMID Representative in Iran (individual) [DPRK2].

90. KIM, Yong Su (a.k.a. KIM, Yo'ng-su), Vietnam; DOB 09 Feb 1969; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport 654435458 expires 26 Nov 2019; Chief Representative of the Marine Transport Office in Vietnam (individual) [DPRK2].

91. KIRAKOSYAN, Ruben Ruslanovich, Russia; DOB 03 Mar 1980; citizen Russia; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (individual) [NPWMD] (Linked To: GEFEST–M LLC; Linked To: KOREA TANGUN TRADING CORPORATION).

92. KO, Chol Man (a.k.a. KO, Ch'o'l-man), Shenyang, China; DOB 30 Sep 1967; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 472420180; Foreign Trade Bank of the Democratic People's Republic of Korea representative (individual) [DPRK2].

93. KO, Ch'o'l-Chae, Dalian, China; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Deputy Representative, KOMID (individual) [NPWMD].

94. KO, Il Hwan (a.k.a. KO, Il-hwan), Shenyang, China; DOB 28 Aug 1967; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport 927220424 expires 12 Jun 2022; Korea Daesong Bank Official (individual) [DPRK4].

95. KO, Tae Hun (a.k.a. KIM, Myong Gi); DOB 25 May 1972; Secondary sanctions risk: North Korea Sanctions Regulations, sections

510.201 and 510.210; Passport 563120630 (Korea, North) expires 20 Mar 2018; Tanchon Commercial Bank Representative (individual) [NPWMD] (Linked To: TANCHON COMMERCIAL BANK).

96. KOLCHANOV, Vasili Aleksandrovich (Cyrillic: КОЛЧАНОВ, Василий Александрович) (a.k.a. KOLCHANOV, Vasiliy Aleksandrovich; a.k.a. KOLCHANOV, Vasily); DOB 25 Mar 1946; Secondary sanctions risk: North Korea Sanctions Regulations,, sections 510.201 and 510.210; Profinet Director General (individual) [DPRK4] (Linked To: PROFINET PTE. LTD.).

97. KU, Ja Hyong (a.k.a. KU, Cha-hyo'ng), Libya; DOB 08 Sep 1957; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Foreign Trade Bank of the Democratic People's Republic of Korea chief representative in Libya (individual) [DPRK2].

98. KU, Sung Sop (a.k.a. KU, Seung Sub; a.k.a. KU, Su'ng-so'p; a.k.a. KU, Young Hyok), Shenyang, China; DOB 07 Nov 1959; POB Pyongan-bukdo, North Korea; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 321233 (Korea, North); Consul General, Shenyang, China (individual) [DPRK2].

99. KWAK, Chong-chol (a.k.a. KWAK, Jong-chol), Dubai, United Arab Emirates; DOB 01 Jan 1975; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport 563220533 (Korea, North) (individual) [DPRK4].

100. LAI, Leonard (a.k.a. LAI, Yong Chian); DOB 16 Jun 1958; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport E3251534E (Singapore) expires 20 Mar 2018 (individual) [DPRK].

101. LI, Hong Ri (Chinese Simplified: 李红日) (a.k.a. LI, Hongri; a.k.a. RI, Hong-il), China; DOB 05 Jul 1964; nationality China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male (individual) [DPRK3] (Linked To: RI, Song-hyok).

102. LUO, Chuanxu, China; DOB 15 Jan 1986; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; National Foreign ID Number 210621198601152385 (China); Financial Manager, Dandong Hongxiang Industrial Development Co Ltd (individual) [NPWMD] (Linked To: DANDONG HONGXIANG INDUSTRIAL DEVELOPMENT CO LTD).

103. MA, Xiaohong, China; DOB 15 Dec 1971; nationality China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport G31122619 (China) issued 02 Sep 2008 expires 01 Sep 2018; National Foreign ID Number 210603197112150023 (China); Director of Dandong Hongxiang Industrial Development Co Ltd (individual) [NPWMD] (Linked To: DANDONG HONGXIANG INDUSTRIAL DEVELOPMENT CO LTD).

104. MICHURIN, Igor Aleksandrovich, Russia; DOB 27 Jun 1978; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport 8908104469 (individual) [NPWMD] (Linked To: KOREA TANGUN TRADING CORPORATION; Linked To: ARDIS-BEARINGS LLC).

105. MIN, Byong Chol (a.k.a. MIN, Byong Chun; a.k.a. MIN, Byong-chol; a.k.a. MIN, Pyo'ng-ch'o'l), Korea, North; DOB 10 Aug 1948; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Member of the Worker's Party of Korea's Organization and Guidance Department (individual) [DPRK2].

106. MUN, Cho'ng-Ch'o'l, C/O Tanchon Commercial Bank, Saemaeul 1-Dong, Pyongchon District, Pyongyang, Korea, North; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Tanchon Commercial Bank Representative (individual) [NPWMD].

107. MUN, Kyong Hwan (a.k.a. MUN, Kyo'ng-hwan), Korea, North; Dandong, China; DOB 22 Aug 1967; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 381120660 expires 25 Mar 2016; Bank of East Land representative (individual) [DPRK4].

108. O, Chong Ok (a.k.a. O, Chong Euk; a.k.a. O, Chong-kuk), Korea, North; DOB 01 Jan 1953 to 31 Dec 1953; POB North Hamgyo'ng Province, North Korea; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Director of the First Bureau of the Reconnaissance General Bureau (individual) [DPRK2].

109. O, Kuk-Ryol (a.k.a. O, Ku'k-ryo'l), Korea, North; DOB 07 Jan 1930; POB Onso'ng County, North Hambuk Province, Democratic People's Republic of Korea; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vice Chairman of the National Defense Commission (individual) [NPWMD] [DPRK2] (Linked To: NATIONAL DEFENSE COMMISSION).

110. PAE, Won Uk (a.k.a. PAE, Wo'n-uk), Beijing, China; DOB 22 Aug 1969; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport 472120208 (Korea, North) expires 22 Feb 2017; Korea Daesong Bank representative (individual) [DPRK4].

111. PAEK, Chang-Ho (a.k.a. PAEK, Ch'ang-Ho; a.k.a. PAK, Chang-Ho); DOB 18 Jun 1964; POB Kaesong, DPRK; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 381420754 issued 07 Dec 2011 expires 07 Dec 2016 (individual) [NPWMD].

112. PAEK, Jong Sam (a.k.a. PAEK, Chong-sam), Shenyang, China; DOB 17 Jan 1964; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (individual) [DPRK4].

113. PAEK, Se-Bong (a.k.a. PAEK, Se Pong); DOB 21 Mar 1938; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Chairman, Second Economic Committee (individual) [NPWMD].

114. PAK, Bong Nam (a.k.a. LUI, Wai Ming; a.k.a. PAK, Pong Nam; a.k.a. PAK, Pong-nam), Shenyang, China; DOB 06 May 1969; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; ILSIM International Bank Representative in Shenyang, China (individual) [DPRK4].

115. PAK, Chol Nam (a.k.a. PAK, Ch'o'l-nam), Beijing, China; DOB 16 Jun 1971; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 745420413 expires 19 Nov 2020; Cheil Credit Bank representative in Beijing (individual) [DPRK4].

116. PAK, Chun Il, Egypt; DOB 28 Jul 1954; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 563410091 (Korea, North); North Korean Ambassador to Egypt (individual) [DPRK2].

117. PAK, Han Se (a.k.a. KANG, Myong Chol), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 290410121 (Korea, North); Vice Chairman of the Second Economic Committee (individual) [NPWMD] (Linked To: SECOND ECONOMIC COMMITTEE).

118. PAK, Il-Kyu (a.k.a. PAK, Il-Gyu), Shenyang, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport 563120235; Korea Ryonbong General Corporation Official (individual) [NPWMD] (Linked To: KOREA PUGANG TRADING CORPORATION).

119. PAK, Kwang Hun (a.k.a. BAK, Gwang Hun; a.k.a. PAK, Gwang Hun; a.k.a. PAK, Kwang-hun), Vladivostok, Russia; DOB 01 Jan 1970 to 31 Dec 1970; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Representative of Korea Ryonbong General Corporation in Vladivostok, Russia (individual) [DPRK2].

120. PAK, Mun Il (a.k.a. PAK, Mun-il), Yanji, China; DOB 01 Jan 1965; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport

563335509 expires 27 Aug 2018; Korea Daesong Bank official (individual) [DPRK4].

121. PAK, To-Chun (a.k.a. PAK, Do Chun; a.k.a. PAK, To'-Ch'un); DOB 09 Mar 1944; POB Nangim County, Chagang Province, Democratic People's Republic of Korea; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (individual) [NPWMD].

122. PAK, Tong Sok (a.k.a. PAK, Tong-So'k), Abkhazia, Georgia; DOB 15 Apr 1965; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 745120209 (Korea, North) expires 26 Feb 2020; Korea Ryonbong General Corporation Official (individual) [DPRK2].

123. PAK, Yong Sik (a.k.a. PAK, Yo'ng-sik), Korea, North; DOB 1950; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Member of the Workers' Party of Korea Central Military Commission (individual) [DPRK2] (Linked To: WORKERS' PARTY OF KOREA CENTRAL MILITARY COMMISSION).

124. PANG, Su Nam (a.k.a. PANG, So-nam; a.k.a. PANG, Sunam), Zhuhai, China; DOB 01 Oct 1964; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 472110138; ILSIM International Bank representative in Zhuhai, China (individual) [DPRK2] [DPRK4].

125. PARK, Jin Hyok (a.k.a. DAVID, Andoson; a.k.a. HENNY, Watson; a.k.a. KIM, Hyon U; a.k.a. KIM, Hyon Woo; a.k.a. KIM, Hyon Wu; a.k.a. PAK, Ch'in-hyo'k; a.k.a. PAK, Jin Hek; a.k.a. PAK, Jin Hyok); DOB 15 Aug 1984; alt. DOB 18 Oct 1984; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations,, sections 510.201 and 510.210; Passport 290333974 (Korea, North) (individual) [DPRK3].

126. PISKLIN, Mikhail Yur'evich, Russia; DOB 01 Dec 1980; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport 71 0588176 (individual) [DPRK3].

127. RA, Kyong-Su (a.k.a. CHANG, MYONG HO; a.k.a. CHANG, MYONG–HO; a.k.a. CHANG, MYO'NG–HO), Beijing, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Tanchon Commercial Bank Representative to Beijing, China (individual) [NPWMD] (Linked To: TANCHON COMMERCIAL BANK).

128. RI, Chong Chol (a.k.a. RI, Jong Chol); DOB 12 Apr 1970; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 199110092 (Korea, North) expires 17 Mar 2014; alt. Passport 472220503 (Korea, North) expires 06 Jun 2018; alt. Passport 654220197 (Korea, North) expires 07 May 2019 (individual) [DPRK2] (Linked To: KOREA MINING DEVELOPMENT TRADING CORPORATION).

129. RI, Chun Hwan (a.k.a. RI, Ch'un-hwan), Zhuhai, China; DOB 21 Aug 1957; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 563233049 expires 09 May 2018; Foreign Trade Bank of the Democratic People's Republic of Korea representative (individual) [DPRK2].

130. RI, Chun Song (a.k.a. RI, Ch'un-so'ng), Beijing, China; DOB 30 Oct 1965; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 654133553 expires 11 Mar 2019; Foreign Trade Bank of the Democratic People's Republic of Korea representative (individual) [DPRK2].

131. RI, Ho Nam (a.k.a. RI, Ho-nam), Beijing, China; DOB 03 Jan 1967; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 654120210 expires 21 Feb 2019; Ryugyong Commercial Bank representative (individual) [DPRK4].

132. RI, Hong-Sop, c/o General Bureau of Atomic Energy, Haeudong, Pyongchen District, Pyongyang, Korea, North; DOB 1940; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (individual) [NPWMD].

133. RI, Jae Il (a.k.a. RI, Chae-Il), Korea, North; DOB 01 Jan 1934 to 31 Dec 1934; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; First Vice Director of the Workers' Party of Korea Propaganda and Agitation Department (individual) [DPRK2].

134. RI, Je-Son (a.k.a. RI, Che-Son), c/o General Bureau of Atomic Energy, Haeudong, Pyongchen District, Pyongyang, Korea, North; DOB 1938; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (individual) [NPWMD].

135. RI, Jong Won (a.k.a. RI, Cho'ng-Wo'n; a.k.a. RI, Jung Won), Moscow, Russia; DOB 22 Apr 1971; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport PS654320421 expires 11 Mar 2019 (individual) [DPRK2].

136. RI, Man Gon, Korea, North; DOB 1945; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (individual) [DPRK2].

137. RI, Myong Hun (a.k.a. RI, Myo'ng-hun), Korea, North; DOB 14 Mar 1969; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport 381420089 expires 11 Oct 2016 (individual) [DPRK2].

138. RI, Pyong Chol (a.k.a. RI, Pyo'ng-ch'o'l), Korea, North; DOB 01 Jan 1948 to 31 Dec 1948; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; First Vice Department Director of the Workers' Party of Korea Central Committee (individual) [DPRK2].

139. RI, Song Chol (a.k.a. RI, So'ng-ch'o'l), Korea, North; DOB 15 Aug 1959; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 290210124 (Korea, North) expires 24 May 2015; Ministry of People's Security Counselor (individual) [DPRK3] (Linked To: MINISTRY OF PEOPLE'S SECURITY).

140. RI, Song-hyok (a.k.a. LI, Cheng He), Beijing, China; DOB 19 Mar 1965; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport 654234735 (Korea, North) (individual) [DPRK3].

141. RI, Su Yong, Cuba; DOB 25 Jun 1968; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport 654310175; Korea Ryonbong General Corporation Official (individual) [NPWMD] (Linked To: KOREA RYONBONG GENERAL CORPORATION).

142. RI, Thae Chol (a.k.a. RI, Tae-Chol; a.k.a. RI, T'ae-Ch'o'l); DOB 01 Jan 1947 to 31 Dec 1947; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; DPRK First Vice Minister of People's Security (individual) [DPRK2] (Linked To: KOREAN PEOPLE'S ARMY).

143. RI, Tok Jin (a.k.a. RI, To'k-chin), Ji'an, China; DOB 26 Jul 1957; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Korea Ryonbong General Corporation Representative in Ji'an, China (individual) [DPRK2].

144. RI, U'n-so'ng (a.k.a. RI, Eun Song; a.k.a. RI, Un Song), Moscow, Russia; DOB 23 Jul 1969; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Korea United Development Bank representative (individual) [DPRK4].

145. RI, Won Ho, Egypt; DOB 17 Jul 1964; citizen Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 381310014 (Korea, North) expires 12 Jul 2016; North Korea's Ministry of State Security Official (individual) [DPRK2].

146. RI, Yong Mu (a.k.a. RI, Yong-Mu), Korea, North; DOB 25 Jan 1925; POB South Pyo'ngan Province, Pyo'ngso'ng; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vice Chairman of the National Defense Commission (individual) [DPRK2] (Linked To: NATIONAL DEFENSE COMMISSION).

147. RYANG, Tae Chol (a.k.a. RYANG, Tae-ch'o'l), Tumen, China; DOB 07 Jan 1969; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Representative of the Korea Ryonbong General Corporation in Tumen, China (individual) [DPRK2].

148. RYOM, Hui-bong (a.k.a. RYO'M, Hu'i-pong), Dubai, United Arab Emirates; DOB 18 Sep 1961; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport 745120026 (Korea, North) (individual) [DPRK4].

149. RYU, Jin; DOB 07 Aug 1965; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 563410081; KOMID official in Syria (individual) [DPRK2].

150. SERBIN, Andrey, Russia; DOB 01 Nov 1986; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male (individual) [DPRK3].

151. SIN, Yong Il (a.k.a. SHIN, Yong Il; a.k.a. SIN, Yo'ng Il), Korea, North; DOB 28 Feb 1948; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport PD654210116 (Korea, North); Deputy Director of the Military Security Command (individual) [DPRK2].

152. SON, Jong Hyok (a.k.a. SON, Min), Egypt; DOB 20 May 1980; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (individual) [NPWMD] (Linked To: KOREA MINING DEVELOPMENT TRADING CORPORATION).

153. SON, Mun San; DOB 23 Jan 1951; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; External Affairs Bureau Chief, General Bureau of Atomic Energy (individual) [NPWMD].

154. STEIGER, Jakob, c/o KOHAS AG, Fribourg, FR, Switzerland; DOB 27 Apr 1941; POB Altstatten, SG, Switzerland; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (individual) [NPWMD].

155. SU, Lu-Chi (a.k.a. TSAI SU, Lu-Chi), C/O TRANS MERITS CO. LTD., Taipei, Taiwan; C/O GLOBAL INTERFACE COMPANY INC., Taipei, Taiwan; DOB 07 Feb 1950; alt. DOB Nov 1950; POB Yun Lin Hsien, Taiwan; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 210215095 (Taiwan); Corporate Officer (individual) [NPWMD].

156. SUN, Sidong, Liaoning, China; DOB 11 May 1976; POB Dandong, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport G55296890 (China) issued 15 Sep 2011 expires 14 Sep 2021; National ID No. 210623197605112215 (individual) [DPRK4].

157. SUN, Wei (Chinese Simplified: 孙伟), 224-4 Shifu Da Lu, RM 1305, Heping District, Sheyang City, Liaoning Province, China; 200-69 Yinhe East Road, Tianfu County, Benxi Manchurian Autonomous Region, Liaoning Province, China; DOB 01 Jul 1982; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; National ID No. 210521198207010412 (China) expires 13 Aug 2029 (individual) [NPWMD] (Linked To: FOREIGN TRADE BANK OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA).

158. TSAI, Hsein Tai (a.k.a. TSAI, ALEX H.T.), C/O TRANS MERITS CO. LTD, Taipei, Taiwan; C/O GLOBAL INTERFACE COMPANY INC., Taipei, Taiwan; DOB 08 Aug 1945; POB Tainan, Taiwan; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 131134049 (Taiwan); General Manager—GLOBAL INTERFACE COMPANY INC. (individual) [NPWMD].

159. TSANG, Yung Yuan (Chinese Traditional: 張永源) (a.k.a. TSANG, Neil; a.k.a. TSANG, Niel; a.k.a. TSANG, Yun Yuan), 8th Floor, Number 466, Sec. 2, Neihu Road, Taipei, Taiwan; DOB 20 Oct 1957; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Gender Male; Passport 302001581 (Taiwan) (individual) [DPRK3].

160. YO'N, Cho'ng-Nam, Dalian, China; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Chief Representative, KOMID (individual) [NPWMD].

161. YU, Chol U, Korea, North; DOB 08 Aug 1959; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Director, National Aerospace Development Administration (individual) [DPRK2] (Linked To: NATIONAL AEROSPACE DEVELOPMENT ADMINISTRATION).

162. YU, Kwang Ho; DOB 18 Oct 1956; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (individual) [DPRK2].

163. YUN, Ho-Jin (a.k.a. YUN, Ho-Chin), c/o Namchongang Trading Corporation, Pyongyang, Korea, North; DOB 13 Oct 1944; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (individual) [NPWMD].

164. ZHOU, Jianshu (a.k.a. CHOW, Tony), China; DOB 15 Jul 1971; nationality China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport E09598913 (China) issued 14 Apr 2014 expires 13 Apr 2024; National Foreign ID Number 210602197107153012 (China); General Manager, Dandong Hongxiang Industrial Development Co Ltd (individual) [NPWMD] (Linked To: DANDONG HONGXIANG INDUSTRIAL DEVELOPMENT CO LTD).

Entities

1. 7–28 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8898831 (vessel) [DPRK4] (Linked To: YUSONG SHIPPING CO).

2. ACADEMY OF NATIONAL DEFENSE SCIENCE, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

3. AGRICULTURAL DEVELOPMENT BANK, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK4].

4. AIR KORYO (a.k.a. AIRKORYO), Sunan District, Pyongyang, Korea, North; Swissotel, Hongkong-Macau Center, Dong Si Shi Tiao Li Jiao Qiao, Beijing 10027, China; Chilbosan Hotel, No 81, Shyiwei Road, Heping District, Shenyang, China; Room 412, XinHui Bldg, No 1197 Rd Husong, District SongJiang, Shanghai, China; Soon Vijai Conominun, Room 208, Floor 2, New Petchburi Road, Khwaeng Bangkapi, Huai Khwang, Bangkok 10310, Thailand; Airport, 45, Portovaya Street, Artyom, Primorski Krai 692760, Russia; Mosfilimovskaya 72, Moscow 101000, Russia; Friedrichstr 106B, Berlin 10117, Germany; 20–114, Level 20, Menara Safuan, No.80, Jalan Ampang, Kuala Lumpur 50450, Malaysia; Office 10, 2nd floor, Mghateer complex 31, Block 40, Al Farwaniyah, Kuwait; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

5. AM NOK GANG (a.k.a. AP ROK GANG) General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8132835 (vessel) [DPRK].

6. AMROGGANG DEVELOPMENT BANK (a.k.a. AMNOKKANG DEVELOPMENT BANK), Tongan-dong, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

7. AN SAN 1 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration

Identification IMO 7303803 (vessel) [DPRK4] (Linked To: KOREA ANSAN SHIPPING COMPANY).

8. AO NNK–PRIMORNEFTEPRODUCT (a.k.a. IPC–PRIMORNEFTEPRODUCT JSC; a.k.a. NNK–PRIMORNEFTEPRODUKT, AO; a.k.a. OAO PRIMORNEFTEPRODUCT), 55 Ul. Fontannaya, Vladivostok, Primorskiy Krai 690091, Russia; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3] (Linked To: INDEPENDENT PETROLEUM COMPANY).

9. ARDIS-BEARINGS LLC, Office 35, Number2, 1/13/6 Pokrovka Street, Moscow 101000, Russia; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD] (Linked To: KOREA TANGUN TRADING CORPORATION).

10. ASIA BRIDGE 1 8,015DWT; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8916580 (vessel) [DPRK4] (Linked To: HUAXIN SHIPPING HONGKONG LTD).

11. BAEK MA KANG General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 7944683 (vessel) [DPRK].

12. BANK OF EAST LAND (a.k.a. DONGBANG BANK; a.k.a. TONGBANG BANK; a.k.a. TONGBANG U'NHAENG), PO Box 32, BEL Building, Jonseung-Dong, Moranbong District, Pyongyang, Korea, North; SWIFT/BIC BOELKPPY; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK].

13. BEIJING CHENGXING TRADING CO. LTD. (Chinese Simplified: 北京成兴贸易有限公司), Room 2206 Floor 19, 602 Wangjing Yuan, Zhaoyang District, Beijing, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK4].

14. BELLA Russia flag; Secondary sanctions risk: North Korea Sanctions Regulations,, sections 510.201 and 510.210; Vessel Registration Identification IMO 8808264 (vessel) [DPRK4] (Linked To: GUDZON SHIPPING CO LLC).

15. BOGATYR Russia flag; Secondary sanctions risk: North Korea Sanctions Regulations,, sections 510.201 and 510.210; Vessel Registration Identification IMO 9085730 (vessel) [DPRK4] (Linked To: GUDZON SHIPPING CO LLC).

16. CENTRAL BANK OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA, 58–1 Mansu-dong, Sungri Street, Central District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

17. CHANG AN SHIPPING & TECHNOLOGY (Chinese Traditional: 長安海運技術有限公司) (a.k.a. CHANG AN SHIPPING AND TECHNOLOGY), Room 2105, DL1849, Trend Centre, 29-31 Cheung Lee Street, Chai Wan, Hong Kong, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5938411 [DPRK4].

18. CHEIL CREDIT BANK (a.k.a. FIRST CREDIT BANK; f.k.a. ''KYONGYONG CREDIT BANK''), 3–18 Pyongyang Information Center, Potonggang District, Pyongyang, Korea, North; Beijing, China; Shenyang, China; Shanghai, China; SWIFT/BIC KYCBKPPY; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK4].

19. CH'OLHYO'N OVERSEAS CONSTRUCTION COMPANY, Kuwait; Algeria; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

20. CHON MA SAN Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8660313 (vessel) [DPRK4] (Linked To: KOREA ACHIM SHIPPING CO).

21. CHON MYONG 1 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8712362 (vessel) [DPRK4] (Linked To: CHONMYONG SHIPPING CO).

22. CHONG BONG Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8909575 (vessel) [DPRK3] (Linked To: CHONGBONG SHIPPING CO LTD).

23. CHONG CHON GANG General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 7937317 (vessel) [DPRK].

24. CHONG RIM 2 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8916293 (vessel) [DPRK3] (Linked To: OCEAN BUNKERING JV CO).

25. CHONGBONG SHIPPING CO LTD, Room 502, 90, Ponghak-dong, Pyongchon-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 5878589 [DPRK3].

26. CHONGCHONGANG SHIPPING COMPANY LIMITED (a.k.a. CHONG CHON GANG SHIPPING CO. LTD; a.k.a. CHONGCHONGANG SHIPPING CO LTD), 817, Haeun, Donghung-dong, Central District, Pyongyang, Korea, North; 817, Haeun, Tonghun-dong, Chung-gu, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Identification Number IMO 5342883 [DPRK].

27. CHONMYONG SHIPPING CO (a.k.a. CHON MYONG SHIPPING COMPANY LIMITED), Kalrimgil 2-dong, Mangyongdae-guyok, Pyongyang, Korea, North; Saemaul 2-dong, Pyongchon-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5571322 [DPRK4].

28. CK INTERNATIONAL LTD, c/o Korea Uljibong Shipping Co., Jongbaek 1-dong, Rakrang-guyok, Pyongyang, Korea, North; Room 9, Unit A, 3rd Floor, Cheong Sun Tower, 116–118, Wing Lok Street, Sheung Wan, Hong Kong; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5980332 [DPRK4].

29. COMMERCIAL BANK AGROSOYUZ (Cyrillic: КОММЕРЧЕСКИЙ ВАНК АГРОСОЮЗ) (a.k.a. AGROSOYUZ (Cyrillic: АГРОСОЮЗ); a.k.a. AGROSOYUZ LLC (Cyrillic: АГРОСОЮЗ ООО); a.k.a. LLC COMMERCIAL BANK AGROSOYUZ (Cyrillic: ООО КОММЕРЧЕСКИЙ ВАНК АГРОСОЮЗ; Cyrillic: ООО КВ АГРОСОЮЗ)), Ulanskiy pereulok, number 13 building 1,

Moscow 101000, Russia; SWIFT/BIC AGSZRU31; alt. SWIFT/BIC AGSZRU33; Secondary sanctions risk: North Korea Sanctions Regulations,, sections 510.201 and 510.210 [DPRK4].

30. DAEDONG CREDIT BANK (a.k.a. DAE–DONG CREDIT BANK; a.k.a. DCB; a.k.a. TAEDONG CREDIT BANK), Suite 401, Potonggang Hotel, Ansan-Dong, Pyongchon District, Pyongyang, Korea, North; Ansan-dong, Botongang Hotel, Pongchon, Pyongyang, Korea, North; SWIFT/BIC DCBKKPPY; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

31. DAEWON INDUSTRIES (a.k.a. DAEWON INDUSTRY COMPANY; a.k.a. TAEWO'N INDUSTRIES), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

32. DAI HONG DAN General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 7944695 (vessel) [DPRK].

33. DALIAN GLOBAL UNITY SHIPPING CO., LTD. (Chinese Simplified: 大连宁联船务有限公司) (a.k.a. DALIAN GLOBAL UNITY SHIPPING AGENCY), Dalian, China; Pyongyang, Korea, North; Chongjin, Korea, North; Najin, Korea, North; Hungnam, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

34. DALIAN SUN MOON STAR INTERNATIONAL LOGISTICS TRADING CO., LTD (Chinese Simplified: 大连天宝国际物流有限公司) (a.k.a. DALIAN TIANBAO INTERNATIONAL LOGISTICS CO., LTD.), Room 1801, Chenggong Building, No. 72 Luxun Road, Zhongshan District, Dalian, Liaoning 116000, China; 49 Zhonghsan Road, Shahekou District, Dalian 116021, China; Secondary sanctions risk: North Korea Sanctions Regulations,, sections 510.201 and 510.210 [DPRK4].

35. DANDONG DONGYUAN INDUSTRIAL CO., LTD. (a.k.a. DANDONG DONGYUAN INDUSTRIAL CO.; a.k.a. DANDONG DONGYUAN INDUSTRY CO., LTD.), No. 34–7, Zhenba Street, Zhenxing District, Dandong 118001, China; Rm 3002 No 99 3 1 Binjiang Middle Rd, Zhenxing District, Dandong, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; D–U–N–S Number 542957624 [DPRK4].

36. DANDONG HONGDA TRADE CO. LTD., China; Room 301, No. 1 Building, Business & Tourist Section, Dandong, Liaoning, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK4].

37. DANDONG HONGXIANG INDUSTRIAL DEVELOPMENT CO LTD, Dandong, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

38. DANDONG JINXIANG TRADE CO., LTD. (a.k.a. CHINA DANDONG KUMSANG TRADE COMPANY, LIMITED; a.k.a. DANDONG METAL COMPANY; a.k.a. JINXIANG TRADING COMPANY), Room 303, Unit 2, Building Number 3, Number 99 Binjiang Lu (Road), Zhenxing District, Dandong, China; Room 303–01, Number 99–3, Binjiang Zhong Lu (Road), Dandong, China; Number 5, Tenth Street, Zhenxing District, Dandong, Liaoning, China; 245–11, Number 1 Wanlian Road, Shenhe District, Shenyang, China; Room 1101, No B, Jiadi Building, Business and Tourist, China; Room 303, Unit 2, 3 Haolou, Building 99 Binjiang Middle Rd., Zhenxing, Dandong, Liaoning 118000, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Nationality of Registration China [DPRK4].

39. DANDONG KEHUA ECONOMY & TRADE CO., LTD. (a.k.a. DANDONG KEHUA ECONOMIC AND TRADE CO. LTD.), China; Room 102, 1/F, Antai Garden, Zhenxing District, Dandong, Liaoning 118000, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK4].

40. DANDONG RICH EARTH TRADING CO., LTD., Jiadi Square, Number 64, Binjiang Middle Road, Room 1001, Building B, Dandong City, Liaoning, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD] (Linked To: KOREA KUMSAN TRADING CORPORATION).

41. DANDONG TIANFU TRADE CO., LTD. (Chinese Simplified: 丹东天富贸易有限公司), No. 5, Shiwei Road, Zhenxing District, Dandong City, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

42. DANDONG XIANGHE TRADING CO., LTD. (a.k.a. DANDONG XIANGHE TRADING CORPORATION; a.k.a. DANDONG XIANGHE TRADING LTD. CO; a.k.a. XIANGHE TRADE CO., LTD.), China; No. 603, 2F, Jiadi Square, Developing Zone, Dandong, Liaoning, China; Beida Rd., Pingxiang City, Chongzuo, Guangxi 532600, China; Room 703, No. 7 Building, Fangba, Yanjiang Development Zone, Dandong, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK4].

43. DANDONG ZHICHENG METALLIC MATERIAL CO., LTD. (Chinese Simplified: 丹东至诚金属材料有限公司) (a.k.a. DANDONG CHENGTAI; a.k.a. DANDONG CHISONG METAL MATERIALS COMPANY; a.k.a. DANDONG ZHICHENG METAL MATERIALS CO., LTD; a.k.a. DANDONG ZHICHENG METALLIC MINERAL CO., LIMITED), Dandong, Liaoning, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

44. DANDONG ZHONGSHENG INDUSTRY & TRADE CO., LTD. (Chinese Simplified: 丹东中盛工贸有限公司) (a.k.a. DANDONG ZHONGSENG INDUSTRY & TRADE; a.k.a. DANDONG ZHONGSENG INDUSTRY AND TRADE; a.k.a. DANDONG ZHONGSHENG INDUSTRY AND TRADE CO., LTD.; a.k.a. DANDONG ZHONGSHONG INDUSTRY & TRADE; a.k.a. DANDONG ZHONGSHONG INDUSTRY & TRADE CORPORATION LTD.; a.k.a. DANDONG ZHONGSHONG INDUSTRY AND TRADE; a.k.a. DANDONG ZHONGSHONG INDUSTRY AND TRADE CORPORATION LTD.), Building 34, Chengjian Zone, Shiwei Road, Zhenxing District, Dandong, Liaoning, China; Zhenxing District, Building 34, Dandong, China; Secondary sanctions risk: North Korea Sanctions Regulations,, sections 510.201 and 510.210; Business Registration Number 312106037714354404 (China) [NPWMD] (Linked To: FOREIGN TRADE BANK OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA).

45. DAWN MARINE MANAGEMENT CO LTD, Changgyong 2-dong, Sosong-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Nationality of Registration Korea, North; Company Number 5926921 [DPRK4].

46. DAWNLIGHT General Cargo Mongolia flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9110236 (vessel) [DPRK].

47. DCB FINANCE LIMITED, Akara Building, 24 de Castro Street, Wickhams Cay I, Road Town, Tortola, Virgin Islands, British; Dalian, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

48. DOK CHON General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 7411260 (vessel) [DPRK].

49. DONG FENG 6 5,515DWT Tanzania flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9008201 (vessel) [DPRK4] (Linked To: SHANGHAI DONGFENG SHPG CO LTD).

50. EKO DEVELOPMENT AND INVESTMENT COMPANY (a.k.a. EKO DEVELOPMENT & INVESTMENT FOOD COMPANY; a.k.a. EKO IMPORT AND EXPORT COMPANY), 35 St. Abd al-Aziz al-Sud, al-Manial, Cairo, Egypt; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK2].

51. EVER BRIGHT 88 Sierra Leone flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8914934 (vessel) [DPRK] (Linked To: OCEAN MARITIME MANAGEMENT COMPANY LIMITED).

52. EVER GLORY Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8909915 (vessel) [DPRK4] (Linked To: KOREA MARINE & INDUSTRIAL TRDG).

53. EXTERNAL CONSTRUCTION BUREAU (a.k.a. EXTERNAL CONSTRUCTION GENERAL COMPANY; a.k.a. EXTERNAL CONSTRUCTION GUIDANCE BUREAU), Korea, North; Kuwait; Qatar; United Arab Emirates; Oman; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

54. FIRST OIL JV CO LTD, Jongbaek 1-dong, Rakrang-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5963351 [DPRK4].

55. FOREIGN TRADE BANK OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (a.k.a. KOREA TRADE BANK; a.k.a. MOOYOKBANK; a.k.a. NORTH KOREA'S FOREIGN TRADE BANK), FTB Building, Jungsong-dong, Central District, Pyongyang, Korea, North; SWIFT/BIC FTBDKPPY; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD] [DPRK3].

56. GEFEST–M LLC, Office 401, Structure 1, Building 1, Chermyanskaya Street, Moscow 127081, Russia; Office Space 5, Room 18, Building 5/7 Rozhdestvenka Street, Moscow 107031, Russia; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD] (Linked To: KOREA TANGUN TRADING CORPORATION).

57. GENERAL BUREAU OF ATOMIC ENERGY (a.k.a. GBAE; a.k.a. GENERAL DEPARTMENT OF ATOMIC ENERGY), Haeudong, Pyongchen District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

58. GLOBAL INTERFACE COMPANY INC. (f.k.a. TRANS SCIENTIFIC CORP.), 9F–1, No. 22, Hsin Yi Rd., Sec. 2, Taipei, Taiwan; 1st Floor, No. 49, Lane 280, Kuang Fu S. Road, Taipei, Taiwan; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Business Registration Document #12873346 (Taiwan) [NPWMD].

59. GOLD STAR 3 Cambodia flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8405402 (vessel) [DPRK] (Linked To: OCEAN MARITIME MANAGEMENT COMPANY LIMITED).

60. GOO RYONG Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel

Registration Identification IMO 8201870 (vessel) [DPRK4] (Linked To: GOORYONG SHIPPING CO LTD).

61. GOORYONG SHIPPING CO LTD (f.k.a. GOORYONG SHIPPING BANGKOK), Changgyong 2-dong, Sosong-guyok, Pyongyang, Korea, North; Warranton Ville 458Soi 5Pattanakan Soi 44Suanluang, Bangkok 10250, Thailand; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5055293 [DPRK4].

62. GRAND KARO Cambodia flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8511823 (vessel) [DPRK] (Linked To: OCEAN MARITIME MANAGEMENT COMPANY LIMITED).

63. GREEN PINE ASSOCIATED CORPORATION (a.k.a. CHO'NGSONG UNITED TRADING COMPANY; a.k.a. CHONGSONG YONHAP; a.k.a. CH'O'NGSONG YO'NHAP; a.k.a. CHOSUN CHAWO'N KAEBAL T'UJA HOESA; a.k.a. JINDALLAE; a.k.a. KU'MHAERYONG COMPANY LTD; a.k.a. NATURAL RESOURCES DEVELOPMENT AND INVESTMENT CORPORATION; a.k.a. SAENGP'IL COMPANY), c/o Reconnaissance General Bureau Headquarters, Hyongjesan-Guyok, Pyongyang, Korea, North; Nungrado, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK].

64. GUDZON SHIPPING CO LLC (a.k.a. LLC GUDZON SHIPPING CO; a.k.a. OOO GUDZON SHIPPING CO; a.k.a. SK GUDZON, OOO), ul Tigorovaya 20A, Vladivostok, Primorskiy kray 690091, Russia; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5753988 [DPRK4].

65. HAEJIN SHIP MANAGEMENT COMPANY LIMITED, Tonghung-dong, Chung-guyok, Pyongyang, Korea, North; Tonghung-dong, Central District, Pyongyang, Korea, North; email address *haejinsm@silibank.net.kp;* Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Identification Number IMO 5814866 [DPRK].

66. HANA BANKING CORPORATION LTD (a.k.a. BRILLIANCE BANKING CORPORATION, LTD.; a.k.a. GORGEOUS BANK OF NORTH KOREA; a.k.a. HUALI BANK (Chinese Simplified: 朝鲜华丽银行); a.k.a. HWARYO BANK (Korean: 화려은행)), Haebangsan Hotel, Jungsong-Dong, Sungri Street, Central District, Pyongyang, Korea, North; Dandong, China; SWIFT/BIC BRBKKPP1; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

67. HANA ELECTRONICS JVC (a.k.a. HANA ELECTRONIC JV COMPANY; a.k.a. HANA ELECTRONICS), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK4].

68. HAO FAN 2 11,658DWT; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8747604 (vessel) [DPRK4] (Linked To: SHEN ZHONG INTERNATIONAL SHPG).

69. HAO FAN 6 13,500DWT; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8628597 (vessel) [DPRK4] (Linked To: SHEN ZHONG INTERNATIONAL SHPG).

70. HAP JANG GANG 6 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9066540 (vessel) [DPRK4] (Linked To: HAPJANGGANG SHIPPING CORP).

71. HAPJANGGANG SHIPPING CORP, Kumsong 3-dong, Mangyongdae-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5787684 [DPRK4].

72. HESONG TRADING CORPORATION, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

73. HOE RYONG Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9041552 (vessel) [DPRK3] (Linked To: HOERYONG SHIPPING CO LTD).

74. HOERYONG SHIPPING CO LTD, 108, Pongnam-dong, Pyongchon-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 5817786 [DPRK3].

75. HONG KONG ELECTRONICS (a.k.a. HONG KONG ELECTRONICS KISH CO), Sanaee St., Kish Island, Iran; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

76. HONGXIANG MARINE HONG KONG LTD (Chinese Traditional: 鴻祥海運(香港)有限公司), Room 1502, 15th Floor, Keen Hung Commercial Building, 80, Queen's Road East, Wan Chai, Hong Kong, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5857588 [DPRK4].

77. HUA FU 10,030DWT Panama flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9020003 (vessel) [DPRK4] (Linked To: CHANG AN SHIPPING & TECHNOLOGY).

78. HUAXIN SHIPPING HONGKONG LTD (Chinese Traditional: 華信船務(香港)有限公司), Room 2105, Trend Centre, 29-31 Chueng Lee Street, Chai Wan, Hong Kong, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5758476 [DPRK4].

79. HWA SONG Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8217685 (vessel) [DPRK4] (Linked To: HWASONG SHIPPING CO LTD).

80. HWANG GUM SAN 2 General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8405270 (vessel) [DPRK].

81. HWASONG SHIPPING CO LTD, Changgyong dong, Sosong-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 543400 [DPRK4].

82. HYOK SIN 2 Bulk Carrier Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8018900 (vessel) [DPRK].

83. ILSIM INTERNATIONAL BANK, Pyongyang, Korea, North; SWIFT/BIC ILSIKPPY; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

84. INDEPENDENT PETROLEUM COMPANY (a.k.a. AKTSIONERNOE OBSHCHESTVO 'NEZAVISIMAYA NEFTEGAZOVAYA KOMPANIYA'; a.k.a. ''NNK, AO''), 1 Arbatskaya Square, Moscow 119019, Russia; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

85. INTERNATIONAL INDUSTRIAL DEVELOPMENT BANK, Jongpyong-Dong, Pyong Chon District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK4].

86. JANG GYONG Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8203933 (vessel) [DPRK4] (Linked To: DAWN MARINE MANAGEMENT CO LTD).

87. JANG JA SAN CHONG NYON HO Bulk Carrier Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8133530 (vessel) [DPRK].

88. JH 86 Cambodia flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8602531 (vessel) [DPRK] (Linked To: OCEAN MARITIME MANAGEMENT COMPANY LIMITED).

89. JI SONG 6 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8898740 (vessel) [DPRK4] (Linked To: PHYONGCHON SHIPPING & MARINE).

90. JI SONG 8 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8503228 (vessel) [DPRK4] (Linked To: PHYONGCHON SHIPPING & MARINE).

91. JIN TAI Sierra Leone flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9163154 (vessel) [DPRK] (Linked To: OCEAN MARITIME MANAGEMENT COMPANY LIMITED).

92. JIN TENG Sierra Leone flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9163166 (vessel) [DPRK] (Linked To: OCEAN MARITIME MANAGEMENT COMPANY LIMITED).

93. JINHOU INTERNATIONAL HOLDINGS CO., LTD. (Chinese Simplified: 金猴集团国际控股有限公司), No. 106, Heping Road, Weihai, Shandong, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

94. JINMYONG JOINT BANK, Korea, North; Dalian, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK4].

95. JINSONG JOINT BANK, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK4].

96. JON JIN 2 Bulk Carrier Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8018912 (vessel) [DPRK].

97. KANG SONG 1 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 6908096 (vessel) [DPRK4] (Linked To: KOREA KUMBYOL TRADING COMPANY).

98. KANGBONG TRADING CORPORATION, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

99. KINGLY WON INTERNATIONAL CO., LTD., Marshall Islands; Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH 96960, Marshall Islands; Taiwan; 8th Floor, Number 466, Section 2, Neihu Road, Taipei, Taiwan; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Commercial Registry Number 90132 (Marshall Islands) [DPRK3] (Linked To: TSANG, Yung Yuan).

100. KOHAS AG, Route des Arsenaux 15, Fribourg, FR 1700, Switzerland; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; C.R. No. CH–217.0.135.719–4 (Switzerland) [NPWMD].

101. KOREA ACHIM SHIPPING CO, Sochang-dong, Chung-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5936312 [DPRK4].

102. KOREA ANSAN SHIPPING COMPANY (a.k.a. KOREA ANSAN SHPG CO), Pyongchon 1-dong, Pyongchon-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5676084 [DPRK4].

103. KOREA COMPLEX EQUIPMENT IMPORT CORPORATION, Rakwon-dong, Pothonggang District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

104. KOREA COMPUTER CENTER (a.k.a. CHOSON COMPUTER CENTER; a.k.a. CHUNG SUN COMPUTER CENTER; a.k.a. KOREA COMPUTER COMPANY), Pyongyang, Korea, North; Germany; China; Syria; India; United Arab Emirates; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

105. KOREA DAEBONG SHIPPING CO, Ansan 1-dong, Pyongchon-guyok, Pyongyang, Korea, North; Secondary sanctions risk:

North Korea Sanctions Regulations, sections 510.201 and 510.210; Nationality of Registration Korea, North; Company Number 5145243 [DPRK4].

106. KOREA DAESONG BANK (a.k.a. CHOSON TAESONG UNHAENG; a.k.a. TAESONG BANK), Segori-dong, Gyongheung St., Potonggang District, Pyongyang, Korea, North; SWIFT/BIC KDBKKPPY; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; PHONE 850 2 381 8221; PHONE 850 2 18111 ext. 8221; FAX 850 2 381 4576; TELEX 360230 and 37041 KDP KP; TGMS daesongbank; EMAIL *kdb@co.chesin.com* [DPRK].

107. KOREA DAESONG GENERAL TRADING CORPORATION (a.k.a. DAESONG TRADING; a.k.a. DAESONG TRADING COMPANY; a.k.a. KOREA DAESONG TRADING COMPANY; a.k.a. KOREA DAESONG TRADING CORPORATION), Pulgan Gori Dong 1, Potonggang District, Pyongyang City, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; PHONE 850 2 18111 8204/8208; PHONE 850 2 381 8208/4188; FAX 850 2 381 4431/4432; EMAIL *daesong@co.chesin.com* [DPRK].

108. KOREA EXPO JOINT VENTURE (a.k.a. CHOSUN EXPO; a.k.a. CHOSUN EXPO JOINT VENTURE; a.k.a. KOREA EXPO JOINT VENTURE CORPORATION), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations,, sections 510.201 and 510.210 [DPRK3].

109. KOREA FOREIGN TECHNICAL TRADE CENTER, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

110. KOREA GENERAL CORPORATION FOR EXTERNAL CONSTRUCTION, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

111. KOREA HAEGUMGANG TRADING CORPORATION (a.k.a. HAEGU'MGANG TRADING COMPANY; a.k.a. KOREA RIMYONGSU TRADING CORPORATION; a.k.a. NAEGU'NGANG TRADING COMPANY), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK2].

112. KOREA HEUNGJIN TRADING COMPANY (a.k.a. HUNJIN TRADING CO.), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

113. KOREA HYOKSIN TRADING CORPORATION (a.k.a. KOREA HYOKSIN EXPORT AND IMPORT CORPORATION), Rakwon-dong, Pothonggang District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

114. KOREA INTERNATIONAL CHEMICAL JOINT VENTURE COMPANY (a.k.a. CHOSON INTERNATIONAL CHEMICALS JOINT OPERATION COMPANY; a.k.a. CHOSUN INTERNATIONAL CHEMICALS JOINT OPERATION COMPANY; a.k.a. INTERNATIONAL CHEMICAL JOINT VENTURE CORPORATION), Hamhung, South Hamgyong Province, Korea, North; Man gyongdae-kuyok, Pyongyang, Korea, North; Mangyungdae-gu, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

115. KOREA KUMBYOL TRADING COMPANY (a.k.a. KUMBYOL TRADING; a.k.a. KUMBYOL TRADING COMPANY OF NORTH KOREAN WORKERS' PARTY), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK4].

116. KOREA KUMSAN TRADING CORPORATION, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD] (Linked To: GENERAL BUREAU OF ATOMIC ENERGY).

117. KOREA KUMUNSAN SHIPPING CO, Pongnam-dong, Pyongchon-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5110478 [DPRK4].

118. KOREA KWANGSON BANKING CORP (a.k.a. KKBC), Jungson-dong, Sungri Street, Central District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

119. KOREA KWANGSONG TRADING CORPORATION, Rakwon-dong, Pothonggang District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

120. KOREA MARINE & INDUSTRIAL TRDG (a.k.a. KOREA MARINE AND INDUSTRIAL TRDG), Changgyong 2-dong, Sosong-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5928635 [DPRK4].

121. KOREA MINING DEVELOPMENT TRADING CORPORATION (a.k.a. CHANGGWANG SINYONG CORPORATION; a.k.a. DPRKN MINING DEVELOPMENT TRADING COOPERATION; a.k.a. EXTERNAL TECHNOLOGY GENERAL CORPORATION; a.k.a. KOREA KUMRYONG TRADING COMPANY; a.k.a. KOREAN MINING AND INDUSTRIAL DEVELOPMENT CORPORATION; a.k.a. NORTH KOREAN MINING DEVELOPMENT TRADING CORPORATION; a.k.a. ''KOMID''), Central District, Pyongyang, Korea, North; Beijing, China; Moscow, Russia; Tehran, Iran; Damascus, Syria; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD] [DPRK2].

122. KOREA MYONGDOK SHIPPING CO, Chilgol 2-dong, Mangyongdae-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5985863 [DPRK4].

123. KOREA NATIONAL INSURANCE CORPORATION (a.k.a. KOREA FOREIGN INSURANCE COMPANY; a.k.a. KOREA NATIONAL INSURANCE COMPANY), Central District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

124. KOREA OCEAN SHIPPING AGENCY, Moranbong District, Pyongyang, Korea, North; Namp'o Branch, Namp'o, South P'yo'ngan Province, Korea, North; Hungnam Branch, Hungnam, South Hamgyong Province, Korea, North; Chongjin Branch, Songphyong District, Chongjin, North Hamgyong Province, Korea, North; Haeju Branch, Haeju, South Hwanghae Province, Korea, North; Songnim Branch, Songnim, North Hwanghae Province, Korea, North; Wonsan Branch, Wonsan, Kangwon Province, Korea, North; Rason Branch, Rason, North Hamgyong Province, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

125. KOREA OIL EXPLORATION CORPORATION (a.k.a. CHOSUN OIL EXPLORATION COMPANY; a.k.a. KOREA OIL EXPLORATION COMPANY; a.k.a. ''KOEC''), Ulam Dong, Taedonggang District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

126. KOREA PUGANG TRADING CORPORATION, Rakwon-dong, Pothonggang District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

127. KOREA RUNGRADO GENERAL TRADING CORPORATION (a.k.a. RUNGRADO TRADE COMPANY), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

128. KOREA RUNGRADO RYONGAK TRADING CO, Pulgunkori 2-dong, Potonggang-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Nationality of Registration Korea, North; Company Number 5787653 [DPRK4].

129. KOREA RUNGRADO SHIPPING CO, Pulgunkori 1-dong, Potonggang-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Nationality of Registration Korea, North; Company Number 1414592 [DPRK4].

130. KOREA RYONBONG GENERAL CORPORATION (a.k.a. KOREA YONBONG GENERAL CORPORATION; f.k.a. LYONGAKSAN GENERAL TRADING CORPORATION), Pot'onggang District, Pyongyang, Korea, North; Rakwon-dong, Pothonggang District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

131. KOREA RYONGWANG TRADING CORPORATION (a.k.a. KOREA RYENGWANG TRADING CORPORATION), Rakwon-dong, Pothonggang District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

132. KOREA RYONHA MACHINERY JOINT VENTURE CORPORATION (a.k.a. CHOSUN YUNHA MACHINERY JOINT

OPERATION COMPANY; a.k.a. KOREA RYENHA MACHINERY J/V CORPORATION; a.k.a. RYONHA MACHINERY JOINT VENTURE CORPORATION), Mangungdae-gu, Pyongyang, Korea, North; Mangyongdae District, Pyongyang, Korea, North; Central District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

133. KOREA SAMILPO SHIPPING CO, Tonghung-dong, Chung-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 1701459 [DPRK3].

134. KOREA SAMJONG SHIPPING CO, Tonghung-dong, Chung-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5954061 [DPRK4].

135. KOREA SAMMA SHPG CO (a.k.a. KOREA SAMMA SHIPPING CO), Rakrang 3-dong, Rakrang-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5145892 [DPRK4].

136. KOREA SOUTH–SOUTH COOPERATION CORPORATION (a.k.a. NAM NAM GENERAL CORPORATION; a.k.a. NAM–NAM (SOUTH–SOUTH) COOPERATIVE GENERAL COMPANY), Central District, Pyongyang, Korea, North; China; Russia; Poland; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

137. KOREA TAESONG TRADING COMPANY, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

138. KOREA TANGUN TRADING CORPORATION (a.k.a. KOREA KURYONGGANG TRADING CORPORATION; a.k.a. RYUNG SENG TRADING CORPORATION; a.k.a. RYUNGSENG TRADING CORPORATION; a.k.a. RYUNGSONG TRADING CORPORATION), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD] [DPRK2].

139. KOREA UNGUM CORPORATION (a.k.a. KOREA UNGUM COMPANY), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations,, sections 510.201 and 510.210 [DPRK3].

140. KOREA UNITED DEVELOPMENT BANK, Pyongyang, Korea, North; SWIFT/BIC KUDBKPPY; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

141. KOREA UNPHA SHIPPING & TRADING (a.k.a. KOREA UNPHA SHIPPING AND TRADING), Puksong-dong, Pyongchon-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 6005935 [DPRK4].

142. KOREA YUJONG SHIPPING CO LTD, Puksong 2-dong, Pyongchon-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5434358 [DPRK4].

143. KOREA ZINC INDUSTRIAL GROUP (a.k.a. KOREA ZINC INDUSTRY GENERAL CORPORATION; a.k.a. KOREA ZINC INDUSTRY GROUP; a.k.a. NORTH KOREAN ZINC INDUSTRY GROUP), Korea, North; Dalian, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

144. KOREA ZUZAGBONG MARITIME LTD, Kinmaul-dong, Moranbong-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 1991835 [DPRK3].

145. KOREAN BUYON SHIPPING CO. LTD. (a.k.a. KOREA BUYON SHIPPING CO; a.k.a. KOREAN BUYON SHIPPING COMPANY LIMITED), Wonsan, Kangwon-do, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 5057119 [DPRK3].

146. KOREAN COMMITTEE FOR SPACE TECHNOLOGY (a.k.a. COMMITTEE FOR SPACE TECHNOLOGY; a.k.a. DEPARTMENT OF SPACE TECHNOLOGY OF NORTH KOREA; a.k.a. DPRK COMMITTEE FOR SPACE TECHNOLOGY; a.k.a. KCST), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

147. KOREAN PEOPLE'S ARMY, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

148. KOREAN POLISH SHPG CO LTD, Kinmaul-dong, Moranbong-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 1267131 [DPRK3].

149. KOREAN WORKERS PARTY, PROPAGANDA AND AGITATION DEPARTMENT (a.k.a. PROPAGANDA AND AGITATION DEPARTMENT; a.k.a. PROPAGANDA AND AGITATION DEPARTMENT, WORKERS PARTY OF KOREA), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

150. KORYO BANK, Koryo Bank Building, Pulgun Street, Pyongyang, Korea, North; SWIFT/BIC KORBKPPY; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; all offices worldwide [DPRK3].

151. KORYO COMMERCIAL BANK LTD., Pyongyang, Korea, North; Beijing, China; Shenyang, China; SWIFT/BIC KCBKKPP1; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK4].

152. KORYO CREDIT DEVELOPMENT BANK (a.k.a. DAESONG CREDIT DEVELOPMENT BANK; a.k.a. KORYO GLOBAL CREDIT BANK; a.k.a. KORYO GLOBAL TRUST BANK), Yanggakdo International Hotel, RYUS, Pyongyang, Korea, North; SWIFT/BIC KGCBKPPY; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; all offices worldwide [DPRK3].

153. KOTI CORP, Panama City, Panama; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5982254 [DPRK4].

154. KOTI Panama flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9417115 (vessel) [DPRK4] (Linked To: KOTI CORP).

155. KU BONG RYONG Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8983404 (vessel) [DPRK4] (Linked To: KOREA KUMBYOL TRADING COMPANY).

156. KUM GANG 3 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8966535 (vessel) [DPRK4] (Linked To: KOREA UNPHA SHIPPING & TRADING).

157. KUM SONG 3 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8661850 (vessel) [DPRK4] (Linked To: DAWN MARINE MANAGEMENT CO LTD).

158. KUM SONG 5 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8661719 (vessel) [DPRK4] (Linked To: DAWN MARINE MANAGEMENT CO LTD).

159. KUM SONG 7 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8739396 (vessel) [DPRK4] (Linked To: DAWN MARINE MANAGEMENT CO LTD).

160. KUM UN SAN 3 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8705539 (vessel) [DPRK4] (Linked To: DAWN MARINE MANAGEMENT CO LTD).

161. KUM UN SAN Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8720436 (vessel) [DPRK4] (Linked To: KOREA KUMUNSAN SHIPPING CO).

162. KUMGANG BANK, Kumgang Bank Building, Jungsong-don, Pyongyang, Korea, North; SWIFT/BIC KMBKKPPY; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; all offices worldwide [DPRK3].

163. LEADER (HONG KONG) INTERNATIONAL TRADING LIMITED (a.k.a. LEADER INTERNATIONAL TRADING LIMITED), Room 1610 Nan Fung Tower, 173 Des Voeux Road, Hong Kong; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

164. LIBERTY SHIPPING CO LTD (Chinese Traditional: 利百船務有限公司), Room D, 3rd Floor, Thomson Commercial Building, 8-10 Thomson Road, Wan Chai, Hong Kong, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5513586 [DPRK4].

165. MANSUDAE OVERSEAS PROJECT GROUP OF COMPANIES (a.k.a. MANSUDAE ART STUDIO), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

166. MANSUDAE OVERSEAS PROJECTS ARCHITECTURAL AND TECHNICAL SERVICES (PTY) LIMITED, Namibia; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Registration ID 2001/044 (Namibia) [DPRK3] (Linked To: MANSUDAE OVERSEAS PROJECT GROUP OF COMPANIES).

167. MARITIME ADMINISTRATION OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (a.k.a. MARITIME ADMINISTRATION BUREAU), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

168. MI RIM 2 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9361407 (vessel) [DPRK3] (Linked To: MIRIM SHIPPING CO LTD).

169. MI RIM Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8713471 (vessel) [DPRK3] (Linked To: MIRIM SHIPPING CO LTD).

170. MILITARY SECURITY COMMAND (a.k.a. KOREAN PEOPLE'S ARMY SECURITY BUREAU; a.k.a. MILITARY SECURITY BUREAU), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

171. MINGZHENG INTERNATIONAL TRADING LIMITED, Flat/RM A30 9/F, Silvercorp International Tower, 707–713 Nathan Road, Kowloon, Mong Kok, Hong Kong; 224–4 Shifa Da Lu, RM 1305, Heping District, Shenyang City, Liaoning Province, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD] (Linked To: FOREIGN TRADE BANK OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA; Linked To: SUN, Wei).

172. MINISTRY OF ATOMIC ENERGY INDUSTRY, Haeun 2-Dong, Pyongchon District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

173. MINISTRY OF CRUDE OIL INDUSTRY (a.k.a. CRUDE OIL INDUSTRY MINISTRY; a.k.a. GENERAL BUREAU OF PETROLEUM INDUSTRY; a.k.a. MINISTRY OF CRUDE OIL), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

174. MINISTRY OF LABOR, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

175. MINISTRY OF LAND AND MARITIME TRANSPORTATION OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (a.k.a. MINISTRY OF LAND AND MARINE TRANSPORT), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

176. MINISTRY OF PEOPLE'S ARMED FORCES, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

177. MINISTRY OF PEOPLE'S SECURITY (a.k.a. MINISTRY OF PUBLIC SECURITY; a.k.a. ''MPS''), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

178. MINISTRY OF PEOPLE'S SECURITY CORRECTIONAL BUREAU (a.k.a. MINISTRY OF PEOPLE'S SECURITY CORRECTIONAL MANAGEMENT BUREAU; a.k.a. MINISTRY OF PEOPLE'S SECURITY PRISON BUREAU), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

179. MINISTRY OF STATE SECURITY (a.k.a. STATE SECURITY DEPARTMENT), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

180. MINISTRY OF STATE SECURITY PRISONS BUREAU (a.k.a. MINISTRY OF STATE SECURITY FARM BUREAU; a.k.a. MINISTRY OF STATE SECURITY FARM GUIDANCE BUREAU; a.k.a. MINISTRY OF STATE SECURITY FARMING BUREAU; a.k.a. STATE SECURITY DEPARTMENT PRISONS BUREAU), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

181. MIRIM SHIPPING CO LTD, Tonghung-dong, Chung-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 5647684 [DPRK3].

182. MU DU BONG General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8328197 (vessel) [DPRK].

183. MUNITIONS INDUSTRY DEPARTMENT (a.k.a. MILITARY SUPPLIES INDUSTRY DEPARTMENT), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

184. MYOHYANG SHIPPING CO, Kumsong 3-dong, Mangyongdae-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5988369 [DPRK4].

185. NAM SAN 8 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8122347 (vessel) [DPRK4] (Linked To: HAPJANGGANG SHIPPING CORP).

186. NAMCHONGANG TRADING CORPORATION (a.k.a. KOREA NAMHUNG TRADING CORPORATION; a.k.a. KOREA TAERYONGGANG TRADING CORPORATION; a.k.a. NAM CHON GANG CORPORATION; a.k.a. NAMCHONGANG TRADING; a.k.a. NAMHUNG; a.k.a. NOMCHONGANG TRADING CO.; a.k.a. ''NCG''), Pyongyang, Korea, North; Chilgol, Mangyongdae District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

187. NAMGANG CONSTRUCTION, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

188. NATIONAL AEROSPACE DEVELOPMENT ADMINISTRATION (a.k.a. ''NADA''), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

189. NATIONAL DEFENSE COMMISSION, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK2].

190. NEPTUN Russia flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8404991 (vessel) [DPRK4] (Linked To: GUDZON SHIPPING CO LLC).

191. NORTH EAST ASIA BANK, Haebangsan-dong, Central District, Pyongyang, Korea, North; SWIFT/BIC NEABKPPY; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; all offices worldwide [DPRK3].

192. O UN CHONG NYON HO General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8330815 (vessel) [DPRK].

193. OCEAN BUNKERING JV CO, Otan-dong, Chung-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 4199470 [DPRK3].

194. OCEAN MARITIME MANAGEMENT COMPANY LIMITED (a.k.a. EAST SEA SHIPPING COMPANY; a.k.a. HAEYANG CREW MANAGEMENT COMPANY; a.k.a. KOREA MIRAE SHIPPING CO. LTD.),

Dongheung-dong Changgwang Street, Chung-ku, PO Box 125, Pyongyang, Korea, North; Donghung Dong, Central District, PO Box 120, Pyongyang, Korea, North; No. 10, 10th Floor, Unit 1, Wu Wu Lu 32–1, Zhong Shan Qu, Dalian City, Liaoning Province, China; 22 Jin Cheng Jie, Zhong Shan Qu, Dalian City, Liaoning Province, China; 43–39 Lugovaya, Vladivostok, Russia; CPO Box 120, Tonghung-dong, Chung-gu, Pyongyang, Korea, North; Bangkok, Thailand; Lima, Peru; Port Said, Egypt; Singapore; Brazil; Hong Kong, China; Shenzhen, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Identification Number IMO 1790183 [DPRK].

195. OFFICE 39 (a.k.a. BUREAU 39; a.k.a. CENTRAL COMMITTEE BUREAU 39; a.k.a. DIVISION 39; a.k.a. OFFICE #39; a.k.a. OFFICE NO. 39; a.k.a. ''THIRD FLOOR''), Second KWP Government Building (Korean—Ch′o′ngsa), Chungso′ng, Urban Town (Korean—Dong), Chung Ward, Pyongyang, Korea, North; Chung-Guyok (Central District), Sosong Street, Kyongrim-Dong, Pyongyang, Korea, North; Changgwang Street, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK].

196. ORGANIZATION AND GUIDANCE DEPARTMENT, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK2].

197. ORIENTAL TREASURE 9,038DWT Comoros flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9115028 (vessel) [DPRK4] (Linked To: HONGXIANG MARINE HONG KONG LTD).

198. ORION STAR; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9333589 (vessel) [DPRK] (Linked To: OCEAN MARITIME MANAGEMENT COMPANY LIMITED).

199. P–532; Aircraft Manufacture Date 1974; Aircraft Model AN24–RV; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (aircraft) [DPRK3].

200. P–533; Aircraft Manufacture Date 1974; Aircraft Model AN24–RV; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (aircraft) [DPRK3].

201. P–537; Aircraft Manufacture Date 1966; Aircraft Model AN24–B; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (aircraft) [DPRK3].

202. P–552; Aircraft Manufacture Date 1976; Aircraft Model T154–B; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (aircraft) [DPRK3].

203. P–561; Aircraft Manufacture Date 1983; Aircraft Model T154–B; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (aircraft) [DPRK3].

204. P–632; Aircraft Manufacture Date 1994; Aircraft Model T204–300; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (aircraft) [DPRK3].

205. P–633; Aircraft Manufacture Date 2009; Aircraft Model T204–100; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (aircraft) [DPRK3].

206. P–671; Aircraft Manufacture Date 2012; Aircraft Model A148–100; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (aircraft) [DPRK3].

207. P–672; Aircraft Manufacture Date 2015; Aircraft Model A148–100; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (aircraft) [DPRK3].

208. P–813; Aircraft Manufacture Date 1983; Aircraft Model T134–B; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (aircraft) [DPRK3].

209. P–835; Aircraft Manufacture Date 1969; Aircraft Model IL18–D; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (aircraft) [DPRK3].

210. P–881; Aircraft Manufacture Date 1986; Aircraft Model IL62–M; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (aircraft) [DPRK3].

211. P–885; Aircraft Manufacture Date 1979; Aircraft Model IL62–M; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (aircraft) [DPRK3].

212. P–912; Aircraft Manufacture Date 1990; Aircraft Model IL76–TD; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (aircraft) [DPRK3].

213. P–913; Aircraft Manufacture Date 1990; Aircraft Model IL76–TD; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (aircraft) [DPRK3].

214. P–914; Aircraft Manufacture Date 1990; Aircraft Model IL76–TD; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 (aircraft) [DPRK3].

215. PAEK MA Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9066978 (vessel) [DPRK4] (Linked To: PAEKMA SHIPPING CO; Linked To: FIRST OIL JV CO LTD).

216. PAEKMA SHIPPING CO, Care of First Oil JV Co Ltd, Jongbaek 1-dong, Rakrang-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5999479 [DPRK4].

217. PAEKSOL TRADING CORPORATION (a.k.a. BAEKSOL TRADING; a.k.a. BAEKSUL TRADING; a.k.a. KOREA PAEK SOL TRADING; a.k.a. PAEK SOL TRADING CORPORATION; a.k.a. PAEKSO'L CORPORATION; a.k.a. PAEKSO'L TRADING CORPORATION), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

218. PARTIZAN Russia flag; Secondary sanctions risk: North Korea Sanctions Regulations,, sections 510.201 and 510.210; Vessel Registration Identification IMO 9113020 (vessel) [DPRK4] (Linked To: GUDZON SHIPPING CO LLC).

219. PATRIOT Russia flag; Secondary sanctions risk: North Korea Sanctions Regulations,, sections 510.201 and 510.210; Vessel Registration Identification IMO 9003550 (vessel) [DPRK4] (Linked To: PRIMORYE MARITIME LOGISTICS CO LTD; Linked To: GUDZON SHIPPING CO LLC).

220. PHO THAE General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 7632955 (vessel) [DPRK].

221. PHYONGCHON SHIPPING & MARINE (a.k.a. PHYONGCHON SHIPPING AND MARINE), Otan-dong, Chung-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5878561 [DPRK4].

222. PI RUY GANG General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8829593 (vessel) [DPRK].

223. PO CHON Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8848276 (vessel) [DPRK4] (Linked To: POCHON SHIPPING & MANAGEMENT).

224. PO THONG GANG General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8829555 (vessel) [DPRK].

225. POCHON SHIPPING & MANAGEMENT (a.k.a. POCHON SHIPPING AND MANAGEMENT), Sonnae-dong, Mangyongdae-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5990271 [DPRK4].

226. PRIMORYE MARITIME LOGISTICS CO LTD (a.k.a. ''PML CO LTD''), 01 ul Tigorovaya 20A, Vladivostok, Primorskiy kray 690091, Russia; Secondary sanctions risk: North Korea Sanctions Regulations,, sections 510.201 and 510.210; Company Number IMO 5993381 [DPRK4].

227. PROFINET PTE. LTD. (Cyrillic: ООО ПРОФИНЕТ) (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU PROFINET; a.k.a. PROFINET AGENCY; a.k.a. PROFINET, OOO), 46, ul. Malinovskogo, Nakhodka, Primorski Kr. 692919, Russia; office 2, 30, Pogranichnaya Street, Nakhodka, Primorskiy Region 692922, Russia; Pogranichnaya str. 30–2, Nakhodka 692922, Russia; Secondary sanctions risk: North Korea Sanctions Regulations,, sections 510.201 and 510.210 [DPRK4].

228. PRO-GAIN GROUP CORPORATION, 8th Floor, Number 466, Section 2, Neihu Road, Taipei, Taiwan; Le Sanalele Complex, Ground Floor, Vaea Street, Saleufi, Apia, Samoa; Taiwan; Samoa; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3] (Linked To: TSANG, Yung Yuan).

229. PU HUNG 1 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8703933 (vessel) [DPRK4] (Linked To: KOREA RUNGRADO SHIPPING CO).

230. PYONGJIN SHIP MANAGEMENT COMPANY LIMITED, Ryukkyo 1-dong, Pyongchon-guyok, Pyongyang, Korea, North; 102 Ryuggyo 1-dong, Pyongchon District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Identification Number IMO 5817790 [DPRK].

231. QINGDAO CONSTRUCTION (NAMIBIA) CC, ERF 338, Platinum Street, Prosperita, Windhoek, Namibia; P.O. Box 26774, Windhoek, Namibia; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Registration ID 2008/0598 (Namibia) [DPRK3] (Linked To: MANSUDAE OVERSEAS PROJECTS ARCHITECTURAL AND TECHNICAL SERVICES (PTY) LIMITED; Linked To: MANSUDAE OVERSEAS PROJECT GROUP OF COMPANIES).

232. RA NAM 2 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8625545 (vessel) [DPRK3] (Linked To: KOREA SAMILPO SHIPPING CO).

233. RA NAM 3 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9314650 (vessel) [DPRK3] (Linked To: KOREA SAMILPO SHIPPING CO).

234. RAK RANG Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 7506118 (vessel) [DPRK4] (Linked To: KOREA DAEBONG SHIPPING CO).

235. RAK WON 2 General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8819017 (vessel) [DPRK].

236. RASON INTERNATIONAL COMMERCIAL BANK, Rason, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; all offices worldwide [DPRK3].

237. RECONNAISSANCE GENERAL BUREAU (a.k.a. CHONGCH'AL CH'ONGGUK; a.k.a. KPA UNIT 586; a.k.a. ''RGB''), Hyongjesan-Guyok, Pyongyang, Korea, North; Nungrado, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK] [DPRK2].

238. RUNG RA 1 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8713457 (vessel) [DPRK4] (Linked To: KOREA RUNGRADO RYONGAK TRADING CO).

239. RUNG RA 2 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9020534 (vessel) [DPRK4] (Linked To: KOREA RUNGRADO RYONGAK TRADING CO).

240. RUNG RA DO Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8989795 (vessel) [DPRK4] (Linked To: KOREA RUNGRADO SHIPPING CO).

241. RYE SONG GANG 1 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 7389704 (vessel) [DPRK4] (Linked To: KOREA KUMBYOL TRADING COMPANY).

242. RYO MYONG Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8987333 (vessel) [DPRK3] (Linked To: KOREAN POLISH SHPG CO LTD).

243. RYONG GANG 2 General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 7640378 (vessel) [DPRK].

244. RYONG GUN BONG General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification 8606173 (vessel) [DPRK].

245. RYUGYONG COMMERCIAL BANK, Korea, North; Beijing, China; Dandong, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK4].

246. SAM JONG 1 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8405311 (vessel) [DPRK4] (Linked To: KOREA SAMJONG SHIPPING CO).

247. SAM JONG 2 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 7408873 (vessel) [DPRK4] (Linked To: KOREA SAMJONG SHIPPING CO).

248. SAM MA 2 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8106496 (vessel) [DPRK4] (Linked To: KOREA SAMMA SHPG CO).

249. SECOND ACADEMY OF NATURAL SCIENCES (a.k.a. 2ND ACADEMY OF NATURAL SCIENCES; a.k.a. ACADEMY OF NATURAL SCIENCES; a.k.a. CHAYON KWAHAK–WON; a.k.a. CHE 2 CHAYON KWAHAK–WON; a.k.a. KUKPANG KWAHAK–WON; a.k.a. NATIONAL DEFENSE ACADEMY; a.k.a. SANSRI; a.k.a. SECOND ACADEMY OF NATURAL SCIENCES RESEARCH INSTITUTE), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

250. SECOND ECONOMIC COMMITTEE, Kangdong, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

251. SENAT SHIPPING LIMITED (a.k.a. SENAT SHIPPING & TRADING PTE LTD; a.k.a. SENAT SHIPPING AGENCY LTD; a.k.a. SENAT SHIPPING AND TRADING LTD; a.k.a. SENAT SHIPPING AND TRADING PRIVATE LIMITED), 36–02 A, Suntec Tower, 9, Temasek Boulevard, Singapore 038989, Singapore; 9 Temasek Boulevard, 36–02A, Singapore 038989, Singapore; Panama City, Panama; PO Box 957, Offshore Incorporations Centre Road Town, Tortola, Virgin Islands, British; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Identification Number IMO 5179245; alt. Identification Number IMO 5405737 [DPRK].

252. SEVASTOPOL Russia flag; Secondary sanctions risk: North Korea Sanctions Regulations,, sections 510.201 and 510.210; Vessel Registration Identification IMO 9235127 (vessel) [DPRK4] (Linked To: GUDZON SHIPPING CO LLC).

253. SHANGHAI DONGFENG SHPG CO LTD, Room 601, 433, Chifeng Lu, Hongkou Qu, Shanghai 200083, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5721069 [DPRK4].

254. SHEN ZHONG INTERNATIONAL SHPG (Chinese Traditional: 沈忠國際海運有限公司), Unit 503, 5th Floor, Silvercord Tower 2, 30, Canton Road, Tsim Sha Tsui, Kowloon, Hong Kong, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5604962 [DPRK4].

255. SINGWANG ECONOMICS AND TRADING GENERAL CORPORATION, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

256. SINSMS PTE. LTD. (a.k.a. SUN MOON STAR (SINGAPORE) LTD.), 24 Mohamed Sultan Road, Singapore 239012, Singapore; Secondary sanctions risk: North Korea Sanctions Regulations,, sections 510.201 and 510.210; Registration Number 201318227N (Singapore) [DPRK4].

257. SO BAEK SAN Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8658267 (vessel) [DPRK4] (Linked To: KOREA KUMBYOL TRADING COMPANY).

258. SONG WON Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8613360 (vessel) [DPRK4] (Linked To: SONGWON SHIPPING & MANAGEMENT).

259. SONGI TRADING COMPANY, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

260. SONGWON SHIPPING & MANAGEMENT (a.k.a. SONGWON SHIPPING AND MANAGEMENT), Somun-dong, Chung-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5990268 [DPRK4].

261. SOUTH HILL 2 Sierra Leone flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8412467 (vessel) [DPRK] (Linked To: OCEAN MARITIME MANAGEMENT COMPANY LIMITED).

262. SOUTH HILL 5 Palau flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9138680 (vessel) [DPRK] (Linked To: OCEAN MARITIME MANAGEMENT COMPANY LIMITED).

263. STATE AFFAIRS COMMISSION, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

264. STATE PLANNING COMMISSION, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

265. STRATEGIC ROCKET FORCE OF THE KOREAN PEOPLE'S ARMY (a.k.a. STRATEGIC ROCKET FORCE; a.k.a. THE STRATEGIC ROCKET FORCE COMMAND OF KPA; a.k.a. ''STRATEGIC FORCE''; a.k.a. ''STRATEGIC FORCES''), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

266. TAE DONG GANG General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 7738656 (vessel) [DPRK].

267. TANCHON COMMERCIAL BANK (f.k.a. CHANGGWANG CREDIT BANK; f.k.a. KOREA CHANGGWANG CREDIT BANK), Saemul 1-Dong Pyongchon District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

268. THAE PYONG SAN Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9009085 (vessel) [DPRK3] (Linked To: THAEPHYONGSAN SHIPPING CO LTD).

269. THAEPHYONGSAN SHIPPING CO LTD, Room 402, 90, Sochon-dong, Sosong-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 5878575 [DPRK3].

270. TONG HUNG 1 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8661575 (vessel) [DPRK3] (Linked To: KOREA ZUZAGBONG MARITIME LTD).

271. TONG HUNG 5 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8151415 (vessel) [DPRK4] (Linked To: TONGHUNG SHIPPING & TRADING CO).

272. TONGHUNG SHIPPING & TRADING CO (a.k.a. TONGHUNG SHIPPING AND TRADING CO), Kinmaul-dong, Moranbong-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 1991835 [DPRK4].

273. TOSONG TECHNOLOGY TRADING CORPORATION, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

274. TRANS MERITS CO. LTD., 1F, No. 49, Lane 280, Kuang Fu S. Road, Taipei, Taiwan; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Business Registration Document #16316976 (Taiwan) [NPWMD].

275. TRANS MULTI MECHANICS CO. LTD. (a.k.a. FENG SHENG CO., LTD.), 19, Chin Ho Lane, Chung Cheng Rd., Taya District, Taichung City, Taiwan; No 19, Jinhe Lane, Zhongzheng Road, Daya District, Taichung City, Taiwan; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [NPWMD].

276. TRANSATLANTIC PARTNERS PTE. LTD., 10 Anson Road, #29–05A, International Plaza 079903, Singapore; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

277. UL JI BONG 6 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9114555 (vessel) [DPRK4] (Linked To: CK INTERNATIONAL LTD).

278. UN RYUL Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8514409 (vessel) [DPRK4] (Linked To: KOREA MARINE & INDUSTRIAL TRDG).

279. VELMUR MANAGEMENT PTE LTD, 2 Marina Blvd., No. 66–08, The Sail at Marina Bay 018987, Singapore; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3] (Linked To: TRANSATLANTIC PARTNERS PTE. LTD.).

280. VICTORY 2 Mongolia flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8312227 (vessel) [DPRK3] (Linked To: KOREAN BUYON SHIPPING CO. LTD.).

281. VOLASYS SILVER STAR, 41 Ulitsa Klary Tsetskin, Vladivostok, Russia; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3] [DPRK4].

282. WEIHAI WORLD–SHIPPING FREIGHT, 419–201, Tongyi Lu, Huancui Qu, Weihai, Shandong 264200, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5905801 [DPRK4].

283. WON SAN 2 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9159787 (vessel) [DPRK4] (Linked To: YUSONG SHIPPING CO).

284. WOORY STAR Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8408595 (vessel) [DPRK4] (Linked To: PHYONGCHON SHIPPING & MARINE).

285. WORKERS' PARTY OF KOREA CENTRAL MILITARY COMMISSION, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK2].

286. XIN GUANG HAI 7,067DWT; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9004700 (vessel) [DPRK4] (Linked To: WEIHAI WORLD–SHIPPING FREIGHT).

287. YANBIAN SILVERSTAR NETWORK TECHNOLOGY CO., LTD. (Chinese Simplified: 延边银星网络科技有限公司; Korean: 은성인터네트기술회사) (a.k.a. CHINA SILVER STAR INTERNET TECHNOLOGY COMPANY; a.k.a. SILVER STAR INTERNET TECHNOLOGY CORPORATION; a.k.a. UNSONG INTERNET TECHNOLOGY CORPORATION; a.k.a. YANBIAN SILVER STAR; a.k.a. YANBIAN SILVERSTAR), 20998B-26 Changbaishan East Road, Yanji, Jilin, China; Secondary sanctions risk: North Korea Sanctions Regulations,, sections 510.201 and 510.210 [DPRK3] [DPRK4].

288. YANG GAK DO Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 6401828 (vessel) [DPRK4] (Linked To: KOREA RUNGRADO SHIPPING CO).

289. YONGJIN SHIP MANAGEMENT COMPANY LIMITED, Tonghung-dong, Chung-guyok, Pyongyang, Korea, North; Tonghung-dong, Central District, Korea, North; Email Address *yonmgjinsm@silibank.net.kp;* Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Identification Number IMO 5814883; alt. Identification Number IMO 5814906; alt. Identification Number IMO 5820255 [DPRK].

290. YU JONG 2 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8604917 (vessel) [DPRK4] (Linked To: KOREA YUJONG SHIPPING CO LTD).

291. YU PHYONG 5 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8605026 (vessel) [DPRK4] (Linked To: KOREA MYONGDOK SHIPPING CO).

292. YU SON Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8691702 (vessel) [DPRK4] (Linked To: MYOHYANG SHIPPING CO).

293. YU SONG 12 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9096791 (vessel) [DPRK4] (Linked To: YUSONG SHIPPING CO).

294. YU SONG 7 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8400854 (vessel) [DPRK4] (Linked To: YUSONG SHIPPING CO).

295. YUK TUNG ENERGY PTE LTD, 17–22, UOB Plaza 2, Raffles Place 048624, Singapore; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5987860 [DPRK4].

296. YUK TUNG; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9030591 (vessel) [DPRK4] (Linked To: YUK TUNG ENERGY PTE LTD).

297. YUSONG SHIPPING CO, Uiam-dong, Taedonggang-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Nationality of Registration Korea, North; Company Number 5146578 [DPRK4].

298. ZA RYOK 2 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8898738 (vessel) [DPRK4] (Linked To: YUSONG SHIPPING CO).

Dated: October 4, 2018.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2018–22165 Filed 10–10–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 20, 2018.

FOR FURTHER INFORMATION CONTACT: Antoinette Ross at 1–888–912–1227 or (202) 317–4110.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Tuesday, November 20, 2018, at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Antoinette Ross. For more information please contact: Antoinette Ross at 1–888–912–1227 or (202) 317–4110, or write TAP Office, 1111 Constitution Avenue NW, Room 1509, National Office, Washington, DC 20224, or contact us at the website: *http://www.improveirs.org.*

The committee will be discussing various issues related to Taxpayer Communications and public input is welcome.

Dated: October 1, 2018.

Lisa Billups,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2018–22059 Filed 10–10–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Special Projects Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Special

Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 21, 2018.

FOR FURTHER INFORMATION CONTACT: Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Special Projects Committee will be held Wednesday, November 21, 2018, at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612–5217 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

The agenda will include a discussion on various special topics with IRS processes.

Dated: October 1, 2018.

Lisa Billups,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2018–22061 Filed 10–10–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 14, 2018.

FOR FURTHER INFORMATION CONTACT: Robert Rosalia at 1–888–912–1227 or (718) 834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Wednesday, November 14, 2018, at 2:00 p.m., Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Robert Rosalia. For more information please contact Robert Rosalia at 1–888–912–1227 or (718) 834–2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: October 1, 2018.

Lisa Billups,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2018–22060 Filed 10–10–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: The Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will conduct an open meeting and will solicit public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 20, 2018.

FOR FURTHER INFORMATION CONTACT: Gilbert Martinez at 1–888–912–1227 or (737) 800–4060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be held Tuesday, November 20, 2018, at 4:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Gilbert Martinez. For more information please contact Gilbert Martinez at 1–888–912–1227 or 214–413–6523, or write TAP Office 3651 S. IH–35, STOP 1005 AUSC, Austin, TX 78741, or post comments to the website: *http://www.improveirs.org.*

The committee will be discussing various issues related to the Taxpayer Assistance Centers and public input is welcomed.

Dated: October 1, 2018.

Lisa Billups,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2018–22057 Filed 10–10–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, November 29, 2018.

FOR FURTHER INFORMATION CONTACT: Fred Smith at 1–888–912–1227 or (202) 317–3087.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Thursday, November 29, 2018, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information please contact Fred Smith at 1–888–912–1227 or (202) 317–3087, or write TAP Office, 1114 Commerce Street, Dallas, TX 75242–1021, or post comments to the website: *http://www.improveirs.org.*

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: October 1, 2018.

Lisa Billups,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2018–22058 Filed 10–10–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 13, 2018.

FOR FURTHER INFORMATION CONTACT: Rosalind Matherne at 1–888–912–1227 or 202–317–4115.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Tuesday, November 13, 2018, at 3:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Rosalind Matherne. For more information please contact Rosalind Matherne at 1–888–912–1227 or 202–317–4115, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

The committee will be discussing Toll-free issues and public input is welcomed.

Dated: October 1, 2018.

Lisa Billups,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2018–22053 Filed 10–10–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, November 8, 2018.

FOR FURTHER INFORMATION CONTACT: Gregory Giles at 1–888–912–1227 or 240–613–6478.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Thursday, November 8, 2018, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Otis Simpson. For more information please contact Otis Simpson at 1–888–912–1227 or 202–317–3332, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues. Gregory Giles. For more information please contact Gregory Giles at 1–888–912–1227 or 240–613–6478, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

The agenda will include a discussion on various letters, and other issues related to written communications from the IRS.

Dated: October 1, 2018.

Lisa Billups,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2018–22052 Filed 10–10–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; U.S. Individual Income Tax Return

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on this request.

DATES: Comments should be received on or before November 13, 2018 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Jennifer Quintana by emailing *PRA@treasury.gov,* calling (202) 622–0489, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: U.S. Individual Income Tax Return.

OMB Control Number: 1545–0074.

Type of Review: Revision of a currently approved collection.

Description: These forms and schedules are used by individuals to report their income tax liability. IRS uses the data collected on these forms and their schedules to compute tax liability and determine that the items claimed are properly allowable. This information is also used for general statistical purposes.

Current Actions:

2018 Draft Form 1040

Following the most expansive tax law changes in 30 years, Treasury asked the IRS to look at ways to improve the 1040 filing experience. In response, the IRS took a strategic look at the family of 1040 forms with a goal of simplifying the experience for taxpayers and our partners in the tax industry. The 2018 draft Form 1040 replaces the current Form 1040 as well as the Form 1040A and the Form 1040EZ. The 2018 draft Form 1040 uses a ''building block'' approach, which can be supplemented with additional schedules as needed. The 2018 draft Form 1040 goes from the current 79 lines to somewhere around 23 lines. Taxpayers with straightforward

tax situations would only need to file this new 1040 with no additional schedules. The changes effective in 2018 and affecting the tax returns taxpayers will file in 2019 include (but are not limited to):

Information for the standard deduction was moved below the name entry spaces.

The checkbox for ''Full-year health care coverage'' was moved to the first page.

The ''Exemptions'' section was renamed ''Dependents.'' Taxpayers will continue to list individuals for whom they claim tax benefits associated with an exemption. Only two dependents can be listed on the form itself. Just as in 2017, dependents who cannot be listed on the form must be identified in an attached statement.

The entry spaces for subtotaling exemptions were removed; a new checkbox was added for dependents who qualify for the credit for other dependents.

The signature block was moved. An entry space was added for the spouse's identity protection PIN in lieu of the taxpayer's daytime phone number. The ''Paid Preparers'' section was shortened and a third-party designee box was added. Taxpayers with third-party designees or a foreign address must attach Schedule 6.

Line 4 (IRAs, pensions and annuities) combined 2017 Form 1040, lines 15 and 16.

Line 6 is a subtotal from Schedule 1, which includes less common types of income, as well as any adjustments to income.

Line 9 was added for the qualified business income deduction under section 199A.

Line 11 is the chapter 1 tax. Taxpayers with less common situations will enter an amount from Schedule 2, which generally includes lines 44 through 47 of the 2017 Form 1040.

Line 12 is the child tax credit and/or credit for other dependents. Taxpayers with other nonrefundable credits, will enter a subtotal from Schedule 3, which generally includes lines 48 through 55 of the 2017 Form 1040.

Line 14 is a subtotal from Schedule 4, which generally includes the items from the ''Other Taxes'' section of the 2017 Form 1040.

Line 17 is refundable credits and some payments. The earned income credit, additional child tax credit, and American opportunity tax credit remain on the form. Taxpayers with other credits and payments will enter an amount from Schedule 5, which generally includes items from the ''Payments'' section of the 2017 Form 1040.

Treasury's Office of Tax Analysis projects that roughly 25% of projected 2018 individual income tax filers would be able to file the new form without any attachments (meaning any of the six new schedules or any existing forms or schedules that are retained). For context, in Tax Year 2015, 16% of 1040 series returns filed were Form 1040–EZ.

Burden Impact Evaluation

An analysis of the impact of the Tax Cuts and Jobs Act (TCJA) of 2017 on the burden faced by individual taxpayers in complying with the Federal tax law indicates that the overall impact of the law on individuals will lower taxpayer burden. Currently, the average time to complete a tax year 2018 individual tax return is estimated to decrease by 9% and the average out-of-pocket costs are estimated to decrease 2%.

The expected impact of TCJA provisions by statutory and discretionary change are provided below:

Statutory Changes—Overall, the statutory changes are expected to lead to an overall decrease in burden. There are three major changes that are expected to have a material impact on burden in the TCJA.

The increase in the standard deduction and the limitation on the Schedule A tax deduction, taken together, are the most substantial changes introduced in the TCJA. These changes are expected to decrease the number of Schedule A filers from 46 million to 20 million. The 26 million drop in Schedule A filings and the elimination of certain Schedule A line items is expected to lead to decrease of 241,000,000 hours and a decrease of $2,948,000,000 in out-of-pocket costs.

The change in thresholds on the Form 6251 for alternative minimum tax is expected to lead to a significant decrease in Form 6251 filings, from 10 million to 1 million or less. This change is expected to lead to a decrease of 13,000,000 hours and a decrease of $557,000,000 in out-of-pocket costs.

The new Sec 199A Deduction for qualified business income is expected to increase burden for many filers who report sole proprietor and passthrough income. The deduction is also expected to increase the number of filers with sole proprietors and passthrough income which should increase burden. This change is expected to lead to an increase of 52,000,000 hours and an increase of $1,303,000,000.

Additional changes, such as the adjustment of the child tax credit phaseout threshold and credit amount, the introduction of the older dependent credit, and the elimination of the domestic production credit are expected to have a net estimated impact of an increase of 2,000,000 hours and an increase of $64,000,000 of out-of-pocket costs.

Overall, the decreases in burden from the change in Schedule A and Form 6251 filings are expected to more than offset the increase burden from the Sec 199A Deduction. Total statutory changes are expected decrease time burden by 200,000,000 and are expected to decrease out-of-pocket costs by $2,138,000,000.

IRS Discretionary Changes—The largest discretionary change in place for tax year 2018 is the redesign of the Form 1040 and discontinuance of Forms 1040, 1040A, and 1040EZ. Modest decreases in burden are expected for some taxpayers who prepare by hand without using a paid preparer or tax software but overall, the transition from Forms 1040, 1040A, and 1040EZ to the shortened Form 1040 is not expected to have a material impact on the burden individual taxpayers face. Approximately 95% of individual taxpayers use a paid preparer or tax software to complete their tax return and almost 90% of individual taxpayers e-file. Currently, these taxpayers using assisted methods interact with either a tax software interface or a paid preparer so they have limited interaction with the tax forms themselves. There is very little expectation for their experience to change so the form redesign is not expected to have a material impact on them.

The impact of the Form 1040 redesign on the approximately 5% of individual taxpayers who complete their taxes by hand without using a paid preparer or software is not expected to have a material impact on overall filing burden. The current expectation is that some taxpayers who prepare unassisted will have marginally lower burden while others will have marginally higher burden. For example, taxpayers who previously filed a Form 1040EZ may experience slightly more burden because they need to evaluate more information than before while a segment of taxpayers who previously filed the Form 1040 and 1040A may experience slightly less burden because they need to evaluate less information than before. In addition, some filers are expected to experience a reduction in burden from the separation of the components of the Form 1040 onto the new set of schedules while some are not. Overall, the minor increases and decreases that this population experiences are expected to mostly offset and are

expected to decrease time burden by 1,000,000 and decrease out-of-pocket costs by $5,000,000.

Form: Form 1040 and Schedules 1, 2, 3, 4, 5, 6 and associated forms and schedules.

Affected Public: Individuals and households.

Estimated Number of Respondents: 157,800,000.

Frequency of Response: Annually, On Occasion.

Estimated Total Number of Annual Responses: 157,800,000.

Estimated Time per Response: 11.31 hours.

Estimated Total Annual Burden Hours: 1.784 billion (1,784,000,000).

Total Estimated Out-of-Pocket Costs: $31.764 billion ($31,764,000,000).

Estimated Out-of-Pocket Cost per Respondent: $201.

Total Estimated Monetized Burden: $60.225 billion ($60,225,000,000).

Estimated Monetized Burden per Respondent: $381.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: October 5, 2018.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2018–22180 Filed 10–10–18; 8:45 am]

BILLING CODE 4810–01–P

DEPARTMENT OF THE TREASURY

Interest Rate Paid on Cash Deposited To Secure U.S. Immigration and Customs Enforcement Immigration Bonds

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning October 1, 2018, and ending on December 31, 2018, the U.S. Immigration and Customs Enforcement Immigration Bond interest rate is 2.08 per centum per annum.

DATES: Rates are applicable October 1, 2018 to December 31, 2018.

ADDRESSES: Comments or inquiries may be mailed to Sam Doak, Reporting Team Leader, Federal Borrowings Branch, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia, 26106–1328. You can download this notice at the following internet addresses: <*http://www.treasury.gov*> or <*http://www.federalregister.gov*>.

FOR FURTHER INFORMATION CONTACT: Adam Charlton, Manager, Federal Borrowings Branch, Office of Public Debt Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia, 26106–1328, (304) 480–5248; Sam Doak, Reporting Team Leader, Federal Borrowings Branch, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia, 26106–1328, (304) 480–5117.

SUPPLEMENTARY INFORMATION: Federal law requires that interest payments on cash deposited to secure immigration bonds shall be ''at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum.'' 8 U.S.C. 1363(a). Related Federal regulations state that ''Interest on cash deposited to secure immigration bonds will be at the rate as determined by the Secretary of the Treasury, but in no case will exceed 3 per centum per annum or be less than zero.'' 8 CFR 293.2. Treasury has determined that interest on the bonds will vary quarterly and will accrue during each calendar quarter at a rate equal to the lesser of the average of the bond equivalent rates on 91-day Treasury bills auctioned during the preceding calendar quarter, or 3 per centum per annum, but in no case less than zero. [FR Doc. 2015–18545] In addition to this Notice, Treasury posts the current quarterly rate in Table 2b—Interest Rates for Specific Legislation on the TreasuryDirect website.

Gary Grippo,

Deputy Assistant Secretary for Public Finance.

[FR Doc. 2018–22195 Filed 10–10–18; 8:45 am]

BILLING CODE 4810–25–P

FEDERAL REGISTER

Vol. 83 Thursday,

No. 197 October 11, 2018

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule and Critical Habitat Designation for Atlantic Pigtoe; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2018–0046; 4500030113]

RIN 1018–BD12

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule and Critical Habitat Designation for Atlantic Pigtoe

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and 12-month finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Atlantic pigtoe (*Fusconaia masoni*) as endangered or threatened under the Endangered Species Act of 1973, as amended (Act). The Atlantic pigtoe is a freshwater mussel native to Virginia, North Carolina, South Carolina, and Georgia. After review of the best available scientific and commercial information, we find that listing the Atlantic pigtoe as a threatened species is warranted. Accordingly, we propose to list it as a threatened species with a rule issued under section 4(d) of the Act (''4(d) rule''). We also propose to designate critical habitat under the Act. In total, approximately 542 river miles (872 river kilometers) in Virginia and North Carolina fall within the boundaries of the proposed critical habitat designation. Finally, we announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat.

DATES: We will accept comments received or postmarked on or before December 10, 2018. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 26, 2018.

ADDRESSES:

Written comments: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2018–0046, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2018–0046, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: For the critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the administrative record and are available at *https://www.fws.gov/southeast/,* at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0046, and at the Raleigh Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for the critical habitat designation will also be available at the Service website and Field Office set out above, and may also be included in the preamble and/or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Pete Benjamin, Field Supervisor, U.S. Fish and Wildlife Service, Raleigh Ecological Services Field Office, 551F Pylon Drive, Raleigh, NC 27606; telephone 919–856–4520; or facsimile 919–856–4556. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we determine that a species may be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. To the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designation of critical habitat can only be completed by issuing a rule.

This rule proposes the listing of the Atlantic pigtoe (*Fusconaia masoni*) as a threatened species with a 4(d) rule and proposes the designation of critical habitat.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that habitat degradation (Factor A), resulting from the cumulative impacts of land use change and associated watershed-level effects on water quality, water quantity, habitat connectivity, and instream habitat suitability, poses the largest risk to future viability of the Atlantic pigtoe. This stressor is primarily related to habitat changes: The buildup of fine sediments, the loss of flowing water, instream habitat fragmentation, and impairment of water quality, and it is exacerbated by the effects of climate change (Factor E).

Section 4(b)(2) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. The Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed if such areas are essential to the conservation of the species. In accordance with section 4(b)(2) of the Act, we prepared an analysis of the economic impacts of the proposed critical habitat designation.

Peer Review. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270) and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of six appropriate specialists regarding the species status assessment report, which informed th this proposed rule. The purpose of peer review is to ensure that the science behind our listing determination, the critical habitat

determination, and 4(d) rule are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in mussel biology, habitat, and stressors to the species.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. We particularly seek comments concerning:

(1) The Atlantic pigtoe's biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) Information on activities that are necessary and advisable for the conservation of the Atlantic pigtoe to include in a 4(d) rule for the species. The Service is proposing such measures that are necessary and advisable for the conservation of the species, and will evaluate ideas provided by the public in considering the prohibitions we should include in the 4(d) rule.

(6) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(7) Specific information on:

(a) The amount and distribution of Atlantic pigtoe habitat;

(b) What areas, that were occupied at the time of listing and that contain the physical or biological features essential to the conservation of the species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(8) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(9) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the benefits of including or excluding areas that may be impacted.

(10) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts and the description of the environmental impacts in the draft environmental assessment is complete and accurate.

(11) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(12) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. All comments submitted electronically via *http://www.regulations.gov* will be presented on the website in their entirety as submitted. For comments submitted via hard copy, we will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Raleigh Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Please note that submissions merely stating support for or opposition to the listing action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

Public Hearing

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be received by the date specified in **DATES** at the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Species Status Assessment

A species status assessment (SSA) team prepared an SSA report for the Atlantic pigtoe. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. The SSA report underwent independent peer review by scientists with expertise in mussel

biology, habitat management, and stressors (factors negatively affecting the species) to the species. The SSA report and other materials relating to this proposal can be found on the Service's Southeast Region website at *https://www.fws.gov/southeast/ and at http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0046. The draft economic analysis is available at *https://www.fws.gov/southeast/,* at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0046, and at the Raleigh Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

We identified the Atlantic pigtoe as a Category 2 candidate species in our November 21, 1991, Animal Candidate Review for Listing as Endangered or Threatened Species (56 FR 58804). Category 2 candidates were defined as taxa for which we had information that listing was possibly appropriate, but conclusive data on biological vulnerability and threats were not available to support a proposed rule. In the February 28, 1996, CNOR (61 FR 7596), we discontinued the designation of species as Category 2 candidates; therefore, the Atlantic pigtoe was no longer a candidate species.

On April 20, 2010, we were petitioned to list 404 aquatic species in the southeastern United States, including Atlantic pigtoe. In response to the petition, we completed a partial 90-day finding on September 27, 2011 (76 FR 59836), in which we announced our finding that the petition contained substantial information that listing may be warranted for numerous species, including the pigtoe. On June 17, 2014, the Center for Biological Diversity (CBD) filed a complaint against the Service for failure to complete a 12-month finding for the Atlantic pigtoe in accordance with statutory deadlines. On September 22, 2014, the Service and the CBD filed stipulated settlements in the District of Columbia, agreeing that the Service would submit to the **Federal Register** a 12-month finding for the Atlantic pigtoe no later than September 30, 2018 (*Center for Biological Diversity* v. *Jewell,* case 1:14–CV–01021–EGS/JMF). This document constitutes our concurrent 12-month warranted petition finding, proposed listing rule, and proposed critical habitat rule.

I. Proposed Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of the Atlantic pigtoe is presented in the SSA report (Service 2017; available at *https://www.fws.gov/southeast/*).

The Atlantic pigtoe is a small freshwater mussel with a sub-rhomboidal shaped shell. Although larger specimens exist, the Atlantic pigtoe rarely exceeds 50 millimeters (mm) (2 inches (in)) in length. The known historical range of the Atlantic pigtoe included 12 populations in Atlantic river basins from Virginia to Georgia. However, surveys conducted from 2005 to 2015 indicate that the currently occupied range of the Atlantic pigtoe consists of seven populations in Virginia and North Carolina. The Atlantic pigtoe is dependent on clean, moderate-flowing water with high dissolved oxygen content in creek and riverine environments. Historically, the most abundant populations existed in creeks and rivers with excellent water quality, and where stream flows were sufficient to maintain clean, silt-free substrates. It is associated with gravel and coarse sand substrates at the downstream edge of riffles (shallow water with rapid currents running over gravel or rocks), and less commonly occurs in cobble, silt, or sand detritus mixtures. Because this species prefers more pristine conditions, it typically occurs in headwaters of rural watersheds.

The Atlantic pigtoe is presumed to be an omnivore. Adults primarily filter feed on a wide variety of microscopic particulate matter suspended in the water column, including phytoplankton, zooplankton, bacteria, detritus, and dissolved organic matter, although juveniles tend to pedal feed in the sediment (Alderman and Alderman 2014, p. 9).

Like most freshwater mussels, the Atlantic pigtoe has a unique life cycle that relies on fish hosts for successful reproduction. Following release from the female mussel, sticky packets of floating glochidia (larvae) attach to the gills and scales of host minnows. The larvae stay attached to the host fish until they complete metamorphosis, when they release from the fish and fall to the substrate.

The Atlantic pigtoe has been documented in all major river basins in the Atlantic coastal drainages from the James River Basin in Virginia south to the Altamaha River Basin in Georgia, and from the foothills of the Appalachian Mountains to the Coastal Plain. However, abundance and distribution of the species has declined, with the species currently occupying approximately 40% of its historical range. Most of the remaining populations are small and fragmented, only occupying a fraction of reaches that were historically occupied. Current surveys found Atlantic pigtoes remain in seven populations in Virginia and North Carolina, however only three populations have multiple documented occurrences within the past 10 years. This decrease in abundance and distribution has resulted in largely isolated contemporary populations. Evidence suggests that the range reduction of the species corresponds to habitat degradation resulting from the cumulative impacts of land use change and associated watershed-level effects on water quality, water quantity, habitat connectivity, and instream habitat suitability.

Summary of Biological Status and Threats

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an ''endangered species'' or a ''threatened species.'' The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether any species is an ''endangered species'' or a ''threatened species'' because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or

required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

In our determination, we correlate the threats acting on the species to the factors in section 4(a)(1) of the Act. We summarize the status assessment for Atlantic pigtoe below.

The SSA report documents the results of our comprehensive biological status review for the Atlantic pigtoe, including an assessment of the potential stressors to the species. It does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. It does, however, provide the scientific basis that informs our regulatory decision, which involves the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report.

To assess Atlantic pigtoe viability, we used the three conservation biology principles of resiliency, representation, and redundancy (together, ''the three Rs,'' (3Rs)) (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency refers to the ability of a species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); representation refers to the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes); and redundancy refers to the ability of the species to withstand catastrophic events (for example, droughts, hurricanes). In general, the more redundant and resilient a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we used the 3Rs to evaluate individual mussel life-history needs. During the next stage, we assessed the historical and current condition of species' demographics and habitat characteristics, including explaining how the species arrived at its current condition. In the final stage of the SSA, we made predictions about the species' responses to positive and negative environmental and anthropogenic influences. This process used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We used this information to inform our regulatory decision in this finding.

To evaluate the current and future viability of the Atlantic pigtoe, we assessed a range of conditions to allow us to consider the species' resiliency, representation, and redundancy. Populations were delineated using the 12 river basins that Atlantic pigtoe mussels historically occupied: the James, Chowan, Roanoke, Tar, Neuse, Cape Fear, Pee Dee, Catawba, Edisto, Savannah, Ogeechee, and Altamaha River basins. Because the river basin level is at a very coarse scale, populations were further delineated using management units (MUs). The MUs were defined as one or more U.S. Geological Survey Hydrological Unit Code (HUC) 10 watersheds that species experts identified as the most appropriate unit for assessing population-level resiliency. To provide context for the current condition of the species using the 3Rs, we considered the historic range as context for the species' resiliency, redundancy, and representation on the landscape in the past. However, in addressing the current condition of the 3Rs, only extant populations were analyzed.

To assess resiliency, we qualitatively analyzed data related to three population factors (MU occupancy, recruitment, and abundance) and four habitat elements (water quality/flow, water quantity, instream substrate, and habitat connectivity). Overall population condition rankings and habitat condition rankings were determined by combining these factors and elements.

We described representation for the Atlantic pigtoe in terms of river basin variability (known from 12 historical river basins, currently extant in 7), physiographic variability (Mountains, Piedmont, and Coastal Plain), and historic latitudinal variability (Virginia south to Georgia). We assessed Atlantic pigtoe redundancy by first evaluating occupancy within each of the hydrologic units (*i.e.,* HUC10s) that constitute MUs, and then evaluating occupancy at the MU, and ultimately the population, level.

Current Condition of Atlantic Pigtoe

The historical range of the Atlantic pigtoe included 12 populations in Atlantic river basins from Virginia to Georgia. The surveys conducted from 2005 to 2015 indicate that the currently occupied range of the Atlantic pigtoe consists of 14 MUs within 7 populations in Virginia and North Carolina, in the Tar, Neuse, James, Chowan, Roanoke, Cape Fear, and Yadkin-Pee Dee River basins. The species is presumed extirpated from the southern portion of its range, including the Catawba, Edisto, Savannah, Ogeechee, and Altamaha River basins. The Atlantic pigtoe currently (defined as the observation of at least one specimen from 2005 to 2015) occupies 14 of the 81 historically occupied MUs. At the population level, the overall current condition (= resiliency) of the extant populations was estimated to be high for the Tar Population; moderate for the Neuse Population; and low for the James, Chowan, Roanoke, Cape Fear, and Yadkin-Pee Dee populations.

The Atlantic pigtoe currently has reduced adaptive potential due to limited representation (compared with historical representation) in seven river basins and three physiographic regions. The species retains 58 percent of its known river basin variability, but as discussed above distribution has been reduced in the James, Chowan, Roanoke, Cape Fear, and Yadkin-Pee Dee populations. In addition, although the species continues to maintain physiographic representation in all three regions it historically occupied, occupancy has decreased in each region. A 67 percent estimated loss has occurred in the Mountain region's watersheds, 48 percent loss in the Piedmont region's watersheds, and 76 percent loss in the Coastal Plain region's

watersheds. Latitudinal variability is also reduced and is largely limited to the central portions of its historical range, primarily in the Tar and Neuse basins.

Redundancy was estimated as the number of historically occupied MUs that remain currently occupied. The species has limited redundancy within the James, Chowan, Roanoke, and Cape Fear River populations, and only two populations (Tar and Neuse) have multiple moderate or highly resilient MUs. Overall, the species has decreased redundancy across its range due to an estimated 60 percent reduction in occupancy compared to historical levels.

Risk Factors for Atlantic Pigtoe

Aquatic systems face a multitude of natural and anthropogenic factors that may impact the status of species within those systems (Neves *et al.* 1997, p. 44). Generally, these factors can be categorized as either environmental stressors (*e.g.,* development, agriculture practices, or forest management) or systematic changes (*e.g.,* climate change, invasive species, dams or other barriers). The largest threats to the future viability of the Atlantic pigtoe consist of habitat degradation (Factor A) from stressors influencing water quality, water quantity, instream habitat, and habitat connectivity. All of these threats are exacerbated by the effects of climate change (Factor E). A brief summary of these primary stressors is presented below; for a full description of these stressors, refer to chapter 4 of the SSA report. No existing regulatory mechanisms adequately address these threats to the Atlantic pigtoe such that it does not warrant listing under the Act (Factor D). We did not find that the species faces significant threats from overutilization for commercial, recreational, scientific, or education purposes (Factor B), or from disease or predation (Factor C).

Environmental Stressors

Development: Development refers to urbanization of the landscape, including (but not limited to) land conversion for urban and commercial use, infrastructure (roads, bridges, utilities), and urban water uses (water supply reservoirs, wastewater treatment, etc.). The effects of urbanization may include alterations to water quality, water quantity, and habitat (both in stream and streamside) (Ren *et al.* 2003, p. 649; Wilson 2015, p. 424). These alterations adversely affect both Atlantic pigtoe adults, which require clear, flowing water with a temperature less than 35 degrees Celsius (°C) (95 degrees Fahrenheit (°F)) and a dissolved oxygen greater than 3 milligrams per liter (mg/L), and juveniles, which require very specific interstitial chemistry to complete that life stage: low salinity (similar to 0.9 parts per thousand (ppt)), low ammonia (similar to 0.7 mg/L), low levels of copper and other contaminants, and dissolved oxygen greater than 1.3 mg/L.

Impervious surfaces associated with development negatively affect water quality when pollutants that accumulate on impervious surfaces are washed directly into the streams during storm events. Storm water runoff affects such water quality parameters as temperature, pH, dissolved oxygen, and salinity, which in turn alter the water chemistry and could make habitat unsuitable for the Atlantic pigtoe. Concentrations of contaminants, including nitrogen, phosphorus, chloride, insecticides, polycyclic aromatic hydrocarbons, and personal care products, increase with urban development (Giddings *et al.* 2009, p. 2; Bringolf *et al.* 2010, p. 1311).

Urban development can also lead to increased variability in streamflow, typically increasing the amount of water entering a stream after a storm and decreasing the time it takes for the water to travel over the land before entering the stream (Giddings *et al.* 2009, p. 1). Stream habitat is altered either directly via channelization or clearing of riparian areas, or indirectly via high stream flows that reshape the channel and cause sediment erosion (Giddings *et al.* 2009, p. 2). Impervious surfaces associated with increased development cause rain water to accumulate and flow rapidly into storm drains, thereby becoming overheated, which can stress or kill mussels when it enters streams. Pollutants like gasoline, oil, and fertilizers are also washed directly into streams and can kill mussels and other aquatic organisms. The large volumes and velocity of water, combined with the extra debris and sediment entering streams following a storm, can stress, displace, or kill Atlantic pigtoe and the host fish species on which they depend. Many of the known host fish of the Atlantic pigtoe can tolerate short periods of turbidity associated with rain events; however, the cyprinid host fish typically do not persist in streams with consistently high sedimentation. Changes in flow may also result in turbidity that can reduce feeding efficiency and eliminate spawning habitat due to lack of clean gravel substrate.

A further risk of urbanization is the accompanying road development that often results in improperly constructed culverts at stream crossings. These culverts act as barriers, either if flow through the culvert varies significantly from the rest of the stream, or if the culvert ends up being perched above the stream bed so that host fish (and, therefore, the Atlantic pigtoe) cannot pass through them. This leads to loss of access to quality habitat, as well as fragmented habitat and a loss of connectivity between populations. This can limit both genetic exchange and recolonization opportunities.

All of the river basins within the range of this species are affected to some extent by development, ranging from 3 percent of the Black River subbasin in the Cape Fear River Basin to 70 percent of the Crabtree Creek subbasin in the Neuse River Basin (based on the 2011 National Land Cover Data). The Neuse River basin in North Carolina contains one-sixth of the entire State's population, indicating heavy development pressure on the watershed. As another example, the Middle James MU (in the James population) contains 159 impaired stream miles, 2 major discharges, 32 minor discharges, and over 1,300 road crossings. Similarly, the Muddy Creek MU is currently made up of 12.3 percent impervious surfaces. For complete data on all of the populations, refer to appendix C of the SSA report.

Agricultural Practices: The main impacts to the Atlantic pigtoe from agricultural practices are from nutrient pollution and water pumping for irrigation. Fertilizers and animal manure, which are both rich in nitrogen and phosphorus, are the primary sources of nutrient pollution from agricultural sources when agricultural best management practices are not used. Excess nutrients impact water quality when it rains or when water and soil containing nitrogen and phosphorus wash into nearby waters or leach into the water table and ground waters causing algal blooms. These algal blooms can harm freshwater mussels by suffocating host fish and decreasing available oxygen in the water column.

It is common practice to pump water for irrigation from adjacent streams or rivers into a reservoir pond, or to spray the stream or river water directly onto crops. If the water withdrawal is excessive or done illegally, this may cause impacts to the amount of water available to downstream sensitive areas during low flow months, resulting in dewatering of channels and stranding of mussels, leading to desiccation and death. The Cape Fear River basin has 33 reservoirs, many of them supplying water to some of the most populated areas in North Carolina, including the Triad (Greensboro and High Point),

Chapel Hill, Fayetteville, and Wilmington. All told, this basin contains one-fifth of the entire State's population and is the most industrialized basin, as well as home to the most large-scale livestock operations in the State. However, according to the 2011 National Land Cover Data, all of the watersheds within the range of the Atlantic pigtoe are affected by agricultural land uses, most with 20 percent or more of the watershed having been converted for agricultural use.

Forest Management: A forested landscape provides many ideal conditions for aquatic ecosystems, and managed forested watersheds tend to have more natural watershed functions and better water quality than other land uses (Edwards et al. 2015, p. 60). Silvicultural activities, when performed according to strict forest practices guidelines (FPGs) or best management practices (BMPs), can retain adequate conditions for aquatic ecosystems; however, when FPGs/BMPs are not followed, these practices can also contribute to the myriad of stressors facing aquatic systems in the Southeast. Both small- and large-scale forestry activities have been shown to have a significant impact upon the physical, chemical, and biological characteristics of adjacent small streams (Allan 1995, p. 107). The clearing of large areas of forested wetlands and riparian systems can eliminate shade provided by these canopies, exposing streams to more sunlight and increasing the instream water temperature. The increase in stream temperature and light after deforestation alters the macroinvertebrate and other aquatic species richness and abundance composition in streams (Couceiro et al. 2007, p. 272; Kishi et al. 2004, p. 283; Caldwell et al. 2014, p. 3). As stated above, the Atlantic pigtoe is sensitive to changes in temperature, and sustained temperature increases will stress and possibly lead to mortality for these mussels.

Forestry activities often include the construction of logging roads through the riparian zone, which can directly degrade nearby stream environments. Roads can cause localized sedimentation, as well as sedimentation traveling downstream into more sensitive habitats. These effects lead to stress and mortality for the Atlantic pigtoe, as discussed in ''*Development,*'' above. While BMPs are currently widely adhered to today, they were not always common practice in the past. The average implementation rate of BMPs in the southeastern States is at 92 percent, including approximately 88 percent for Virginia and 90 percent for North Carolina. While improper implementation is rare, it can have drastic negative effects on sensitive aquatic species like freshwater mussels. One small area of riparian zone that is removed can cause sedimentation and habitat degradation for miles downstream.

Systemic Changes

Effects of Climate Change: Aquatic systems are encountering changes and shifts in seasonal patterns of precipitation and runoff as a result of climate change. While mussels evolved in habitats that experience seasonal fluctuations in discharge, global weather patterns can have an impact on the normal regimes (*e.g.,* El Niño or La Niña). Both excessively high (*i.e.,* floods and storms) and excessively low (*i.e.,* droughts) flows can adversely affect the species.

As to droughts, even naturally occurring low flow events can cause mussels to become stressed, either because they exert significant energy to move to deeper waters or they may succumb to desiccation. Because late summer and early fall are stressful periods for the species due to low flows, droughts during this time of year can be especially harmful, resulting in increased mortality rates. Atlantic pigtoe habitat must have adequate flow to deliver oxygen, enable passive reproduction, and deliver food to filter-feeding mussels. Further, flow removes contaminants and fine sediments from interstitial spaces preventing mussel suffocation. Droughts have impacted all river basins within the range of Atlantic pigtoe, from an ''abnormally dry'' ranking for North Carolina and Virginia in 2001 on the Southeast Drought Monitor scale to the highest ranking of ''exceptionally dry'' for the entire range of the species in 2002 and 2007. In 2015, the entire Southeast ranged from ''abnormally dry'' to ''moderate drought'' or ''severe drought.'' These data covered the first week in September, which, as noted above, is a very sensitive time for drought to be affecting the species. The Middle Neuse tributaries of the Neuse River basin had consecutive drought years from 2005 through 2012, indicating sustained stress on the species over a long period of time.

Increases in the frequency and strength of storms events alter stream habitat. Stream habitat is altered either directly via channelization or clearing of riparian areas, or indirectly via high stream flows that reshape the channel and cause sediment erosion. The large volumes and velocity of water, combined with the extra debris and sediment entering streams following a storm, stress, displace, or kill Atlantic pigtoe and the host fish species on which they depend.

Sedentary freshwater mussels have limited ability to seek refuge from droughts and floods, and they are completely dependent on specific water temperatures to complete their physiological requirements. Changes in water temperature lead to stress, increased mortality, and also increase the likelihood of extinction.

Invasive Species: Nonnative species are invading aquatic communities and altering biodiversity by competing with native species for food, light, or breeding and nesting areas in many areas across the range of Atlantic pigtoe. For example, the Asian clam (*Corbicula fluminea*) alters benthic substrates, competes with native species for limited resources, and causes ammonia spikes in surrounding water when they die off en masse. Juvenile mussels need low levels of ammonia to survive, and studies show that freshwater mollusks are more sensitive than previously known to some chemical pollutants, including ammonia. The Asian clam is ubiquitous across the southeastern United States and is present in watersheds across the range of the Atlantic pigtoe.

The flathead catfish (*Pylodictis olivaris*) is an apex predator that feeds on almost anything, including other fish, crustaceans, and mollusks. Predation by flathead catfish diminishes host fish communities, reducing the amount of fish available as hosts for the mussels to complete their glochidia life stage. Introductions of flathead catfish into rivers in North Carolina and Georgia have led to steep declines in numbers of native fish (Service 2017). The flathead catfish has been documented in six of the seven river systems currently inhabited by the Atlantic pigtoe (James, Roanoke, Tar, Neuse, Cape Fear, and Yadkin-Pee Dee).

Hydrilla (*Hydrilla verticillata*), an aquatic plant, alters habitat, decreases flows, and contributes to sediment buildup in streams. Hydrilla occurs in several watersheds where the Atlantic pigtoe occurs, including recent documentation from the upper Neuse system and the Tar River. The dense growth is altering the flow in these systems and causing sediment buildup, which can cause suffocation in filter-feeding mussels. While data are lacking on hydrilla currently having population-level effects on Atlantic pigtoe, the spread of this invasive plant is expected to increase in the future.

Barriers: Extinction and extirpation of North American freshwater mussels can

be traced to impoundment and inundation of riffle habitats in all major river basins of the central and eastern United States. Upstream of dams, the change from flowing to impounded waters, increased depths, increased buildup of sediments, decreased dissolved oxygen, and the drastic alteration in resident fish populations can threaten the survival of mussels and their overall reproductive success. Downstream of dams, fluctuations in flow regimes, minimal releases and scouring flows, seasonal dissolved oxygen depletion, reduced or increased water temperatures, and changes in fish assemblages can also threaten the survival and reproduction of many mussel species. Because Atlantic pigtoes use smaller host fish (*e.g.,* darters and minnows), they are even more susceptible to impacts from habitat fragmentation due to increasing distance between suitable habitat patches and a low likelihood of host fish swimming over that distance. Even improperly constructed culverts at stream crossings can act as significant barriers and have some similar effects as dams on stream systems (see discussion under *Development,* above). These barriers not only fragment habitats along a stream course, they also contribute to genetic isolation of the Atlantic pigtoe. Nearly all of the MUs containing Atlantic pigtoe populations have been impacted by dams, with as few as 2 dams in Mill Creek in the James River basin to 237 dams throughout the Middle Neuse basin (Service 2017, appendix D). The Middle Neuse also contains over 5,000 stream crossings, so connectivity in that basin has been severely affected by barriers. Only the Edisto River basin within the range of the Atlantic pigtoe has not been impacted by dams.

Synergistic Effects

In addition to impacting the species individually, it is likely that several of the above summarized risk factors are acting synergistically or additively on the species. The combined impact of multiple stressors is likely more harmful than a single stressor acting alone. For example, in the Meherrin River MU, there are four stream reaches with 34 miles of impaired streams. They have low benthic-macroinvertebrate scores, low dissolved oxygen, low pH, and contain *Escherichia coli* (also known as *E. coli*). There are 16 non-major and 2 major discharges within this MU, along with 7 dams, and 676 road crossings. Additionally, droughts were recorded for 4 consecutive years (2007–2010) in this MU. The combination of all of these stressors on the sensitive aquatic species in this habitat has probably impacted Atlantic pigtoe, in that only two individuals have been recorded here since 2005.

Conservation Actions

The Service and State wildlife agencies are working with numerous partners to provide technical guidance and offering conservation tools to meet both species and habitat needs in aquatic systems in North Carolina. Land trusts are targeting key parcels for acquisition; Federal and State biologists are surveying and monitoring species occurrences; and, recently, there has been a concerted effort to ramp up captive propagation and species population restoration via augmentation, expansion, and reintroduction efforts. In 2014, North Carolina Wildlife Resources Commission staff and partners began a concerted effort to propagate the Atlantic pigtoe in hopes of augmenting existing populations in the Tar and Neuse River basins. In July 2015, 250 Atlantic pigtoes were stocked into Sandy Creek, a tributary of the Tar River. Annual monitoring to evaluate growth and survival is planned, and additional propagation and stocking efforts will continue in upcoming years (Service 2017, p. 59).

Future Scenarios

For the purpose of this assessment, we define viability as the ability of the species to sustain populations in the wild over time. To help address uncertainty associated with the degree and extent of potential future stressors and their impacts on the needs of the species, the 3Rs were applied using four plausible future scenarios. We devised these scenarios by eliciting expert information on the primary stressors anticipated to affect the species into the future: Habitat loss and degradation due to urbanization and the effects of climate change. The models that were used to forecast both urbanization and climate change projected out 50 years in the future. For more detailed information on these models and their projections, please see the SSA report (Service 2017, chapter 3).

For example, in scenario one, the ''status quo'' scenario, factors that influence current populations of the Atlantic pigtoe were assumed to remain constant over the 50-year time horizon. Climate models predict that, if emissions of greenhouse gasses continue to increase, the Southeast will experience an increase in low flow (drought) events. Likewise, this scenario assumed the ''business as usual'' pattern of urban growth, which predicts that urbanization will continue to increase rapidly (using simulations that point to a future in which the extent of urbanization in the Southeast is projected to increase by 101 to 192 percent). This continued growth in development means increases in impervious surfaces, increased variability in streamflow, channelization of streams or clearing of riparian areas, and other negative effects explained above under *Development.* The ''status quo'' scenario also assumes that current conservation efforts would remain in place but that no new conservation actions would be taken. In this scenario, a substantial loss of resiliency, representation, and redundancy is expected. Under this scenario, we predict the condition of MUs as: Zero in high condition, two in moderate condition, and six in low condition, with the remaining six likely to be extirpated. With the likely extirpation of 6 out of 14 currently extant MUs, and only the Tar population retaining more than one moderately resilient MU, redundancy would be reduced. Representation would be reduced, with only five (42 percent) of the former river basins occupied, and with extremely limited variability in the Mountains and Coastal Plain, and reduced variability in the Piedmont.

In the SSA Report we describe results for three more scenarios that represent the full likely range of plausible future outcomes for development, possible climate changes, and the species' expected response to threats. Results for our full resiliency analysis for the future projections is summarized in Table 1 below.

TABLE 1—FUTURE SCENARIOS OF POPULATION CONDITIONS

Populations: management units	Current	Status Quo	Pessimistic	Optimistic	Opportunistic
James: Craig Creek Subbasin	Moderate	Low	x*	Moderate	Moderate.
James: Middle James	Very Low	x	x	x	x.
Chowan: Nottoway	Moderate	x	x	Low	Low.

TABLE 1—FUTURE SCENARIOS OF POPULATION CONDITIONS—Continued

Populations: management units	Current	Status Quo	Pessimistic	Optimistic	Opportunistic
Chowan: Meherrin	Low	x	x	x	x.
Roanoke: Dan River Subbasin	Low	x	x	Moderate	x.
Tar: Upper/Middle Tar	High	Low	Low	Moderate	Low.
Tar: Lower Tar	Low	Low	x	Low	x.
Tar: Fishing Creek	High	Moderate	Low	High	Moderate.
Tar: Sandy-Swift	High	Moderate	Low	High	Moderate.
Neuse: Upper Neuse	Moderate	Low	x	Moderate	Low.
Neuse: Middle Neuse	Moderate	x	x	Low	x.
Cape Fear: New Hope	Moderate	Low	x	Low	x.
Cape Fear: Deep River Subbasin	Low	x	x	Moderate	Low.
Pee Dee: Uwharrie/Little	Low	Low	Low	Low	Low.

* x= likely extirpated.

Determination

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

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Atlantic pigtoe. The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.''

We considered whether the Atlantic pigtoe is presently in danger of extinction and determined that proposing endangered status is not appropriate. The historical range of the Atlantic pigtoe included streams and rivers in 12 Atlantic Slope drainages from the James River Basin to the Altamaha River Basin, with the documented historical distribution in 28 MUs within those basins. Currently, the Atlantic pigtoe is presumed extirpated from 50 percent (14) of the historically occupied MUs and 5 of the drainages. Of the remaining 14 occupied MUs, 3 (21 percent) are estimated to be highly resilient and 5 (36 percent) moderately resilient, with 6 (43 percent) having low resiliency. Eight moderate to high resiliency MUs provide the ability for the species to withstand stochastic disturbance events. Scaling up from the MU to the population level, 1 of 12 former populations (the Tar population) was estimated to have high resiliency, 1 population (the Neuse population) was estimated to have moderate resiliency, 5 populations (the James, Chowan, Roanoke, Cape Fear, and Yadkin-Pee Dee populations) had low estimated resiliency, and 5 of the former 12 populations are presumed extirpated; this means that 42 percent of the species' historic range has been eliminated. Seventy-one percent of streams that remain part of the current species' range are estimated to be in low condition as defined in the SSA report. The species continues to maintain physiographic representation in all 3 regions it historically occupied, although occupancy has decreased in each region by between 48 and 76 percent. However, while threats are currently acting on the species and many of those threats are expected to continue into the future (see below), we did not find that the species is currently in danger of extinction throughout all of its range. With eight moderately or highly resilient MUs in three physiographic regions, the current condition of the species still provides for enough resiliency, redundancy, and representation such that it is not at risk of extinction now.

However, estimates of future resiliency, redundancy, and representation for the Atlantic pigtoe are also low. The Atlantic pigtoe faces a variety of threats from declines in water quality, loss of stream flow, riparian and instream fragmentation, and deterioration of instream habitats (Factor A). These threats, which are expected to be exacerbated by continued urbanization (Factor A) and the effects of climate change (Factor E), were central to our assessment of the future viability of the Atlantic pigtoe. Given current and future decreases in resiliency, populations will become more vulnerable to extirpation from stochastic events, in turn, resulting in concurrent losses in representation and redundancy. The range of plausible future scenarios of these Atlantic pigtoe habitat conditions and population factors suggest possible extirpation in as many as five of seven currently extant populations. Even the most optimistic model predicted that only two MUs will be in high condition in 50 years and the remaining populations are expected to be characterized by low occupancy and abundance. Under most modeled scenarios, the species is likely to lose enough resiliency, redundancy, and representation such that it is at risk of not being viable. All four scenarios presented as representative of plausible future scenarios create conditions where the Atlantic pigtoe would not have enough resiliency, redundancy, or representation to sustain populations over time. While determining the probability of each scenario was not possible with the available data, the entire risk profile that was provided by looking across the range of the four plausible scenarios showed the species is continuing to lose resiliency, redundancy, and representation throughout the range in all likely scenarios. In short, our analysis of the species' current and future conditions, as well as the conservation efforts discussed above, show that the population and habitat factors used to determine the resiliency, representation, and redundancy for the species will continue to decline over the next 50 years so that the species is likely to become in danger of extinction throughout its range within the foreseeable future. Fifty years was considered ''foreseeable'' in this case because it included projections from both available models while taking into consideration that Atlantic pigtoes are slow-growing and long-lived species, and, therefore, respond more slowly on a population or species level to negative impacts on the ecosystem. We can

reasonably rely on the future of 50 years as presented in the models of predicted urbanization and climate change, and predict how those threats will affect the status of the species.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Because we have determined that the Atlantic pigtoe is likely to become an endangered species within the foreseeable future throughout its range, we find it unnecessary to proceed to an evaluation of potentially significant portions of the range. Where the best available information allows the Services to determine a status for the species rangewide, that determination should be given conclusive weight because a rangewide determination of status more accurately reflects the species' degree of imperilment and better promotes the purposes of the statute. Under this reading, we should first consider whether listing is appropriate based on a rangewide analysis and proceed to conduct a ''significant portion of its range'' analysis if, and only if, a species does not qualify for listing as either endangered or threatened according to the ''all'' language. We note that the court in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), did not address this issue, and our conclusion is therefore consistent with the opinion in that case.

Therefore, on the basis of the best available scientific and commercial information, we propose to list the Atlantic pigtoe as threatened in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification (such as ''downlisting'' from endangered to threatened) or removal from the Federal Lists of Endangered and Threatened Wildlife and Plants (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*http://www.fws.gov/endangered*), or from our Raleigh Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands. If we list the Atlantic pigtoe, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Virginia and North Carolina would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Atlantic pigtoe. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the Atlantic pigtoe is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

II. Proposed Critical Habitat Designation

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as: An area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the

point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the specific features that support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We will determine whether unoccupied areas are essential for the conservation of the species by considering the life-history, status, and conservation needs of the species. This will be further informed by any generalized conservation strategy, criteria, or outline that may have been developed for the species to provide a substantive foundation for identifying which features and specific areas are essential to the conservation of the species and, as a result, the development of the critical habitat designation. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species to the maximum extent prudent and determinable. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or

(2) Such designation of critical habitat would not be beneficial to the species. In determining whether a designation would not be beneficial, the factors the Service may consider include but are not limited to: Whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of ''critical habitat.''

There is currently no imminent threat of take attributed to collection or vandalism identified under Factor B for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, we next determine whether such designation of critical habitat would not be beneficial to the species. In the information provided above on threats to the species, we determined that there are habitat-based threats to the Atlantic pigtoe, so the designation of critical habitat would be beneficial to the species through the application of section 7 of the Act to actions that affect habitat as well as those that affect the species. Because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and would be beneficial, we find that designation of critical habitat is prudent for the Atlantic pigtoe.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the Atlantic pigtoe is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''critical habitat.''

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where the species is located. We find that this information is sufficient for us to conduct both the biological and economic analyses required for the critical habitat determination. Therefore, we conclude that the designation of critical habitat is determinable for the Atlantic pigtoe.

Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic needed to support the life history of the species. In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species.

We derive the specific physical or biological features essential for Atlantic pigtoe from studies of this species' habitat, ecology, and life history. The primary habitat elements that influence resiliency of the Atlantic pigtoe include water quality, water quantity, substrate, and habitat connectivity. A full description of the needs of individuals, populations, and the species is available from the SSA report; the individuals' needs are summarized below in Table 2.

TABLE 2—LIFE HISTORY AND RESOURCE NEEDS OF THE ATLANTIC PIGTOE

Life stage	Resources and/or circumstances needed for individuals to complete each life stage	Resource function (BFSD *)
Fertilized Eggs—early spring	• Clear, flowing water • Sexually mature males upstream from sexually mature females. • Appropriate spawning temperatures. • Presence of gravid females.	B
Glochidia—late spring to early summer	• Clear, flowing water • Just enough flow to attract drift feeding minnows. • Presence of host fish for attachment.	B, D
Juveniles—excystment from host fish to ~20mm shell length.	• Clear, flowing water • Host fish dispersal. • Appropriate interstitial chemistry. —Low salinity (~0.9 ppt). —Low ammonia (~0.7 mg/L). —Low levels of copper and other contaminants. —Dissolved oxygen >1.3 mg/L. • Appropriate substrate for settlement. • Adequate food availability.	F, S
Adult—>20 mm shell length	• Clear, flowing water • Appropriate substrate (silt-free gravel and stable, coarse sand). • Adequate food availability (phytoplankton and detritus). • High dissolved oxygen (>3mg/L).	F, S

TABLE 2—LIFE HISTORY AND RESOURCE NEEDS OF THE ATLANTIC PIGTOE—Continued

Life stage	Resources and/or circumstances needed for individuals to complete each life stage	Resource function (BFSD*)
	• Water temperature <35 °C.	

* B=breeding; F=feeding; S=sheltering; D=dispersal

Summary of Essential Physical or Biological Features

In summary, we derive the specific physical or biological features essential to the conservation of Atlantic pigtoe from studies of this species' habitat, ecology, and life history as described above. Additional information can be found in the SSA Report (Service 2017) available on *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0046. We have determined that the following physical or biological features are essential to the conservation of Atlantic pigtoe:

(1) Suitable substrates and connected instream habitats, characterized by geomorphically stable stream channels and banks (*i.e.,* channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation) with habitats that support a diversity of freshwater mussel and native fish (such as stable riffle-run-pool habitats that provide flow refuges consisting of silt-free gravel and coarse sand substrates).

(2) Adequate flows, or a hydrologic flow regime (which includes the severity, frequency, duration, and seasonality of discharge over time), necessary to maintain benthic habitats where the species is found and to maintain connectivity of streams with the floodplain, allowing the exchange of nutrients and sediment for maintenance of the mussel's and fish host's habitat, food availability, spawning habitat for native fishes, and the ability for newly transformed juveniles to settle and become established in their habitats.

(3) Water and sediment quality (including, but not limited to, conductivity, hardness, turbidity, temperature, pH, ammonia, heavy metals, and chemical constituents) necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages.

(4) The presence and abundance of fish hosts necessary for recruitment of the Atlantic pigtoe.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of the Atlantic pigtoe may require special management considerations or protections to reduce the following threats: (1) Urbanization of the landscape, including (but not limited to) land conversion for urban and commercial use, infrastructure (roads, bridges, utilities), and urban water uses (water supply reservoirs, wastewater treatment, etc.); (2) nutrient pollution from agricultural activities that impact water quantity and quality; (3) significant alteration of water quality; (4) improper forest management or silviculture activities that remove large areas of forested wetlands and riparian systems; (5) culvert and pipe installation that creates barriers to movement; (6) impacts from invasive species; (7) changes and shifts in seasonal precipitation patterns as a result of climate change; and (8) other watershed and floodplain disturbances that release sediments or nutrients into the water.

Management activities that could ameliorate these threats include, but are not limited to: Use of best management practices (BMPs) designed to reduce sedimentation, erosion, and bank side destruction; protection of riparian corridors and leaving sufficient canopy cover along banks; moderation of surface and ground water withdrawals to maintain natural flow regimes; increased use of stormwater management and reduction of stormwater flows into the systems; and reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

In summary, we find that the occupied areas we are proposing to designate as critical habitat contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. Special management considerations or protection may be required of the Federal action agency to eliminate, or to reduce to negligible levels, the threats affecting the physical and biological features of each unit.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b) we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat.

The current distribution of the Atlantic pigtoe is much reduced from its historical distribution. We anticipate that recovery will require continued protection of existing populations and habitat, as well as ensure there are adequate numbers of mussels in stable populations and that these populations occur over a wide geographic area. This strategy will help to ensure that catastrophic events, such as the effects of hurricanes (*e.g.,* flooding that causes excessive sedimentation, nutrients, and debris to disrupt stream ecology), cannot simultaneously affect all known populations. Rangewide recovery considerations, such as maintaining existing genetic diversity and striving for representation of all major portions of the species' current range, were considered in formulating this proposed critical habitat.

Sources of data for this proposed critical habitat include multiple databases maintained by universities and State agencies for Virginia and North Carolina, and numerous survey reports on streams throughout the species' range (see SSA report). We have also reviewed available information that pertains to the habitat requirements of this species. Sources of information on habitat requirements include studies conducted at occupied sites and published in peer-reviewed articles, agency reports, and data collected during monitoring efforts (Service 2017).

Areas Occupied at the Time of Listing

We identified stream channels that currently support populations of the Atlantic pigtoe. We defined ''current'' as stream channels with observations of the species from 2005 to the present. Due to the breadth and intensity of survey effort done for freshwater mussels throughout the known range of the species, it is reasonable to assume that streams with no positive surveys since 2005 should not be considered occupied for the purpose of our analysis. However, since each particular area is not surveyed every year, and these cryptic mussels have a 0.42 detection probability, only one negative survey would not be sufficient to determine that the species is not present. Therefore, it is reasonable to assume that if the species had been seen within the past ten years that it could be considered currently occupied. Specific habitat areas were delineated based on Natural Heritage Element Occurrences (EOs) following NatureServe's occurrence delineation protocol for freshwater mussels (NatureServe 2018). These EOs provide habitat for Atlantic pigtoe subpopulations and are large enough to be self-sustaining over time, despite fluctuations in local conditions. The EOs contain stream reaches with interconnected waters so that host fish containing Atlantic pigtoe glochidia can move between areas, at least during certain flows or seasons.

We consider the following streams to be occupied by the species at the time of proposed listing: Craig Creek, Mill Creek, Middle James River, Nottoway River Subbasin, Meherrin River, Dan River, Aarons Creek, Upper/Middle Tar River, Sandy/Swift Creek, Fishing Creek Subbasin, Lower Tar River, Upper Neuse River Subbasin, Middle Neuse River Subbasin, New Hope Creek, Deep River Subbasin, and Little River Subbasin (see *Unit Descriptions,* below). The proposed critical habitat designation does not include all streams known to have been occupied by the species historically; instead, it includes only the occupied streams within the historical range that have also retained the physical or biological features that will allow for the maintenance and expansion of existing populations.

Areas Outside the Geographic Area Occupied at the Time of Listing

We are not proposing to designate any areas outside the geographical area currently occupied by the species because we did not find any unoccupied areas that were essential for the conservation of the species. The protection of eight moderately or highly resilient management units across the physiographic representation of the range would sufficiently reduce the risk of extinction. Improving the resiliency of populations in the currently occupied streams will increase viability to the point that the protections of the Act are no longer necessary.

General Information on the Maps of the Proposed Critical Habitat Designation

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for Atlantic pigtoe. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation under the Act with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the proposed critical habitat designation in the discussion of individual units below. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0046, and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**, above).

Proposed Critical Habitat Designation

We are proposing to designate approximately 542 river mi (872 river km) in 16 units as critical habitat for the Atlantic pigtoe. All of the units are currently occupied by the species and contain all of the physical and biological features essential to the conservation of the species. These proposed critical habitat areas, described below, constitute our current best assessment of areas that meet the definition of critical habitat for the Atlantic pigtoe. Table 3 shows the name, land ownership of the riparian areas surrounding the units, and approximate river miles of the proposed designated units for the Atlantic pigtoe. Because all streambeds are navigable waters, the actual critical habitat units are all owned by the State in which they are located.

TABLE 3—PROPOSED CRITICAL HABITAT UNITS FOR THE ATLANTIC PIGTOE

Critical habitat unit	Riparian ownership	River miles (kilometers)
1. JR1—Craig Creek	Federal	29 (46.7)
2. JR2—Mill Creek	Federal	1 (1.6)
3. JR3—Middle James River	Private	3 (4.8)
4. CR1—Nottoway River Subbasin	Private; Federal	50 (80.5)
5. CR2—Meherrin River	Private	5 (8)
6. RR1—Dan River	Private	7 (11.3)
7. RR2—Aarons Creek	Private	12 (19.3)
8. TR1—Upper/Middle Tar River	Private; Easements	85 (136.8)
9. TR2—Sandy/Swift Creek	Private; State; Easements	58 (93.3)
10. TR3—Fishing Creek Subbasin	Private; State; Easements	85 (136.8)
11. TR4—Lower Tar River	Private; State; Easements	30 (48.3)
12. NR1—Upper Neuse River Subbasin	Private; State; Easements	60 (95)
13. NR2—Middle Neuse River	Private; State; County; Easements	61 (98.2)
14. CF1—New Hope Creek	Private; Easements	6 (9.7)
15. CF2—Deep River	Private	10 (16.1)

TABLE 3—PROPOSED CRITICAL HABITAT UNITS FOR THE ATLANTIC PIGTOE—Continued

Critical habitat unit	Riparian ownership	River miles (kilometers)
16. YR1—Little River	Private; Easements	40 (64.4)
Total		542 (872)

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all proposed units, and reasons why they meet the definition of critical habitat for Atlantic pigtoe, below.

James River Population

Unit 1: JR1—Craig Creek

Unit 1 consists of 29 river mi (46.7 river km) of Craig Creek in Craig and Botecourt Counties, Virginia. The land adjacent to Craig Creek is primarily private, although some land along the river is federally owned by George Washington and Jefferson National Forest (GWJ NF). The unit currently supports all breeding, feeding, and sheltering needs for the species.

Special management considerations or protection may be required to address excess nutrients, sediment, and pollutants that enter the creek and serve as indicators of other forms of pollution such as bacteria and toxins, reducing water quality for the species. Sources of these types of pollution are wastewater, agricultural runoff, and urban stormwater runoff. Five stream reaches, totaling approximately 21 miles, are impaired for aquatic life in the lower Craig Creek watershed. Impairment is indicated by low benthic-macroinvertebrate bioassessments, pH issues, high temperature, and fecal coliform.

The GWJ NF surrounds the Craig Creek Subbasin; protections and management of the National Forest will likely enable habitat conditions (water quality, water quantity/flow, instream substrate, and connectivity) to remain high into the future. Targeted species restoration in conjunction with current associated-species restoration efforts in Johns, Dicks, and Little Oregon Creeks within the Craig Creek Subbasin will likely improve the Atlantic pigtoe's resiliency in these areas. Maintenance of forested buffer conditions is essential to retaining high-quality instream habitat in this unit.

Unit 2: JR2—Mill Creek

Unit 2 consists of a 1-mile (1.6-km) segment of Mill Creek at the VA39 (Mountain Valley Road) crossing in Bath County, Virginia. The land surrounding the creek is privately owned. The unit currently supports all breeding, feeding, and sheltering needs for the species.

Special management considerations or protection may be required within Unit 2 to address excess nutrients, sediment, and pollutants that enter the creek and serve as indicators of other forms of pollution such as bacteria and toxins. Sources of these types of pollution are wastewater, agricultural runoff, and urban stormwater runoff.

The GWJ NF surrounds most of the Mill Creek watershed; protections and management of the National Forest will likely enable habitat conditions to remain high into the future. Targeted species restoration in conjunction with current associated-species restoration efforts in the Cowpasture River Basin will likely improve the Atlantic pigtoe's resiliency in these areas. Maintenance of forested buffer conditions is essential to retaining high-quality instream habitat in this unit.

Unit 3: JR3—Middle James River

Unit 3 consists of a 3-mile (4.8-km) segment of the Middle James River downstream of its confluence with the Slate River, under the crossing of VA Hwy 15 (James Madison Highway) along the boundary of Fluvanna and Buckingham Counties, Virginia. The riparian areas on either side of the river are privately owned. The unit currently supports all breeding, feeding, and sheltering needs for the species.

Special management considerations or protection may be required within Unit 3 to address excess nutrients, sediment, and pollutants that enter the river and serve as indicators of other forms of pollution such as bacteria and toxins. Sources of these types of pollution are wastewater, agricultural runoff, and urban stormwater runoff.

Chowan River Population

Unit 4: CR1—Nottoway River Subbasin

Unit 4 consists of 50 river miles (80.5 river km) of the Nottoway River in Nottoway, Lunenburg, Brunswick, Dinwiddie, and Greenville Counties, Virginia. The proposed designation begins downstream of the Nottoway River's confluence with Dickerson Creek and ends at its confluence with Buckskin Creek. Land bordering the river is primarily privately owned, although some of the land along the river is part of the Fort Pickett National Guard Installation (see Exemptions, below). The unit currently supports all breeding, feeding, and sheltering needs of the species.

Special management considerations or protection may be required within this unit to address a variety of threats. In the past decade, the Nottoway River suffered from several seasonal drought events, which not only caused very low dissolved oxygen conditions but also decreased food delivery because of minimal flows. In addition, these conditions led to increased predation rates on potential host fishes that were concentrated into low-flow refugia (*e.g.,* pools). Urban stormwater and nonpoint source pollution have been identified as contributing to water quality issues in this unit; therefore, special management considerations for riparian buffer restoration, reduced surface and groundwater withdrawals, and stormwater retrofits will benefit the habitat in this unit. Additional threats to this system include oil and gas pipeline projects that propose to cross streams at locations where the species occurs. Additional special management considerations or protection may be required within this unit to address low water levels as a result of water withdrawals and drought, as well as recommendation of alternate routes for oil and gas pipelines, or directional bore for those projects.

Unit 5: CR2—Meherrin River

Unit 5 consists of 5 miles (8 km) of the Meherrin River in Brunswick County, Virginia, from approximately 1.5 river miles below the confluence with Saddletree Creek under VA Hwy 46 (Christana Highway) to VA715 (Iron Bridge Road). The land on either side of the proposed critical habitat unit is privately owned. The unit currently supports all breeding, feeding, and sheltering needs for the species.

Special management considerations or protection may be required within this unit to address a variety of threats. Like the Nottoway River, the Meherrin River has been affected by seasonal droughts, resulting in low flow

conditions and low dissolved oxygen conditions. The rural nature of the unit will benefit from following agricultural and silvicultural BMPs. Additional special management considerations or protection may be required within this unit to address low water levels as a result of water withdrawals and drought.

Roanoke River Population

Unit 6: RR1—Dan River

Unit 6 consists of 7 miles (11.3 km) of the Dan River along the border of Virginia and North Carolina from the Stateline Bridge Road in Pittsylvania County, Virginia, downstream to the confluence with Williamson Creek in Rockingham County, North Carolina. The land on either side of the proposed critical habitat unit is privately owned. The unit currently supports all breeding, feeding, and sheltering needs for the species.

Special management considerations or protection may be required within this unit to address threats. For example, a Duke Energy Coal Ash spill occurred upstream of this unit in February 2014; subsequent actions related to mitigating the effects of the spill will ultimately benefit the habitat in this unit, potentially allowing species restoration efforts.

Unit 7: RR2—Aarons Creek

Unit 7 consists of 12 miles (19.3 km) of Aarons Creek, from NC96 in Granville County, North Carolina, downstream across the North Carolina-Virginia border to VA602 (White House Road) along the Mecklenburg County-Halifax County line in Virginia. Land on either side of the proposed critical habitat unit is privately owned. The unit currently supports all breeding, feeding, and sheltering needs for the species.

Special management considerations or protection may be required within this unit to address a variety of threats. There are two impaired stream reaches totaling approximately 12 miles (19.3 km) in the Aarons Creek watershed. An ''impairment'' designation by the State here is a result of low dissolved oxygen and low benthic-macroinvertebrate assessment scores. Special management focused on maintaining riparian buffers and following BMPs will be important for the habitat in this unit.

Tar River Population

Unit 8: TR1—Upper/Middle Tar River

This unit consists of 85 miles (136.8 km) of the mainstem of the upper and middle Tar River as well as several tributaries (Bear Swamp Creek, Crooked Creek, Cub Creek, and Shelton Creek), all in North Carolina. Land bordering the river and creeks is mostly privately owned (74 mi (119 km)), with some areas in public ownership or easements (11 mi (17 km)). The unit currently supports all breeding, feeding, and sheltering needs for the species.

Special management considerations or protection may be required within this unit to address a variety of threats. Excessive amounts of nitrogen and phosphorus run off the land or are discharged into the waters, causing too much growth of microscopic or macroscopic vegetation and leading to extremely low levels of dissolved oxygen. As a result, there are six ''impaired'' stream reaches (as defined on the State's 303d list) totaling approximately 32 miles in the unit. Expansion or addition of new wastewater discharges are also a threat to habitat in this unit. Special management focused on agricultural BMPs, implementing highest levels of treatment of wastewater practicable, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Unit 9: TR2—Sandy/Swift Creek

This unit consists of a 58-mile (93.3-km) segment of Sandy/Swift Creek in Granville, Vance, Franklin, and Nash Counties, North Carolina. Land bordering the river and creeks is mostly privately owned (50 mi (80 km)) with some areas covered by protective easements (8 mi (13km)). The unit currently supports all breeding, feeding, and sheltering needs for the species.

Special management considerations or protection may be required within this unit to address a variety of threats. Excessive amounts of nitrogen and phosphorus run off the land or are discharged into the waters, causing excessive growth of microscopic or macroscopic vegetation and leading to extremely low levels of dissolved oxygen; there is one ''impaired'' stream reach totaling approximately 5 miles (8 km) in this unit. Special management focused on agricultural BMPs, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Unit 10: TR3—Fishing Creek Subbasin

This unit consists of 85 miles (136.8 km) in Fishing Creek, Little Fishing Creek, Shocco Creek, and Maple Branch located in Warren, Halifax, Franklin, and Nash Counties, North Carolina. The land bordering the creeks includes private parcels (56 miles (90 km)), protective easements (14 miles (23 km)), and State game lands (15 miles (24 km)). The unit currently supports all breeding, feeding, and sheltering needs for the species.

Special management considerations or protection may be required within this unit to address a variety of threats. Excessive amounts of nitrogen and phosphorus run off the land or are discharged into the waters, causing excessive growth of microscopic or macroscopic vegetation and leading to extremely low levels of dissolved oxygen. Special management focused on agricultural BMPs, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Unit 11: TR4—Lower Tar River

This unit consists of 30 miles (48.3 km) of the Lower Tar River and Fishing Creek in Edgecombe County, North Carolina, from NC97 near Leggett, North Carolina, to the Edgecombe-Pitt County line near NC33. Land along the river is divided between private parcels, protective easements, State game lands, and State park land. The unit currently supports all breeding, feeding, and sheltering needs for the species.

Special management considerations or protection may be required within this unit to address a variety of threats. Excessive amounts of nitrogen and phosphorus run off the land or are discharged into the waters, causing excessive growth of microscopic or macroscopic vegetation and leading to extremely low levels of dissolved oxygen. Special management focused on agricultural BMPs, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Neuse River Population

Unit 12: NR1—Upper Neuse River Subbasin

This unit consists of 60 river miles (95 river km) in four subunits including Flat River, Little River, Eno River, and the Upper Eno River. The unit currently supports all breeding, feeding, and sheltering needs for the species.

The Flat River subunit consists of 19 river miles (30.6 river km) in the Flat River Subbasin in Person and Durham Counties, North Carolina, including the South Flat River downstream of Dick Coleman Road, the North Flat River near Parsonage Road, and Deep Creek near Helena-Moriah Road downstream where each river converges into the Flat River downstream of State Forest Road. Land along the Flat River subunit includes private parcels, easements, and State forest land.

The Little River subunit includes 18 river miles (29 river km) of the North Fork and South Fork Little Rivers in Orange and Durham Counties, North Carolina, bordered by both private land and easements.

The Upper Eno River subunit consists of 4 river miles (6.4 river km) in Orange County, North Carolina, including the West Fork Eno River upstream of Cedar Grove Road to the confluence with McGowan Creek. This subunit is bordered by 3 miles (4.8 km) of private land and 1 mile (1.6 km) of conservation parcels.

The Eno River subunit consists of 18 river miles (29 river km) in Orange and Durham Counties, North Carolina, from below Eno Mountain Road to NC15–501. Land bordering the river contains private land, State park land, and conservation parcels.

Special management considerations or protection may be required within this unit to address a variety of threats. Large quantities of nutrients (especially nitrogen) contributed by fertilizers and animal waste washed from lawns, urban developed areas, farm fields, and animal operations are impacting aquatic ecosystems in this unit. More than 300 permitted point-source sites discharge wastewater into streams and rivers in the basin. Development is also impacting areas along the Upper Neuse River.

Special management considerations in this unit include using the highest available wastewater treatment technologies, retrofitting stormwater systems, eliminating direct stormwater discharges, increasing open space, maintaining connected riparian corridors, and treating invasive species (like hydrilla).

Unit 13: NR2—Middle Neuse River

This unit consists of 61 river miles (98.2 river km) in five subunits including Swift Creek, Middle Creek, Upper Little River, Middle Little River, and Contentnea Creek, all in North Carolina. The unit currently supports all breeding, feeding, and sheltering needs for the species.

The Middle Creek subunit is 19 river miles (30.6 river km), and the Swift Creek subunit is 25 river miles (40.2 river km), both in Wake and Johnston Counties. They are primarily bordered by private land with some easement parcels.

The Upper Little River subunit includes 4 miles (6.4 km) of the Upper Little River from the confluence with Perry Creek to Fowler Road in Wake County, North Carolina. The land along this subunit is primarily county-owned with some private parcels.

The Middle Little River subunit includes 11 river miles (17.7 river km) in Johnston County, North Carolina. This area is bordered predominantly by private land and some conservation parcels.

The Contentnea Creek subunit consists of 2 river miles (3.2 river km) near NC581 in Wilson County, North Carolina, bordered entirely by private land.

Special management considerations or protection may be required within this unit to address a variety of threats. Large quantities of nutrients (especially nitrogen) contributed by fertilizers and animal waste washed from lawns, urban developed areas, farm fields, and animal operations are impacting aquatic ecosystems in this unit. More than 300 permitted point-source sites discharge wastewater into streams and rivers in the basin. Development is also impacting areas along the Middle Neuse River.

There are 49 State-defined ''impaired'' stream reaches totaling approximately 447 miles (719.4 km) in this unit. There are many factors that cause an impairment label to be given by the State, including low benthic-macroinvertebrate assessment scores, low pH, poor fish community scores, low dissolved oxygen, polychlorinated biphenyls (PCBs), copper, and zinc. There are 349 non-major and 6 major (Apex Water Reclamation Facility, Central Johnston County Waste Water Treatment Plant, Cary Waste Water Treatment Plant, City of Raleigh Wastewater Treatment Plant, Dempsey Benton Water Treatment Plant, and Terrible Creek Waste Water Treatment Plant) permitted discharges in this MU. Special management related to developed areas, including using the best available wastewater treatment technologies, retrofitting stormwater systems, eliminating direct stormwater discharges, increasing open space in the watershed, and maintaining connected riparian corridors, will be important to maintain habitat in this unit.

Cape Fear Population

Unit 14: CF1—New Hope Creek

This unit consists of 6 mi (9.7 km) of habitat in the New Hope Creek in Orange County, North Carolina. The land bordering the creek includes private parcels and some easements. The unit currently supports all breeding, feeding, and sheltering needs for the species.

Special management considerations or protection may be required within this unit to address a variety of threats. Large quantities of nutrients (especially nitrogen) contributed by fertilizers and animal waste washed from lawns, urban developed areas, farm fields, and animal operations are impacting aquatic ecosystems in this unit. More than 200 permitted point-source sites discharge wastewater into streams and rivers in the basin. Development is also impacting areas along New Hope Creek.

Special management, including using the best available wastewater treatment technologies, retrofitting stormwater systems, eliminating direct stormwater discharges, increasing open space in the watershed, and maintaining connected riparian corridors, may be required to maintain habitat in this unit.

Unit 15: CF2—Deep River

The Deep River Subbasin unit consists of 10 river miles (16.1 river km) in Randolph County, North Carolina, including the mainstem as well as Richland Creek and Brush Creek. Land bordering the area is privately owned. The unit currently supports all breeding, feeding, and sheltering needs for the species.

The Deep River Subbasin is situated in a mostly rural part of the Cape Fear River Basin, and large-scale agriculture and livestock operations are present. Special management considerations or protection may be required within this unit to insure the use of agriculture BMPs, especially preventing cattle access to streams, as well as protecting forested riparian buffers to benefit habitat in this unit.

Yadkin-Pee Dee River Population

Unit 16: YR1—Little River

This unit consists of 40 miles (64.4 km) of Little River in Randolph and Montgomery Counties, North Carolina. Land along the river is predominantly privately owned with some parcels in conservation easements. The unit currently supports all breeding, feeding, and sheltering needs for the species.

Habitat fragmentation from dams and reservoirs is impacting the aquatic ecosystems in this unit. Sedimentation from intensive agriculture is the top pollution problem in the basin. Special management considerations or protection may include the use of agricultural BMPs, especially preventing cattle access to streams, as well as protecting forested riparian buffers to benefit habitat in this unit.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the

conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 670a of this title [the Sikes Act; 16 U.S.C. 670a], if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyze INRMPs developed by military installations located within the range of proposed critical habitat designations to determine if they meet the criteria for exemption from critical habitat under section 4(a)(3) of the Act.

We have identified one area within the proposed critical habitat designation that consists of Department of Defense lands with a completed, Service-approved INRMP. The Army National Guard—Maneuver Training Center Fort Pickett (Fort Pickett) is located in southeastern North Carolina on 41,000 acres in three counties: Nottoway, Brunswick, and Dinwiddie. Fort Pickett is federally owned land that is managed by the Virginia Army National Guard and is subject to all federal laws and regulations. The Fort Pickett INRMP covers fiscal years 2017–2021, and serves as the principal management plan governing all natural resource activities on the installation. Among the goals and objectives listed in the INRMP is habitat management for rare, threatened, and endangered species, and the Atlantic pigtoe is included in this plan. Management actions that benefit the Atlantic pigtoe include maintenance and improvement of habitat, monitoring mussel populations, and improving water quality. Additional elements of the management actions included in the INRMP that will benefit Atlantic pigtoe and its habitat are forest management, stream and wetland protection zones, and public outreach and education.

Fourteen miles (22.5 km) of Unit 4 (CR1—Nottoway River Subbasin) are located within the area covered by this INRMP. Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified streams are subject to the Fort Pickett National Guard Training Center INRMP and that conservation efforts identified in the INRMP will provide a benefit to the Atlantic pigtoe. Therefore, streams within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 14 river miles (22.5 river km) of habitat in this proposed critical habitat designation because of this exemption.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

As discussed below, we are not proposing to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate whether a specific critical habitat designation may restrict or modify specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socioeconomic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For this proposed designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts

that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Atlantic pigtoe (IEc, 2018, entire). The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. This screening analysis, combined with the information contained in our IEM, constitutes our draft economic analysis (DEA) of the proposed critical habitat designation for the Atlantic pigtoe, and is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the proposed critical habitat designation. In our March 19, 2018, IEM describing probable incremental economic impacts that may result from the proposed designation, we first identified probable incremental economic impacts associated with each of the following categories of activities: (1) Federal lands management (National Park Service, U.S. Forest Service, Department of Defense); (2) agriculture; (3) forest management/silviculture/timber; (4) development; (5) recreation; (6) restoration activities; and (7) transportation. Additionally, we considered whether the activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we list the species, as proposed in this document, in areas where the Atlantic pigtoe is present, under section 7 of the Act, Federal agencies would be required to consult with the Service on activities they fund, permit, or implement that may affect the species.

In our IEM, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the Atlantic pigtoe. Because the designation of critical habitat is being proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which would result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the Atlantic pigtoe would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the Atlantic pigtoe totals approximately 542 river miles (872 river km), all of which are currently occupied by the species. In these areas, any actions that may affect the species or its habitat would likely also affect proposed critical habitat, and it is unlikely that any additional conservation efforts would be required to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the species. Therefore, the only additional costs that are expected in all of the proposed critical habitat designation are administrative costs, due to the fact that this additional analysis will require time and resources by both the Federal action agency and the Service. However, it is believed that, in most circumstances, these costs would not reach the threshold of ''significant'' under E.O. 12866. We anticipate a maximum of 109 section 7 consultations annually at a total incremental cost of less than $230,000 per year.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our required determinations. See **ADDRESSES**, above, for information on where to send comments. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Exclusions

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. As discussed above, we prepared an analysis of the probable economic impacts of the proposed critical habitat designation and related factors. The Secretary does not propose to exercise his discretion to exclude any areas from the final designation based on economic impacts. However, during the development of a final designation, we will consider any additional economic impact information we receive during the public comment period, which may result in areas being excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts or Homeland Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this proposal, we have determined that, other than the land exempted under section 4(a)(3)(B)(i) of the Act based upon the existence of an approved INRMP, the lands within the proposed

designation of critical habitat for the Atlantic pigtoe are not owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we anticipate no impact on national security. Consequently, the Secretary does not propose to exercise his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that there are currently no HCPs or other management plans for the Atlantic pigtoe, and the proposed designation does not include any tribal lands or trust resources. We anticipate no impact on tribal lands, partnerships, or HCPs from this proposed critical habitat designation. Accordingly, the Secretary does not propose to exercise his discretion to exclude any areas from the final designation based on other relevant impacts.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final regulation with a new definition of destruction or adverse modification on February 11, 2016 (81 FR 7214). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit or that involve some other Federal action. Federal agency actions within the species' habitat that may require conference or consultation or both include management and any other landscape-altering activities on Federal lands administered by the U.S. Fish and Wildlife Service, Army National Guard, U.S. Forest Service, and National Park Service; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration. Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that result in a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of the Atlantic pigtoe. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of the species or that preclude or significantly delay development of such features. As discussed above, the role of critical habitat is to support physical or biological features essential to the

conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Atlantic pigtoe. These activities include, but are not limited to:

(1) Actions that would alter the minimum flow or the existing flow regime. Such activities could include, but are not limited to, impoundment, channelization, water diversion, water withdrawal, and hydropower generation. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the Atlantic pigtoe and its fish host by decreasing or altering flows to levels that would adversely affect their ability to complete their life cycles.

(2) Actions that would significantly alter water chemistry or temperature. Such activities could include, but are not limited to, release of chemicals (including pharmaceuticals, metals, and salts), biological pollutants, or heated effluents into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could alter water conditions to levels that are beyond the tolerances of the mussel or its host fish and result in direct or cumulative adverse effects to these individuals and their life cycles.

(3) Actions that would significantly increase sediment deposition within the stream channel. Such activities could include, but are not limited to, excessive sedimentation from livestock grazing, road construction, channel alteration, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the mussel and its fish host by increasing the sediment deposition to levels that would adversely affect their ability to complete their life cycles.

(4) Actions that would significantly increase the filamentous algal community within the stream channel. Such activities could include, but are not limited to, release of nutrients into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities can result in excessive filamentous algae filling streams and reducing habitat for the mussel and its fish hosts, degrading water quality during their decay, and decreasing oxygen levels at night from their respiration to levels below the tolerances of the mussel and/or its fish host. Algae can also directly compete with mussel offspring by covering the sediment that prevents the glochidia from settling into the sediment.

(5) Actions that would significantly alter channel morphology or geometry. Such activities could include, but are not limited to, channelization, impoundment, road and bridge construction, mining, dredging, and destruction of riparian vegetation. These activities may lead to changes in water flows and levels that would degrade or eliminate the mussel or its fish host and/or their habitats. These actions can also lead to increased sedimentation and degradation in water quality to levels that are beyond the tolerances of the mussel or its fish host.

(6) Actions that result in the introduction, spread, or augmentation of nonnative aquatic species in occupied stream segments, or in stream segments that are hydrologically connected to occupied stream segments, even if those segments are occasionally intermittent, or introduction of other species that compete with or prey on the Atlantic pigtoe. Possible actions could include, but are not limited to, stocking of nonnative fishes, stocking of sport fish, or other related actions. These activities can introduce parasites or disease for host fish, and can result in direct predation, or affect the growth, reproduction, and survival, of Atlantic pigtoes.

III. Proposed Rule Issued Under Section 4(d) of the Act

Background

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to threatened wildlife. Under section 4(d) of the Act, the Secretary has the discretion to issue such regulations as he deems necessary and advisable to provide for the conservation of threatened species. The Secretary also has the discretion to prohibit, by regulation with respect to any threatened species of fish or wildlife, any act prohibited under section 9(a)(1) of the Act. The same prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.31, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) threatened wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. To the extent the section 9(a)(1) prohibitions apply only to endangered species, this proposed rule would apply those same prohibitions to the Atlantic pigtoe with some exceptions.

In accordance with section 4(d) of the Act, the regulations implementing the Act include a provision that generally applies to threatened wildlife the same prohibitions and exceptions that apply to endangered wildlife (50 CFR 17.31(a), 17.32). However, for any threatened species, the Service may instead develop a protective regulation that is specific to the conservation needs of that species. Such a regulation would contain all of the protections applicable to that species (50 CFR 17.31(c)); this may include some of the general prohibitions and exceptions under 50 CFR 17.31 and 17.32, but would also include species-specific protections that may be more or less restrictive than the general provisions at 50 CFR 17.31.

Proposed 4(d) Rule for Atlantic Pigtoe

Under this proposed 4(d) rule, except as noted below, all prohibitions and provisions of 50 CFR 17.31 and 17.32 would apply to the Atlantic pigtoe:

(1) Species restoration efforts by State wildlife agencies, including collection of broodstock, tissue collection for genetic analysis, captive propagation, and subsequent stocking into currently occupied and unoccupied areas within the historical range of the species.

(2) Channel restoration projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) that are reconnected with their groundwater aquifers. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools comprised of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and

inclusion of riparian wetlands. Second- to third-order, headwater streams reconstructed in this way would offer suitable habitats for the Atlantic pigtoe and contain stable channel features, such as pools, glides, runs, and riffles, which could be used by the species and its host fish for spawning, rearing, growth, feeding, migration, and other normal behaviors.

(3) Bank stabilization projects that use bioengineering methods to replace pre-existing, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species. Following these bioengineering methods, stream banks may be stabilized using live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), live fascines (live branch cuttings, usually willows, bound together into long, cigar shaped bundles), or brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). These methods would not include the sole use of quarried rock (rip-rap) or the use of rock baskets or gabion structures.

(4) Silviculture practices and forest management activities that:

(a) Implement highest-standard best management practices, particularly for Streamside Management Zones, stream crossings, and forest roads; and

(b) Comply with forest practice guidelines related to water quality standards, or comply with Sustainable Forestry Initiative/Forest Stewardship Council/American Tree Farm System certification standards for both forest management and responsible fiber sourcing.

These BMPs are publicly available on websites for these organizations, and can currently be found below:

http://www.ncasi.org/Downloads/Download.ashx?id=10204
http://reports.oah.state.nc.us/
https://us.fsc.org/download.fsc-us-forest-management-standard-v1-0.95.htm
https://www.treefarmsystem.org/certification-american-tree-farm-standards

These actions and activities may have some minimal level of mortality, harm, or disturbance to the Atlantic pigtoe, but are not expected to adversely affect the species' conservation and recovery efforts. In fact, we expect they would have a net beneficial effect on the species. Across the species' range, instream habitats have been degraded physically by sedimentation and by direct channel disturbance. The activities proposed in this rule will correct some of these problems, creating more favorable habitat conditions for the species. These provisions are necessary because, absent protections, the species is likely to become in danger of extinction in the foreseeable future. Additionally, these provisions are advisable because the species needs active conservation to improve the quality of its habitat. By exempting some of the general prohibitions of 50 CFR 17.31 and 17.32, these provisions can encourage cooperation by landowners and other affected parties in implementing conservation measures. This will allow for use of the land while at the same time ensuring the preservation of suitable habitat and minimizing impact on the species.

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

IV. Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Executive Order 13771

This proposed rule is not an Executive Order (E.O.) 13771 (''Reducing Regulation and Controlling Regulatory Costs'') (82 FR 9339, February 3, 2017) regulatory action because this rule is not significant under E.O. 12866.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

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

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include

small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and, therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if promulgated, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that the designation of this proposed critical habitat will significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this proposed rule would significantly or uniquely affect small governments because the lands being proposed for critical habitat designation are owned by the States of Virginia and North Carolina. These government entities do not fit the definition of ''small governmental jurisdiction.'' Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Atlantic pigtoe in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of

critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that, if adopted, this designation of critical habitat for Atlantic pigtoe does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies in Virginia, North Carolina, South Carolina, and Georgia. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the elements of physical or biological features essential to the conservation of the species. The proposed areas of designated critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

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

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. There are no tribal lands in the proposed critical habitat designation.

Authors

The primary authors of this proposed rule are the staff members of the U.S. Fish and Wildlife Service Species Assessment Team and Raleigh Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

■ 2. Amend § 17.11 paragraph (h) by adding an entry for ''Pigtoe, Atlantic'' to the ''List of Endangered and Threatened Wildlife'' in alphabetical order under CLAMS to read as set forth below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	* * *
CLAMS				
*	*	*	*	* * *
Pigtoe, Atlantic	*Fusconaia masoni* ...	Wherever found	T	[**Federal Register** citation when published as a final rule]; 50 CFR 17.45(a)[4d]; 50 CFR 17.95(f)[CH].
*	*	*	*	* * *

■ 3. Amend § 17.45 to read as set forth below:

§ 17.45 Special rules—snails and clams.

(a) Atlantic pigtoe (*Fusconaia masoni*).

(1) *Prohibitions.* Except as noted in paragraph (a)(2) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 apply to the Atlantic pigtoe.

(2) *Exceptions from prohibitions.* Incidental take of the Atlantic pigtoe will not be considered a violation of the Act if the take results from any of the following activities:

(i) Species restoration efforts by State wildlife agencies, including collection of broodstock, tissue collection for genetic analysis, captive propagation, and subsequent stocking into currently occupied and unoccupied areas within the historical range of the species.

(ii) Channel restoration projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) that are reconnected with their groundwater aquifers. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools comprised of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands. Second- to third-order, headwater streams reconstructed in this way would offer suitable habitats for the Atlantic pigtoe and contain stable channel features, such as pools, glides, runs, and riffles, which could be used by the species and its host fish for spawning, rearing, growth, feeding, migration, and other normal behaviors.

(iii) Bank stabilization projects that use bioengineering methods to replace pre-existing, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species. Following these bioengineering methods, stream banks may be stabilized using live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), live fascines (live branch cuttings, usually willows, bound together into long, cigar shaped bundles), or brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). These methods would not include the sole use of quarried rock (rip-rap) or the use of rock baskets or gabion structures.

(iv) Silviculture practices and forest management activities that:

(A) Implement highest-standard best management practices, particularly for Streamside Management Zones, stream crossings, and forest roads; and

(B) Comply with forest practice guidelines related to water quality standards, or comply with Sustainable Forestry Initiative/Forest Stewardship Council/American Tree Farm System certification standards for both forest management and responsible fiber sourcing.

(b) [Reserved]

■ 4. Amend § 17.95 paragraph (f) by adding, immediately following the entry for ''Rabbitsfoot (*Quadrilla cylindrica cylindrica*),'' an entry for ''Atlantic Pigtoe (*Fusconaia masoni*)'' to read as set forth below:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and Snails.*

* * * * *

Atlantic Pigtoe (*Fusconaia masoni*)

(1) Critical habitat units are depicted for Craig, Botecourt, Bath, Fluvanna, Buckingham, Nottoway, Lunenburg, Brunswick, Dinwiddie, Greensville, and Pittsylvania Counties, Virginia; and Rockingham, Granville, Mecklenburg, Halifax, Vance, Franklin, Nash, Warren, Leggett, Edgecombe, Person, Durham, Wake, Johnston, Orange, Randolph, and Montgomery Counties, North Carolina, on the maps below.

(2) Within these areas, the physical or biological features essential to the conservation of Atlantic pigtoe consist of the following components:

(i) Suitable substrates and connected instream habitats, characterized by geomorphically stable stream channels and banks (*i.e.,* channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation) with habitats that support a diversity of freshwater mussel and native fish (such as stable riffle-run-pool habitats that provide flow refuges consisting of silt-free gravel and coarse sand substrates).

(ii) Adequate flows, or a hydrologic flow regime (which includes the severity, frequency, duration, and seasonality of discharge over time), necessary to maintain benthic habitats where the species is found and to maintain connectivity of streams with the floodplain, allowing the exchange of nutrients and sediment for maintenance of the mussel's and fish host's habitat, food availability, spawning habitat for native fishes, and the ability for newly transformed juveniles to settle and become established in their habitats.

(iii) Water and sediment quality (including, but not limited to, conductivity, hardness, turbidity, temperature, pH, ammonia, heavy metals, and chemical constituents) necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages.

(iv) The presence and abundance of fish hosts necessary for recruitment of the Atlantic pigtoe.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they

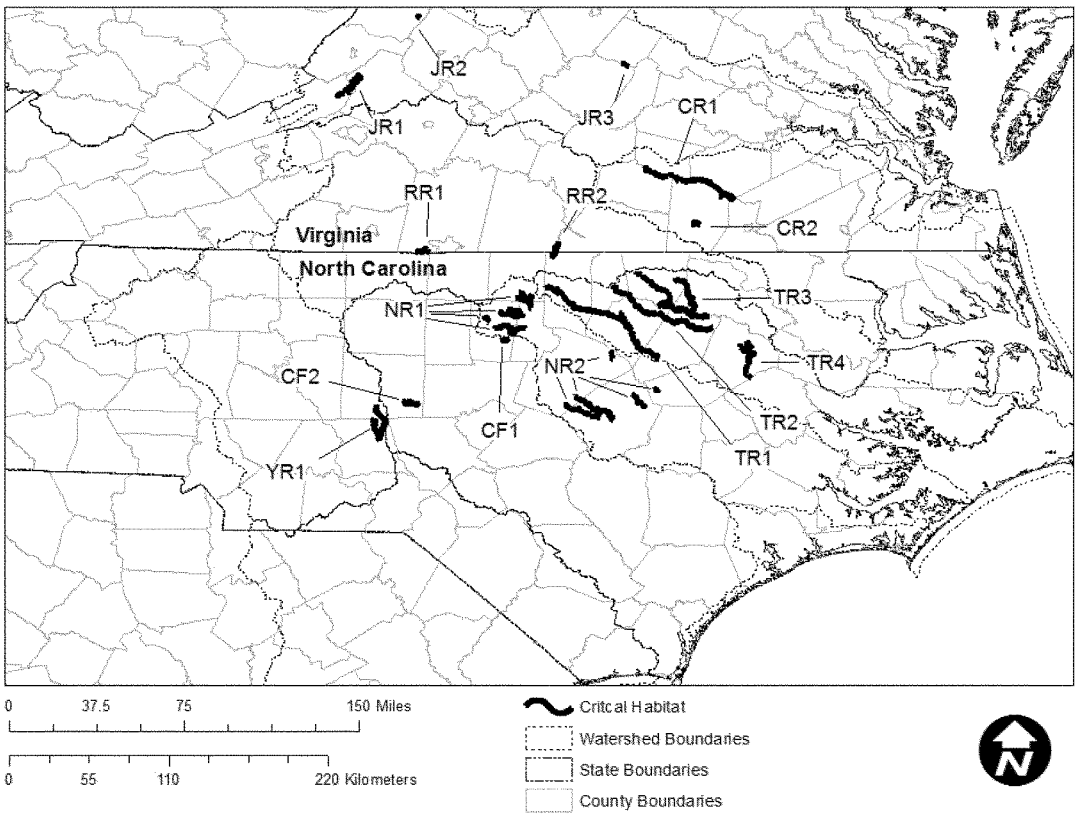
are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created by overlaying Natural Heritage Element Occurrence data and U.S. Geological Survey (USGS) hydrologic data for stream reaches. The hydrologic data used in the critical habitat maps were extracted from the USGS 1:1M scale nationwide hydrologic layer (*https://nationalmap.gov/small_scale/mld/1nethyd.html*) with a projection of EPSG:4269—NAD83 Geographic. The North Carolina and Virginia Natural Heritage program species presence data were used to select specific stream segments for inclusion in the critical habitat layer. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0046 and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* Index map follows:

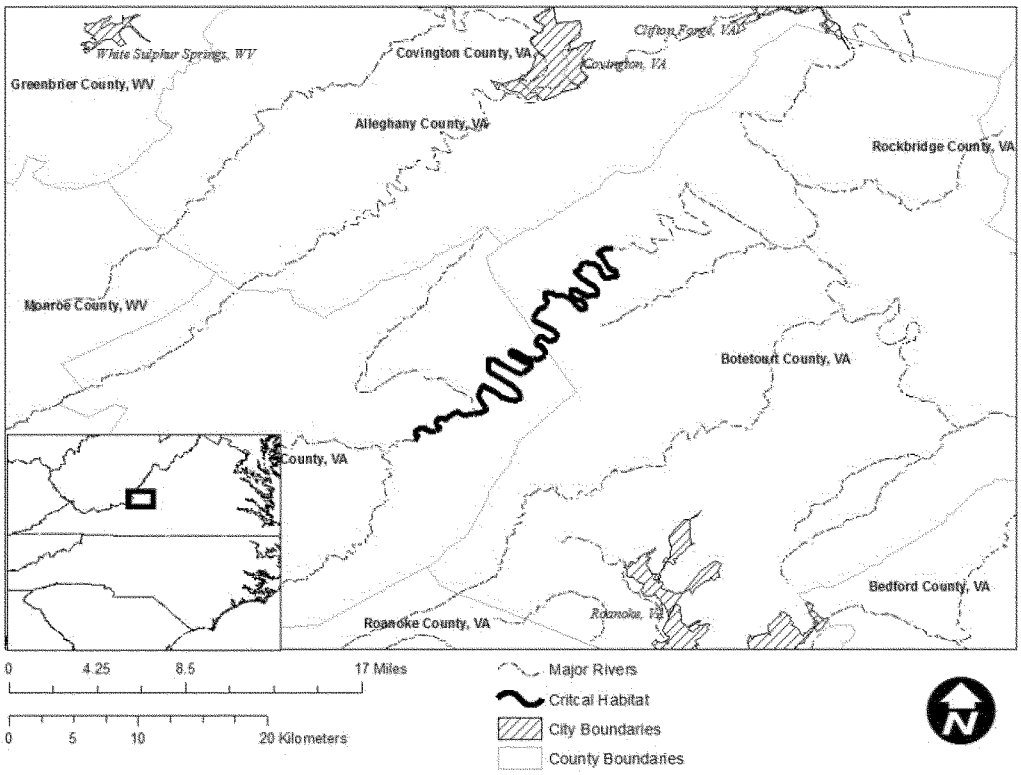
BILLING CODE 4333–15–P

Index Map of Critical Habitat Units for Atlantic Pigtoe



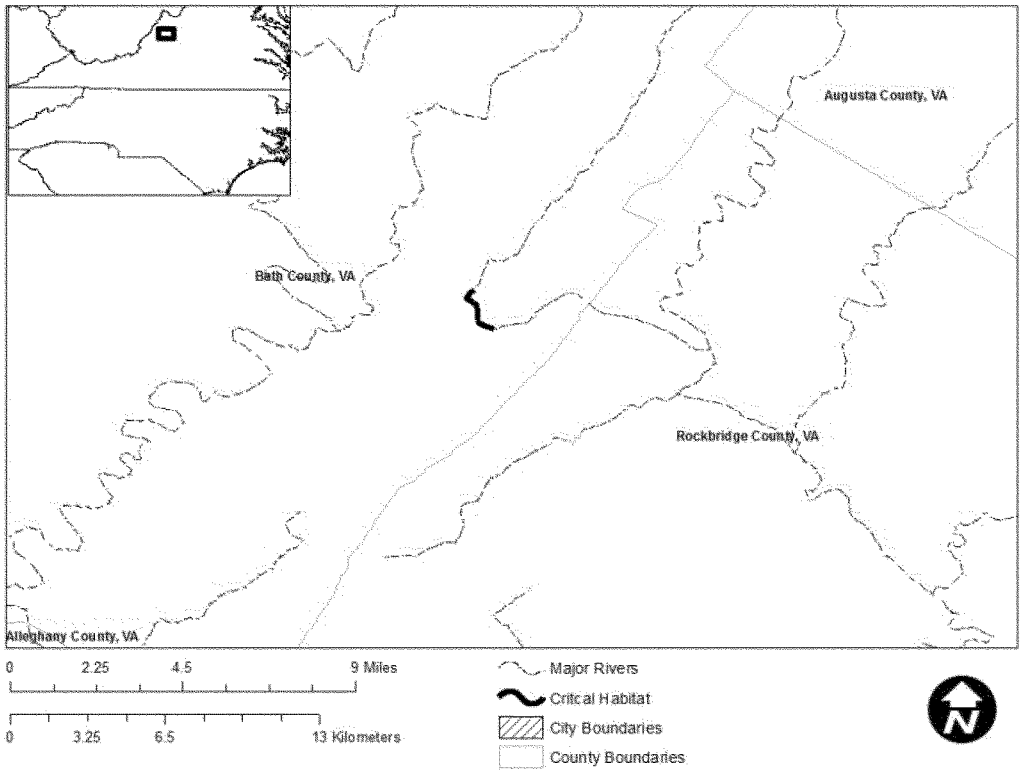
(6) Map of Unit JR1—Craig Creek follows:

Map of JR1 - Craig Creek Critical Habitat Unit for Atlantic Pigtoe

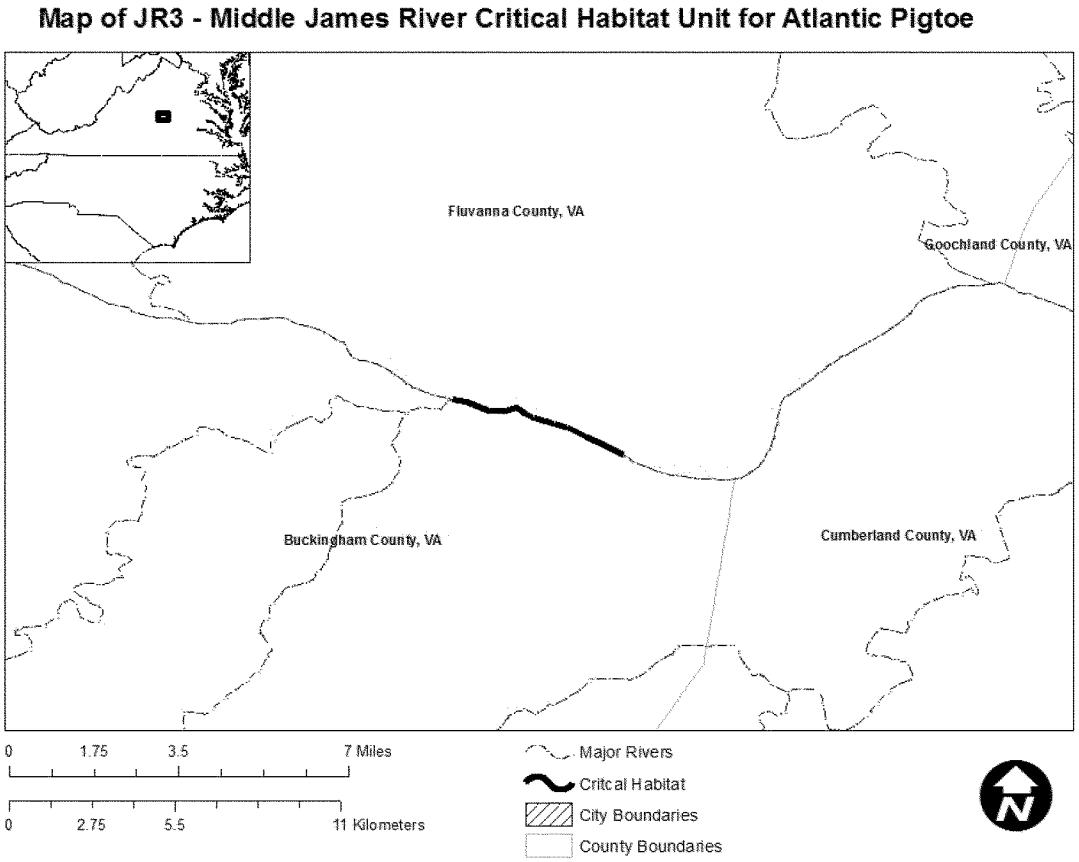


(7) Map of Unit JR2—Mill Creek follows:

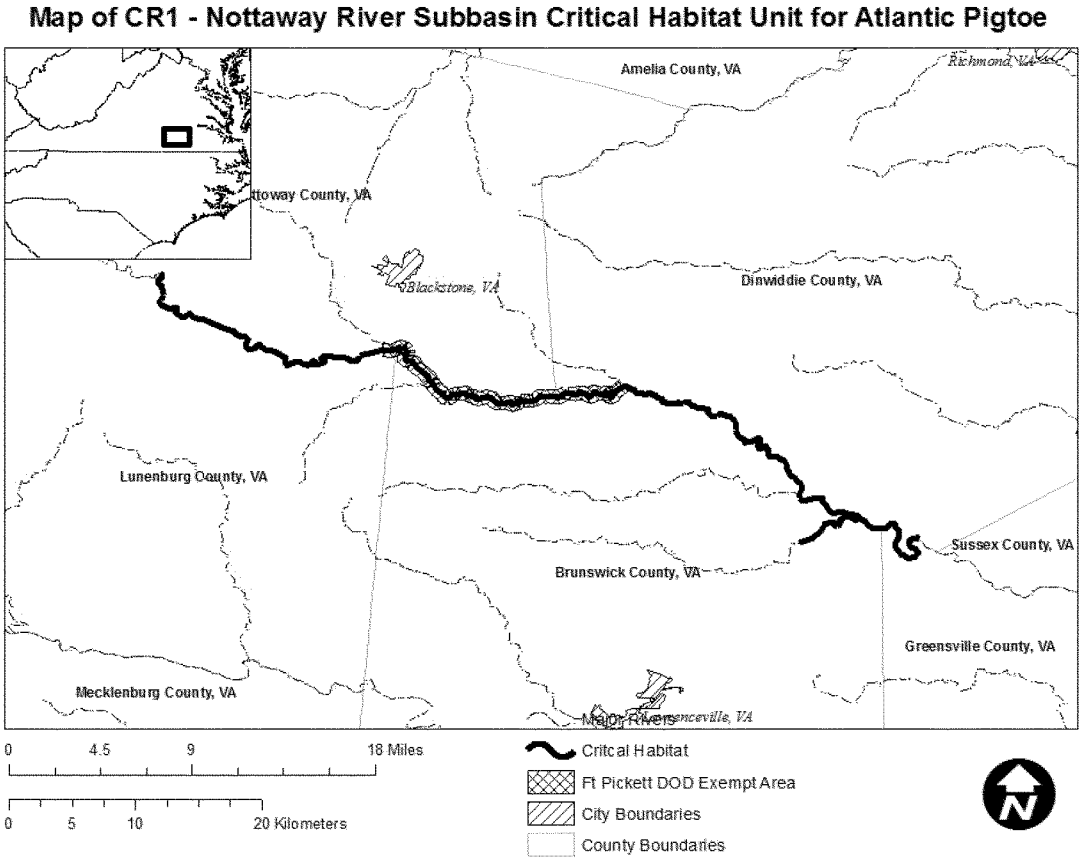
Map of JR2 - Mill Creek Critical Habitat Unit for Atlantic Pigtoe



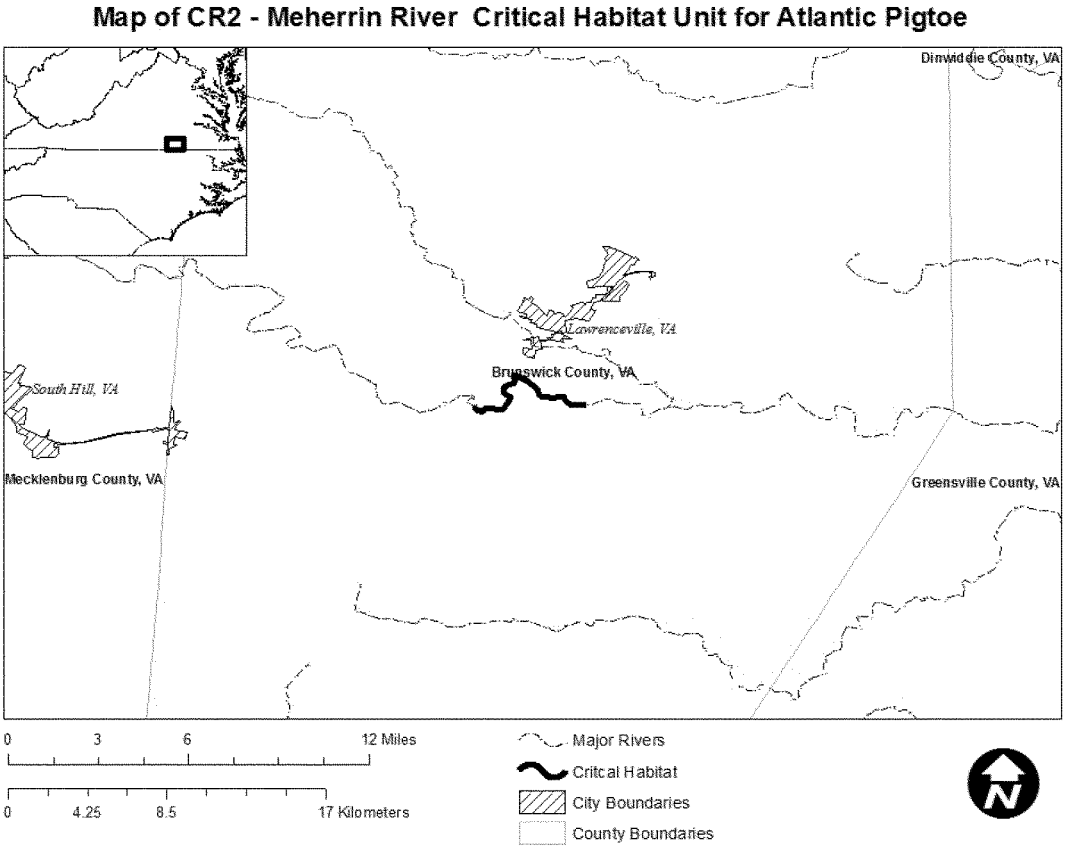
(8) Map of Unit JR3—Middle James River follows:



(9) Map of Unit CR1—Nottoway River Subbasin follows:

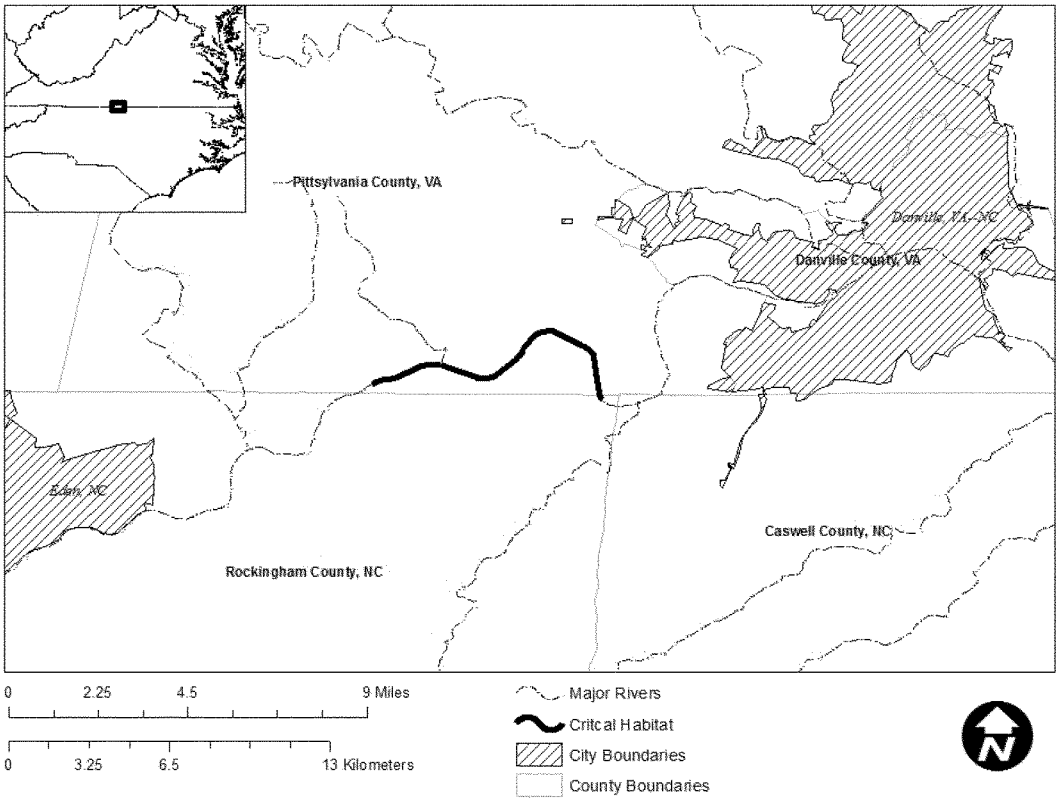


(10) Map of Unit CR2—Meherrin River follows:

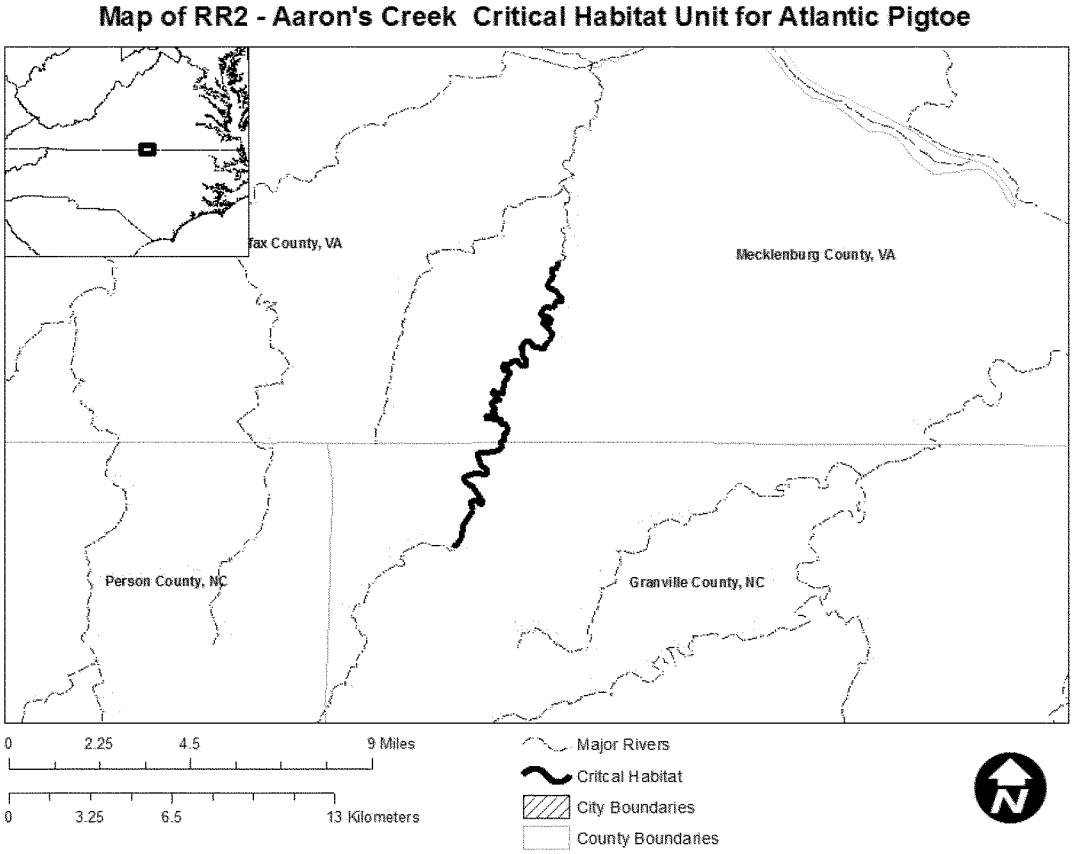


(11) Map of Unit RR1—Dan River follows:

Map of RR1 - Dan River Critical Habitat Unit for Atlantic Pigtoe

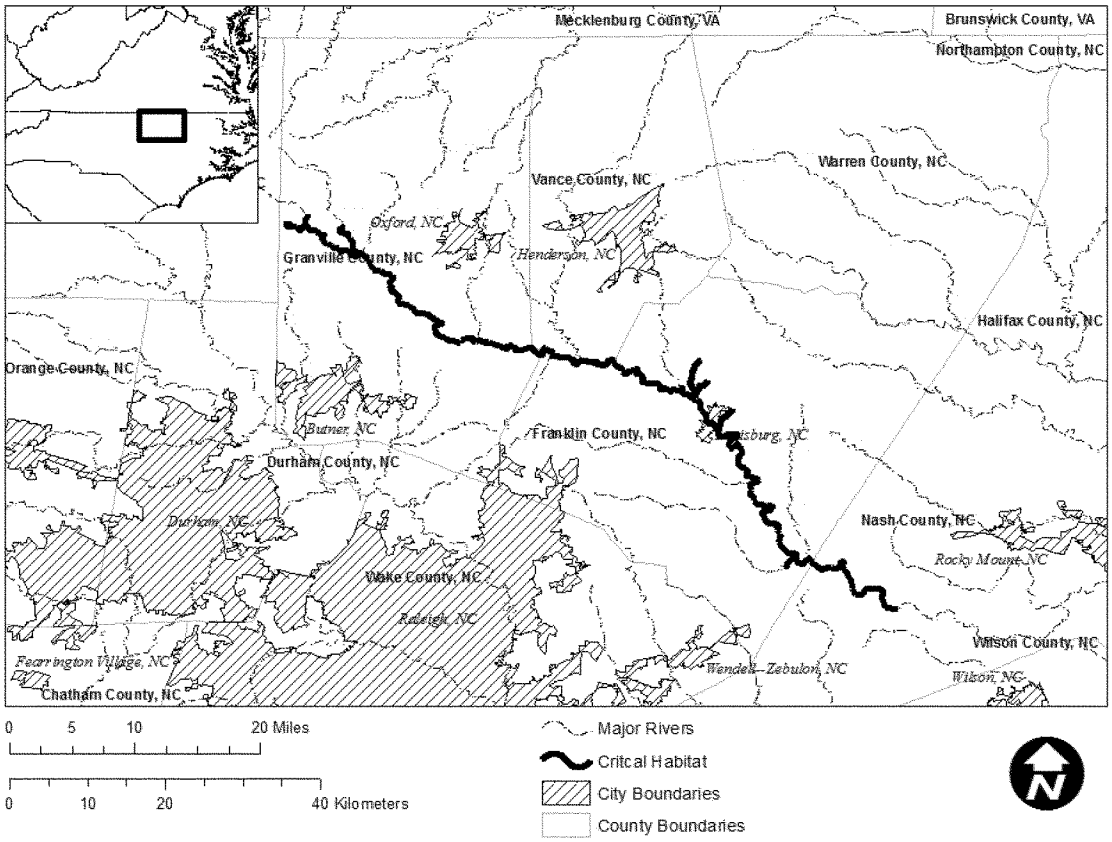


(12) Map of Unit RR2—Aarons Creek follows:



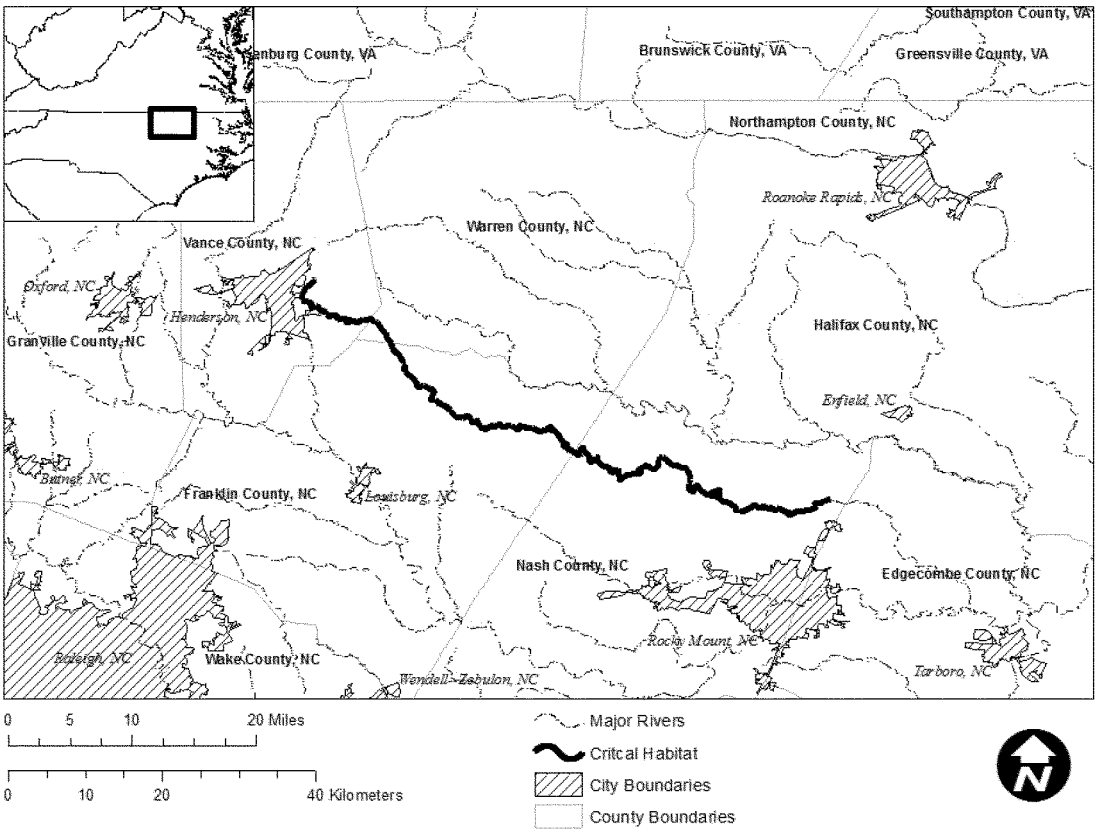
(13) Map of Unit TR1—Upper/Middle Tar River follows:

Map of TR1 - Upper/Middle Tar River Critical Habitat Unit for Atlantic Pigtoe

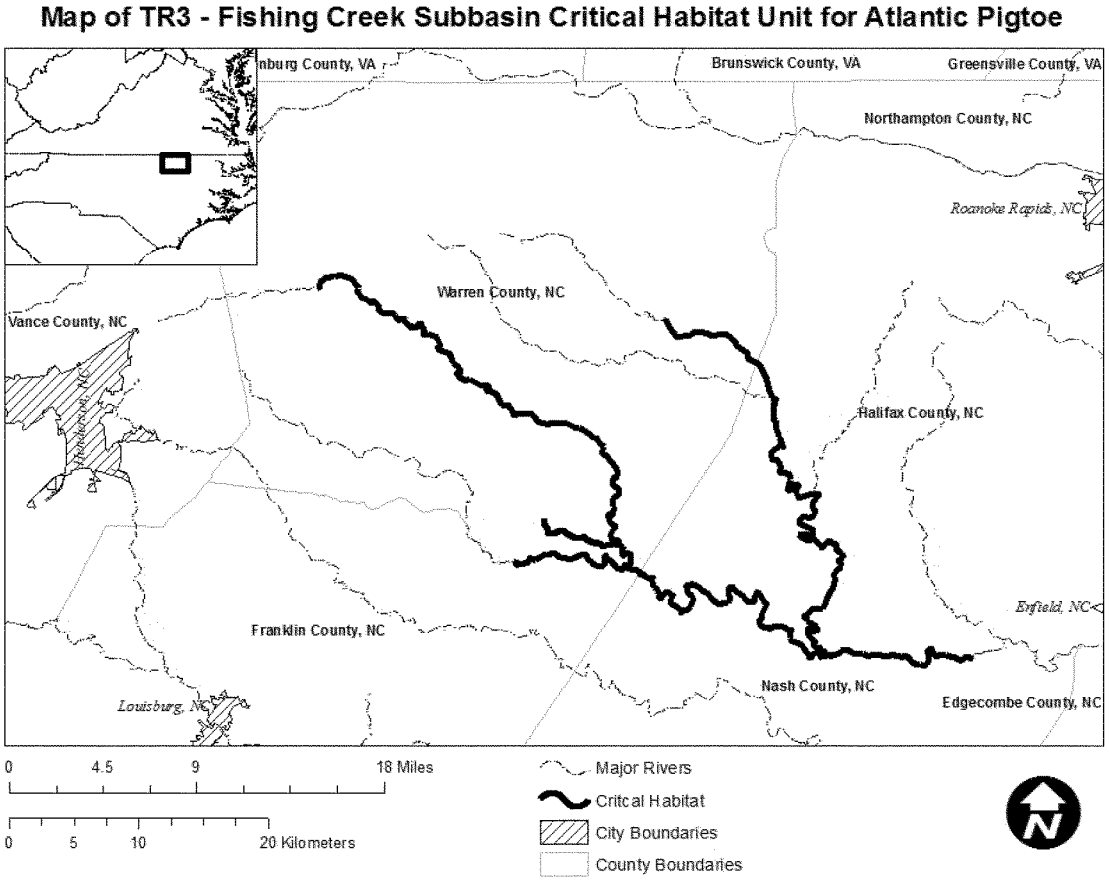


(14) Map of Unit TR2—Sandy/Swift Creek follows:

Map of TR2 - Sandy/Swift Creek Critical Habitat Unit for Atlantic Pigtoe

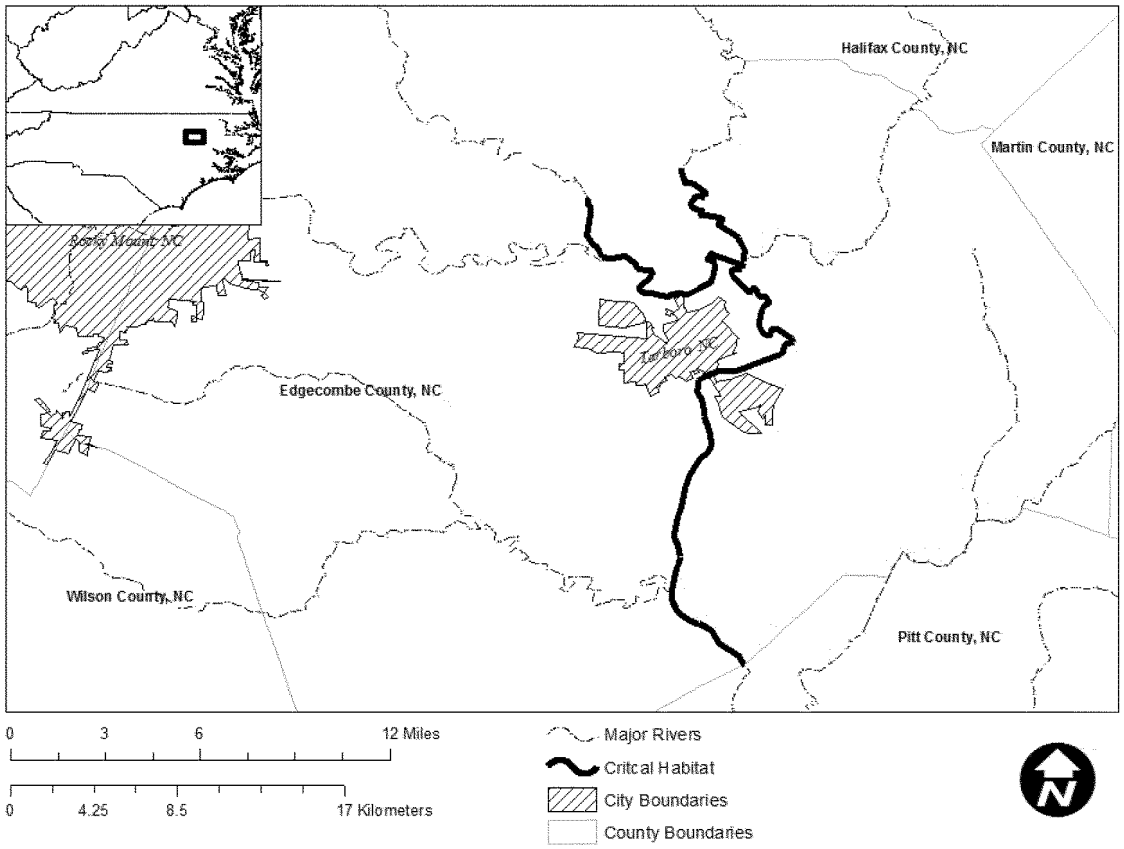


(15) Map of Unit TR3—Fishing Creek Subbasin follows:



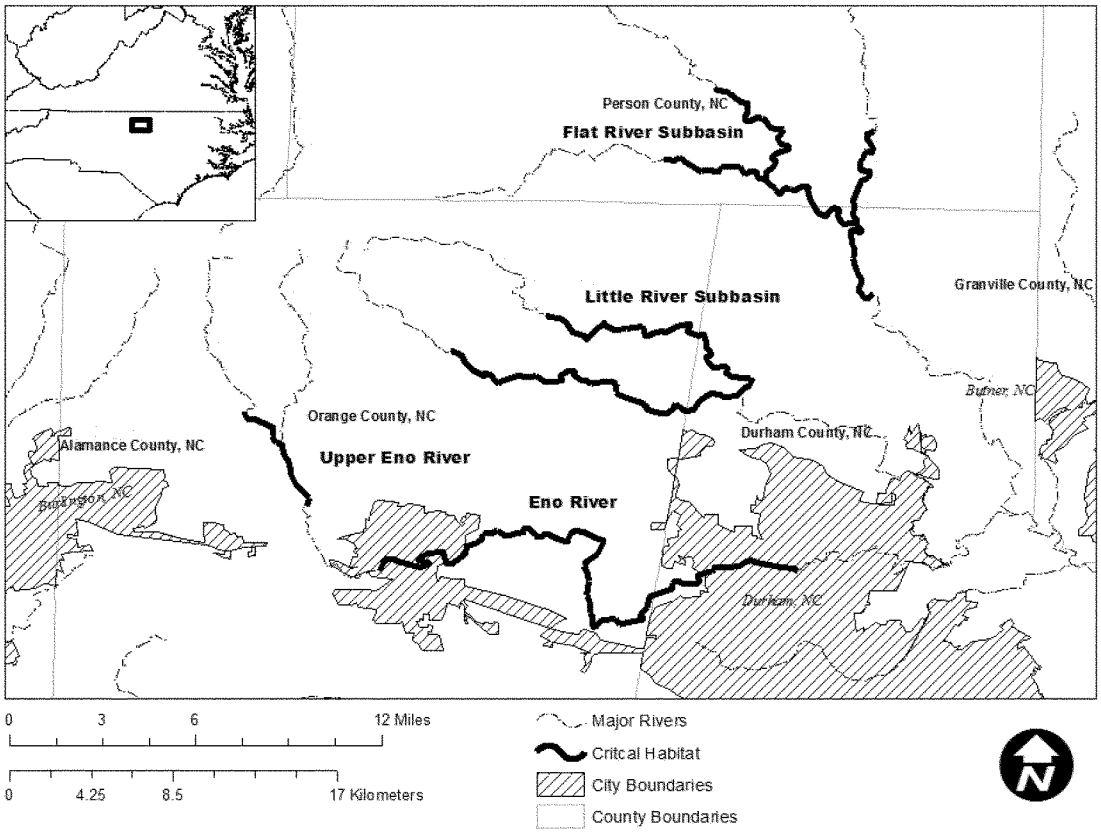
(16) Map of Unit TR4—Lower Tar River follows:

Map of TR4 - Lower Tar River Critical Habitat Unit for Atlantic Pigtoe

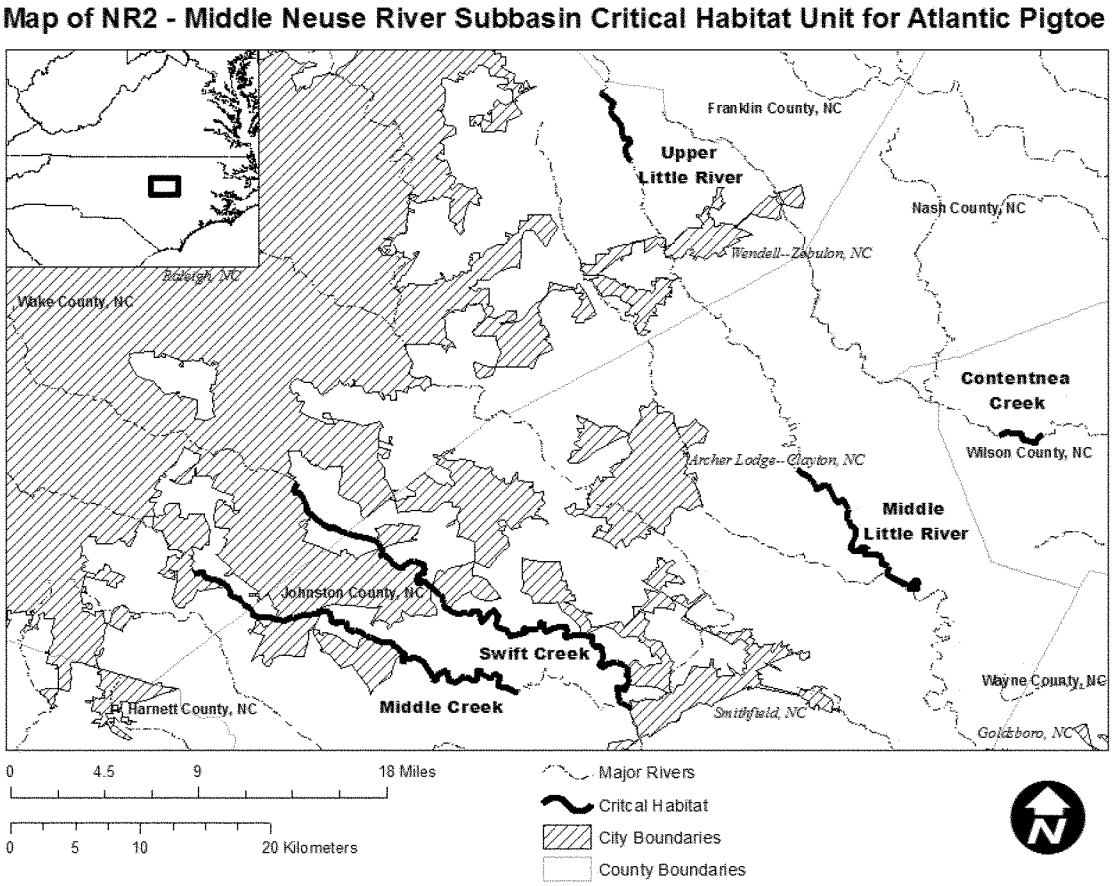


(17) Map of Unit NR1—Upper Neuse River Subbasin follows:

Map of NR1 - Upper Neuse River Subbasin Critical Habitat Unit for Atlantic Pigtoe

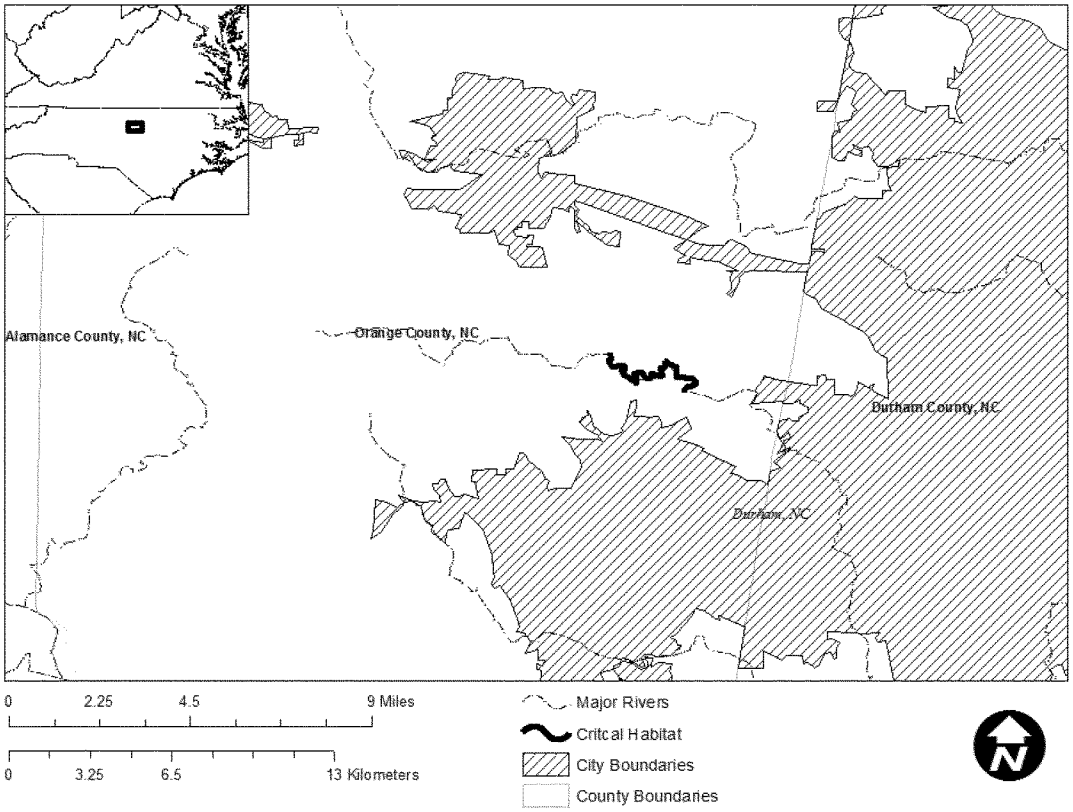


(18) Map of Unit NR2—Middle Neuse River follows:



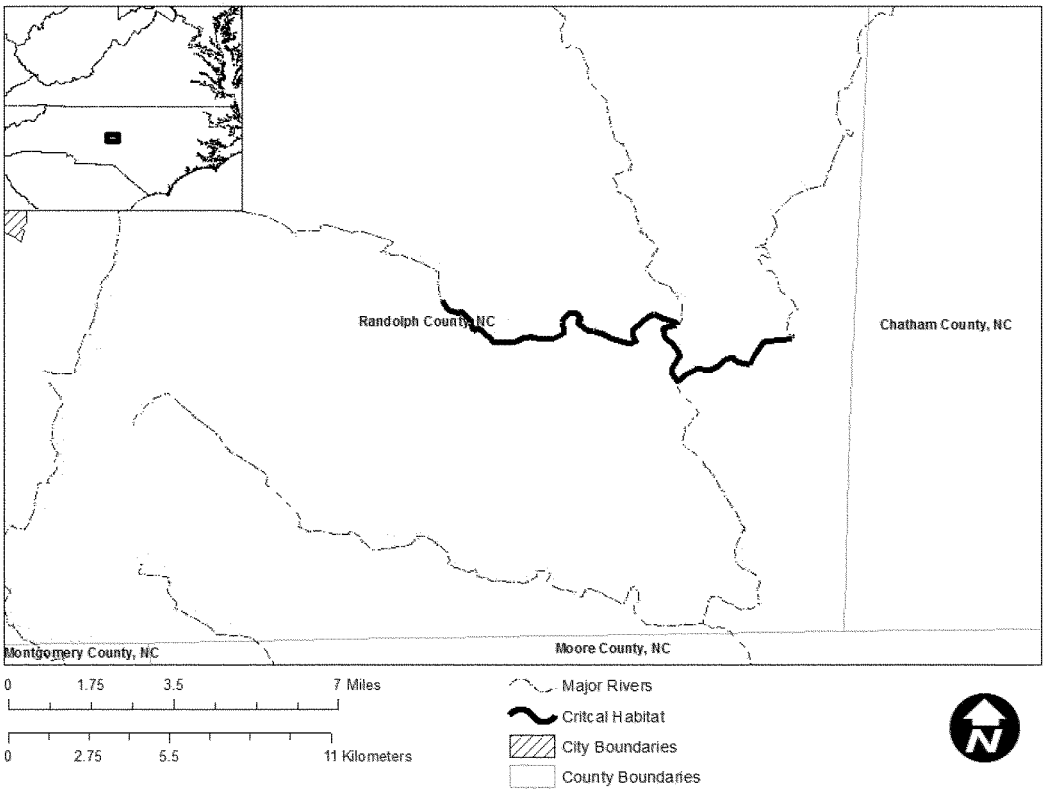
(19) Map of Unit CF1—New Hope Creek follows:

Map of CF1 - New Hope Creek Critical Habitat Unit for Atlantic Pigtoe



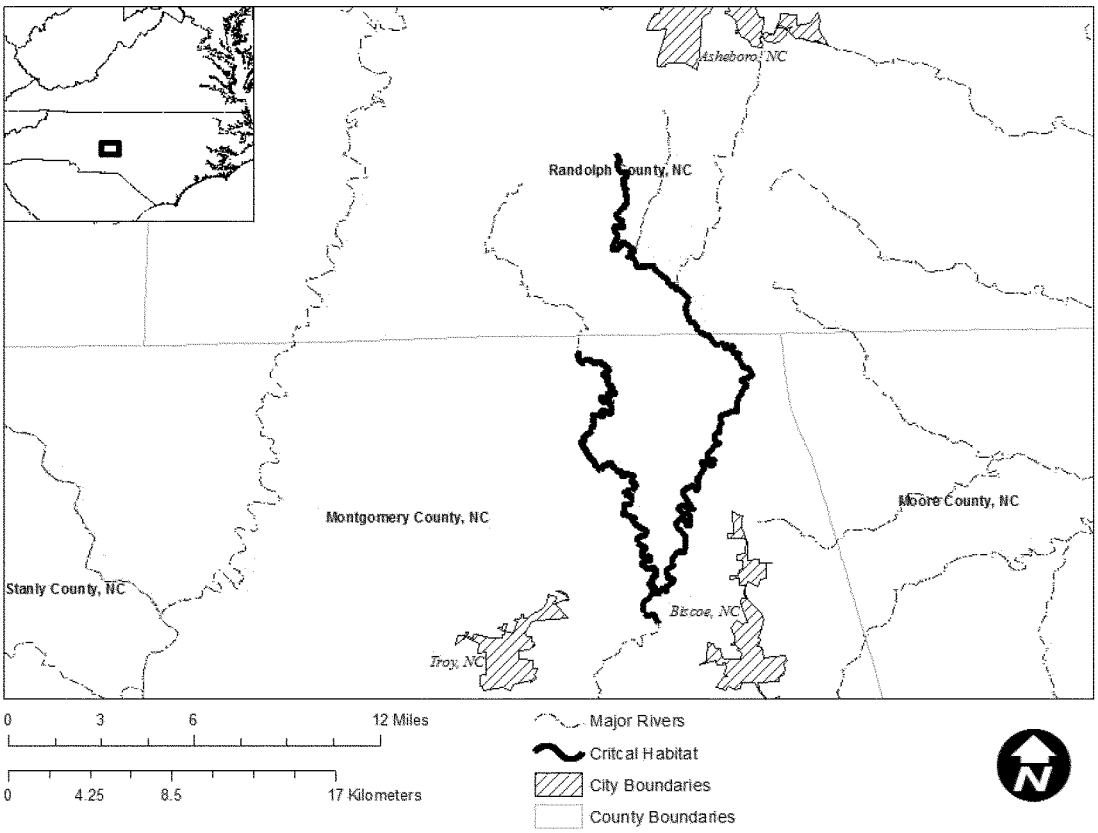
(20) Map of Unit CF2—Deep River follows:

Map of CF2 - Deep River Subbasin Critical Habitat Unit for Atlantic Pigtoe



(21) Map of Unit YR1— Little River follows:

Map of YR1 - Little River Subbasin Critical Habitat Unit for Atlantic Pigtoe



* * * * *

Dated: September 20, 2018.

James W. Kurth,

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

[FR Doc. 2018–21798 Filed 10–10–18; 8:45 am]

BILLING CODE 4333–15–C

FEDERAL REGISTER

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Presidential Determination No. 2019–03 of October 5, 2018—Presidential Determination Pursuant to Section 303 of the Defense Production Act of 1950, as Amended

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Title 3—

The President

Proclamation 9800 of October 5, 2018

Fire Prevention Week, 2018

By the President of the United States of America

A Proclamation

During Fire Prevention Week, we renew our commitment to preparedness, fire safety awareness, and individual responsibility. We also honor our brave firefighters who have lost their lives in the line of duty and their families, as well as those firefighters who continue to put themselves in harm's way to safeguard our lives and property. Our Nation's firefighters are heroes, and they deserve our deepest respect and gratitude for the selfless service they provide to our communities.

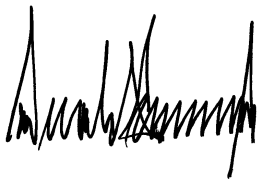
Each year, an average of 1.4 million fires burn in the United States, resulting in thousands of deaths and injuries along with billions of dollars in direct property damage. This year, in the Western and Midwestern parts of the country, wildfires of unprecedented scale and scope have threatened local wildlife and the environment and have severely impacted local and regional economies through their devastating effect on agriculture and tourism industries. In many areas, I have declared the wildfires a major disaster and ordered Federal assistance to supplement State and local recovery efforts. My Administration remains committed to providing help to those affected.

As we mark Fire Prevention Week, all Americans must be vigilant and take precautionary measures to reduce the risk of fire and to protect their families and property. It is critical to look for places in the home where fires can start, identify potential hazards, and take the steps needed to prevent these devastating fires. It is also important to regularly check and maintain smoke alarms, as these devices can provide life-saving warnings if there is a fire in the home. If a smoke alarm rings, it is essential to respond quickly, as you may have only minutes to escape safely. Furthermore, you should at least identify two ways to exit every room, ensuring all doors and windows leading to the outside open easily and are free of clutter. The National Fire Protection Association's ''*Look. Listen. Learn.*'' campaign reinforces these basic but essential practices that every American must follow to help ensure fire safety.

This week, we pray for all the Federal, State, local, tribal, and territorial responders who are fighting wildfires and helping our communities recover, as well as for all those who have lost their loved ones or their homes due to these disasters. We also recognize the importance of actively practicing fire safety to help prevent fire-related tragedies from occurring in the future.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 7 through October 13, 2018, as Fire Prevention Week. On Sunday, October 7, 2018, in accordance with Public Law 107–51, the flag of the United States will be flown at half-staff at all Federal office buildings in honor of the National Fallen Firefighters Memorial Service. I call on all Americans to participate in this observance with appropriate programs and activities and by renewing their efforts to prevent fires and their tragic consequences.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-third.



[FR Doc. 2018–22333
Filed 10–10–18; 11:15 am]
Billing code 3295–F9–P

Presidential Documents

Proclamation 9801 of October 5, 2018

Columbus Day, 2018

By the President of the United States of America

A Proclamation

In 1492, Christopher Columbus and his mighty three-ship fleet, the Niña, Pinta, and Santa Maria, first spotted the Americas. His historic achievement ushered in an Age of Discovery that expanded our knowledge of the world. Columbus's daring journey marked the beginning of centuries of transatlantic exploration that transformed the Western Hemisphere. On Columbus Day, we commemorate the achievements of this skilled Italian explorer and recognize his courage, will power, and ambition—all values we cherish as Americans.

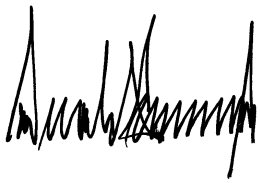
Columbus's spirit of determination and adventure has provided inspiration to generations of Americans. On Columbus Day, we honor his remarkable accomplishments as a navigator, and celebrate his voyage into the unknown expanse of the Atlantic Ocean. His expedition formed the initial bond between Europe and the Americas, and changed the world forever. Today, in that spirit, we continue to seek new horizons for greater opportunity and further discovery on land, in sea, and in space.

Although Spain sponsored his voyage, Columbus was, in fact, a proud citizen of the Italian City of Genoa. As we celebrate the tremendous strides our Nation has made since his arrival, we acknowledge the important contributions of Italian Americans to our country's culture, business, and civic life. We are also thankful for our relationship with Italy, a great ally that shares our strong, unwavering commitment to peace and prosperity.

In commemoration of Christopher Columbus's historic voyage, the Congress, by joint resolution of April 30, 1934, and modified in 1968 (36 U.S.C. 107), as amended, has requested the President proclaim the second Monday of October of each year as ''Columbus Day.''

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 8, 2018, as Columbus Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of our diverse history and all who have contributed to shaping this Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-third.



[FR Doc. 2018–22335
Filed 10–10–18; 11:15 am]
Billing code 3295–F9–P

Presidential Documents

Presidential Determination No. 2019–02 of October 5, 2018

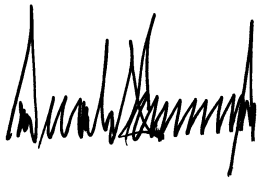
Presidential Determination Pursuant to Section 303 of the Defense Production Act of 1950, as Amended

Memorandum for the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 303 of the Defense Production Act of 1950, as amended (the ''Act'') (50 U.S.C. 4533), I hereby determine, pursuant to section 303(a)(5) of the Act, that the development of and the purchase of equipment and materials needed for alane fuel cells are essential to the national defense.

Without Presidential action under section 303 of the Act, United States industry cannot reasonably be expected to provide the capability for the production of alane fuel cells adequately and in a timely manner. Further, purchases, purchase commitments, or other action pursuant to section 303 of the Act are the most cost effective, expedient, and practical alternative method for meeting the need for this critical capability.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, October 5, 2018

[FR Doc. 2018–22338
Filed 10–10–18; 11:15 am]
Billing code 5001–06–P

Presidential Documents

Presidential Determination No. 2019–03 of October 5, 2018

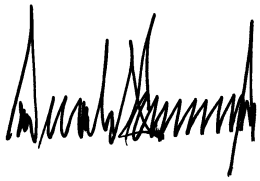
Presidential Determination Pursuant to Section 303 of the Defense Production Act of 1950, as Amended

Memorandum for the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 303 of the Defense Production Act of 1950, as amended (the ''Act'') (50 U.S.C. 4533), I hereby determine, pursuant to section 303(a)(5) of the Act, that the development of and the purchase of equipment and materials needed for Lithium Sea-Water batteries are essential to the national defense.

Without Presidential action under section 303 of the Act, United States industry cannot reasonably be expected to provide the capability for the production of Lithium Sea-Water batteries adequately and in a timely manner. Further, purchases, purchase commitments, or other action pursuant to section 303 of the Act are the most cost effective, expedient, and practical alternative method for meeting the need for this critical capability.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, October 5, 2018

[FR Doc. 2018–22340
Filed 10–10–18; 11:15 am]
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H.R. 46/P.L. 115–255

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Sam Farr and Nick Castle Peace Corps Reform Act of 2018 (Oct. 9, 2018; 132 Stat. 3650)

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Small Business Innovation Protection Act of 2017 (Oct. 9, 2018; 132 Stat. 3664)

S. 1668/P.L. 115–260

To rename a waterway in the State of New York as the ''Joseph Sanford Jr. Channel''. (Oct. 9, 2018; 132 Stat. 3666)

S. 2559/P.L. 115–261

Marrakesh Treaty Implementation Act (Oct. 9, 2018; 132 Stat. 3667)

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